

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.

With respect, we suggest that the NAV Requirement need not be modified absent a convincing rationale establishing cause and effect. We note that the NAV Exemption, which is not proposed to be amended, would already exempt large groups of Chapter 37 debt issuers. To the extent a prospective issuer does not fall within the NAV Exemption, a higher NAV Requirement would in theory help screen out “weaker” candidates. However, as acknowledged in the Consultation Paper, asset size is not always a direct indication of quality. Other matrices, e.g., gearing ratio and profit, may be as indicative or arguably more indicative, especially from a credit perspective. Would it be wise to focus on asset alone and raise the threshold tenfolds? We would encourage the Stock Exchange to hear from asset-light issuers, many of them from innovative sectors, on how the proposed change might affect them. We are concerned that the proposed new threshold might screen out otherwise quality listing candidates; more importantly, we are concerned about an asset-first signal this change may convey to market participants, which we believe is not intended by the Stock Exchange.

Further, we would invite the Stock Exchange to consider whether it is necessary at all to maintain an asset or other financial requirement for listing eligibility, which is not required by many other listing venues. If this requirement could be dispensed with, then this question as well as question 12 below would become moot and the listing process could be further streamlined.

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.

This has to do with the purpose of the Issuer Eligibility Requirements in the first place and why State corporations, defined on an ownership test, should be exempt. It would be a major policy departure for the Stock Exchange to change the ownership test to what would become a credit test; we do not believe it is the Stock Exchange's desire to get in the business of assessing explicit or implied State support for listing candidates, which would go against the light-touch regulatory philosophy. We agree that the status quo can continue unless there are compelling policy reasons for change.

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

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

Yes

No

Please give reasons for your views.

We agree with the analysis set out in the Consultation Paper, provided that tap issuances are carved out as proposed. We note that HK\$100 million is not too high a threshold for a debt issuance marketed to professional investors.

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

Yes

No

Please give reasons for your views.

We agree that this would be a necessary carveout, since it is not uncommon that a debt issuer would want to “tap” an existing issue in an amount that could be significantly smaller. This should not be an issue if the original issuance meets the size requirement. We would suggest, however, that a rigorous definition for tap issuances be given.

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

Yes

No

Please give reasons for your views.

We agree with the policy analysis in general, but see our response to question 5 below. As proposed, this would work together with the proposal discussed in question 5.

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

Yes

No

Please give reasons for your views.

As an empirical matter, we observe that the absence of a requirement to publish listing documents online is, for many issuers, an advantage for the Stock Exchange vis-à-vis other listing venues which do require such publication; we believe this proposal, if adopted, could materially weaken the Stock Exchange's appeal to some listing candidates. Such issuers would have legitimate considerations for confidentiality, of the detailed terms of their debt instruments, for example, from competitors or other individuals or entities who are not the intended audience of the private offerings. Certain other listing venues also do not require publication and allow alternative arrangements for rightful investors to access such documents.

As a normative matter, we are not convinced that the proposal would address the issues set out in paras. 86-7 of the Consultation Paper. In a typical debt offering to professional investors, the investors will receive a copy of the listing documents, which would contain caution statements and other necessary information, before they make an investment decision. They would not be relying on listing documents posted online, especially if the documents are posted only on the listing date as currently proposed; the investment decision would have been made before pricing, which is typically several days before closing, when settlement occurs and debt instruments are issued, and listing, which normally occurs the day after closing.

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

Yes

No

Please give reasons for your views.

We agree with the analysis set out in the Consultation Paper. We would add our observation, with reference to para. 97 of the Consultation Paper, that the several other listing venues in substance also adopt a light touch with prescribed disclosures, even though they have disclosure requirements and do provide comments on listing documents. We have found that their comments, if any, are typically not excessive.

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

Yes

No

Please give reasons for your views.

We believe the key is to require that issuers include all pertinent information in listing documents. It would be very confusing and counterproductive to mandate a different set of listing documents for HNW Investors only.

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

Yes

No

Please give reasons for your views.

We are broadly supportive but also caution that any disclosure guidance should be well considered and discussed with market participants before publication. Any guidance should be clear and easy to follow and intelligently connect to reasonable policy objectives. Otherwise the proposal risks creating substantive disclosure checklists which would go against the light-touch regulatory philosophy and deter listing candidates to the advantage of other listing venues.

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

Yes

No

Please give reasons for your views.

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

Yes

No

You may provide reasons for your views.

We agree with the analysis set out in the Consultation Paper.

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.

We agree with the analysis set out in the Consultation Paper.

- (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.

We agree with the analysis set out in the Consultation Paper.

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.

With respect to the proposed item (a), we would like to invite the Stock Exchange to consider whether it would create an impression of increased compliance cost of listing debt securities on the Stock Exchange.

We would take exception to the proposed item (b) with respect to default, as provided in para. 119 of the Consultation Paper. While the policy consideration is clear, we note that defaults under debt documents come in varieties. While some can be serious, others could be administrative or clerical errors that can be quickly cured. Under the same item, on the issue of winding-up, we also think that the proposed language in Rule 37.47E(b) which provides "... in respect of the business or any part of the business of the issuer or the property of the issuer..." too broad. We question whether it is necessary to mandate an announcement of any default, or a winding-up action with respect to any part of an issuer's business, instead of relying on item (e), which would require an announcement of information having a material effect on an issuer's ability to discharge its obligations under listed debt securities. Such information we believe would surely include any material default or winding up/liquidation specified in item (b). We think the more principle-based item (e) would be sufficient and fit the light-touch regulatory philosophy better.

Furthermore, with respect to the proposed item (c), we question whether this proposal would be effective and whether it would be congruent with the light-touch regulatory philosophy. We note that issuers of listed debt securities, unlike those of equity securities, do not have heavy disclosure obligations under the current regime in the first place.

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

Yes

No

Please give reasons for your views.

We applaud this proposal, which we believe would meaningfully reduce unnecessary documentary burden and ease the listing application process on the Stock Exchange.

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.

We agree with the analysis set out in the Consultation Paper, but see our response to question 1 above.

- (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.

See above.

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.

We agree with the analysis set out in the Consultation Paper.

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.

No comment.

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.

No other comment.

- End -