

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.

We agree with the reasoning provided in the Consultation Paper.

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.

We agree with the proposal, but we recommend that the standards to determine a State corporation be expanded to explicitly include any company or other legal person, in which (i) the State possesses the power or right to appoint, nominate or designate more than 50 per cent. of the members of such company's or legal person's board of directors or other equivalent governing body, and (ii) the State possesses the power to direct or cause the direction of the management policies of such company or legal person, whether obtained by ownership of share capital possession of voting rights, contract or otherwise.

We believe this change is meaningful and helps to demonstrate the existence of a control by the State in a corporation, whose the equity stocks are widely disseminated. This situation may increase as in recent years an increasing number of PRC state-owned enterprises have carried out restructurings in response to the policies of the Central Government of the PRC to attract capital from the private sector to vitalize the business of the state-owned enterprises. See <http://finance.chinadaily.com.cn/a/201902/27/WS5c773602a31010568bdcc6f8.html>; <http://www.sasac.gov.cn/n2588025/n4423279/n4517386/n10527539/c10695408/content.html>.

In addition, these new standards that we are proposing have been generally adopted by market practitioners in determining the status of a state-owned corporation in the transaction documents relating to the issuance of a Chapter 37 Debt.

- (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 reasoning provided in Consultation Paper paragraphs 68 through 72.

- (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 with the reasoning provided in Consultation Paper paragraph 70.

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 cautious statement cited in paragraph 75 has explicitly indicated the intended investor market in Hong Kong, which are Professional Investors only. It is clear and unambiguous. We believe that the proposed statement does not add any weight in emphasising that message substantively. In addition, we prefer to avoid a growing trend toward mandatory disclaimers written in the form of confirmation, as an Issuer is legally and contractually responsible and liable for the accuracy of all material statements in its offering document.

Instead of adopting the new cautious statement, we suggest that you require issuers to put the full text of the existing cautious statement in bold to make it more obvious to readers.

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

Yes

No

Please give reasons for your views.

We agree with the reasons stated in paragraphs 89-91 of the Consultation Paper. In addition, knowing that the offering document will be publicly available will presumably lead to issuers devoting extra effort to ensuring the accuracy of the disclosure and enhancing the quality of the drafting.

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 reasons given in paragraphs 97-100 of the Consultation Paper. In addition, we believe Professional Investors can make their own assessment of the quality and completeness of the disclosure.

- (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 agree with the reasons given in paragraph 99 of the Consultation Paper. In addition, our view is that HNW Investors are generally sophisticated investors who know what to expect in an offering document.

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.

In the interest of promoting quality and consistency of disclosures, we have no objection to the publication of disclosure guidance related to Special Features, provided that such guidance is consistent with paragraphs 102 -103 of the Consultation Paper, and is considered neither exhaustive nor mandatory.

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

Yes

No

Please give reasons for your views.

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

Yes

No

You may provide reasons for your views.

We agree with the reasoning in paragraphs 105-107 of 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 reasoning in paragraphs 110-113 of 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 reasoning in paragraphs 110-113 of 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.

(a) We suggest "as soon as practicable" instead of "promptly" in that issuers may need time to prepare responses and seek advice from external advisers before they are able to respond to the enquiries of the Exchange.

(b) - (g) We agree with the proposals.

We are also making two additional proposals to enhance information transparency.

(i) To Publish the Annual Accounts and Interim Accounts provided under Rule 37.53

We propose to add a rule that requires an issuer to publish on the Exchange's website the annual accounts and interim report provided to the Exchange pursuant to Rule 37.53 as soon as reasonably practicable after the same is so provided. This proposal is driven by the same rationale and consideration for our response to Question 5 above.

Issuers and/or guarantors are normally required by the terms and conditions of the debt securities to furnish their annual audited reports and unaudited interim accounts with the trustee within a specified period, but those reports and accounts are only available to existing bondholders upon request, and are not available to any person who does not hold any of the securities at that time, such as potential investors in the secondary market. Although Chapter 37 Debts are not traded on the Exchange, it is crucial to give existing holders of listed debt securities and potential investors an access to the issuers' or the guarantors' key financial information to allow them to make an informed investment decision. SGX and ISE publish the annual and interim accounts filed by the issuers of debt securities.

(ii) To Clarify the Announcement Obligation in the Event of Open Market Repurchase

Second, we propose to clarify in the Listing Rules that an issuer is not required to make an announcement if it, directly or indirectly through its subsidiaries, purchases without cancellation more than 10 per cent. of the total principal amount of the bonds of the same series then outstanding on the open market. Existing Rule 37.48(a) imposes a mandatory announcement obligation in the event of a redemption or cancellation, but it is unclear whether this obligation needs to be fulfilled by issuers in the open market repurchase. We have from time to time received enquiries from corporate and financial institution clients in this regard. Therefore, we believe additional clarification is necessary to allow market participants to clearly understand the applicability of this rule.

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 agree with the reasoning provided in paragraphs 136-139 of the Consultation Paper.

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.

Having a third party (the auditor) involved increases quality control.

- (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.

We agree with the reasoning provided in paragraphs 143 and 144 of the Consultation Paper.

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 reasoning provided in paragraph 147 of 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.

The amendments should be circulated for public review as the possibility of unintended consequences is very real (see for example the replies to Q10 above - the HKEX needs to exercise caution in establishing rules for ongoing disclosure when Bonds are governed by their unique Terms & Conditions.).

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.

We would like to take this opportunity to make two proposals in respect of matters that are not discussed in the Consultation Paper.

1. Eligibility criteria for a listing of guaranteed debt securities

Under existing Rule 37.08, one of the eligibility criteria of the issuer of a guaranteed debt securities for listing the debt securities is that the issuer is wholly owned by a State, a Supranational or by a corporate body that meets the eligibility criteria. We propose to liberalize the ownership threshold to "majority owned".

Under the prevailing terms and conditions of the guaranteed debts in the market, the guarantor guarantees the obligations of the issuer as if it was the primary and principal obligor under the debt instrument regardless of its ownership of the issuer. We do not see that a less 100 per cent. ownership of the issuer by the guarantor should be interpreted as a negative implication of the guarantor's ability to fulfill its guarantee obligations in respect of the guaranteed securities. The existing ownership requirement by the guarantor would make this structure unavailable or costly for certain companies which do not have existing wholly owned subsidiaries, and discourages them to seek listing of their bonds on the Exchange.

It also seems unnecessary to require a 100 per cent. ownership of the issuer's share capital by a State here, because the issuer is able to establish its "State corporation" status with a lower threshold based on the definition of "State corporation".

2. Listing of debt securities issued in a tap issuance

We would like to propose a procedural change that allow debt securities issued in a tap issuance to be listed before it consolidates with the outstanding debt securities.

Currently, new debt securities issued in a tap issuance are not able to acquire the listing status until they are consolidated with the relevant outstanding debt securities of the issuer on the consolidation date. For a number of reasons, such as post-issue regulatory filings or selling restrictions, debt securities issued in a tap issuance may not be immediately consolidated and fungible with the outstanding debt securities of the issuer until a later date when the post-issue filings in respect of the additional securities are completed or the distribution compliance period is lapsed. This period could last for weeks or even months due to uncertainties that are beyond the applicant's control. Making consolidation a prerequisite for the new securities to acquire its listing status materially affects the marketability of the newly issued securities. From the procedural perspective, the consolidation date needs to be provided by the listing applicant during the listing application. But it is hard for listing applicants to provide a definitive consolidation date at this stage due to the uncertainties associated with consolidation.

It is our view that listing of new securities issued in a tap issuance should not be affected by the consolidation with the outstanding securities. The Exchange may still grant the listing approval in respect of the new securities with a different stock code to distinguish them from the existing securities until the issuer submits an application to consolidate both securities for the purposes of Chapter 37 after they are consolidation under their terms. This is similar to the practice adopted by the clearing systems to distinguish the new and existing securities before consolidation.

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