

SLAUGHTER AND MAY

**SUBMISSION BY SLAUGHTER AND MAY
REGARDING THE STOCK EXCHANGE OF HONG KONG LIMITED'S
CONSULTATION PAPER ON THE LISTING REGIME FOR DEBT
ISSUES TO PROFESSIONAL INVESTORS ONLY**

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Consultation Questions

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 that the HK\$100 million threshold should be increased given that (i) the current threshold has remained unchanged for over 15 years; (ii) the average NAV levels of those issuers intending to list debt securities under the Professional Debt Regime will have increased during that time; and (iii) increasing the threshold such that only those issuers with a higher asset pool are eligible for listing should help to maintain the quality of the Professional Debt Regime.

While we generally agree that setting the threshold at HK\$1 billion seems to strike a reasonable balance between enhancing investor protection while not excluding quality issuers who might otherwise have a low net asset level, we would encourage the Exchange to carefully consider any feedback from market participants with greater expertise on the pipeline of potential debt issuances in order to assess the impact such amount might have on the overall development of the debt market in Hong Kong.

In addition, the Exchange should clarify whether, in cases where a keepwell arrangement is being utilised by the issuer of the debt securities, the NAV Requirement can be satisfied by the net assets of the relevant keepwell provider, which would provide issuers with greater flexibility on potential credit enhancement structures.

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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.

We understand that the current Eligibility Exemption for State corporations is based on whether such corporations are majority owned by, and/or by agencies of, a State rather than whether financial support or backing is provided by a State. We believe that concerns raised by some market participants as to whether financial support or backing will be provided by a State to its State corporations in case of default of the State corporations' payment obligations can be addressed by including relevant disclosure in the listing documents.

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

See our response to question 2(a) above.

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.

A minimum issuance size should assist in maintaining the quality of the Professional Debt Regime by allowing access only to issuers with the financial capacity and a proven track-record of raising sizeable funds in the market.

While we are supportive of the introduction of a minimum issuance size, we note that the proposed HK\$100 million threshold is considerably higher than the minimum issuance size requirements currently imposed by LUXSE (HK\$1.85 million), ISE (HK\$1.85 million), LSE (HK\$2.1 million) and SGX (HK\$29.1 million). Accordingly, as with our response to question 1 above, we would encourage the Exchange to carefully consider any feedback from market participants with greater expertise on the pipeline of potential debt issuances in order to assess the impact such amount might have on the overall development of the debt market in Hong Kong.

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

Yes

No

Please give reasons for your views.

Given that the issuer will have satisfied the minimum issuance size requirement at the point of original issuance, we agree that there is no need to make issuers satisfy this requirement again.

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 Rules 37.31?

Yes

No

Please give reasons for your views.

The explicit statement on the front cover should better alert retail investors that they are not the intended class of investors in relation to Chapter 37 Debts. Further, the statement should assist Licensed Intermediaries in facilitating the suitability assessments when the listing documents become available in the secondary market, helping to minimise the mis-selling of Chapter 37 Debts in the secondary market.

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.

The publication of listing documents for Chapter 37 Debts on the Exchange's website should benefit both Licensed Intermediaries and potential investors by providing access to information on the relevant Chapter 37 Debts. In addition, such a requirement would bring Hong Kong in line with global standards given that the publication of such information is already required by LUXSE, ISE, LSE and SGX.

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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 proposal to maintain the Exchange's 'light-touch' approach in relation to disclosure requirements and vetting for Chapter 37 Debts. In particular, we agree that adopting prescriptive disclosure requirements could negatively impact the ease at which issuers can list their Chapter 37 Debts, as well as the length of time to complete the listing process. This, in turn, could have a negative impact on Hong Kong's competitiveness as a listing venue for debt securities and undermine the Hong Kong Government's initiative of continuing to develop the bond market in Hong Kong.

- (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 provided (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.

Please see our response to question 6(a) above.

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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.

The proposed market guidance should help to promote disclosure quality and consistency. We note, in particular, that such market guidance will be able to be updated from time to time in order to reflect changing market conditions and respond to changes to the Special Features commonly found in certain Chapter 37 Debts. As such, issuing market guidance as opposed to attempting to mandate prescriptive disclosures for Chapter 37 Debts will introduce greater flexibility to the Professional Debt Regime, allowing the Regime to adapt to the evolution of the bond market in Hong Kong.

- (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.

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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.

Codifying the PI Waiver should help to ensure that potential issuers are informed of the fact that the Professional Debt Regime is in fact available to HNW Investors, as well as Institutional Investors. This should help to ensure that Hong Kong is considered as a possible listing venue for HNW Investors' debt securities. Similarly, given that an issuer's choice of listing venue often depends on ease and length of time in completing the listing process, reducing the administrative burden on issuers by removing the need for issuers to apply for the PI Waiver should help to increase the attractiveness of Hong Kong as a listing venue.

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.

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

We are generally supportive of the proposed enhancements.

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.

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.

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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.

Bringing the Rule in line with market practice should help to avoid confusion amongst potential issuers.

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.

Please see our response to question 1 above regarding keepwell arrangements.

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.

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If the Exchange has any queries regarding our submission, please feel free to contact John Moore at [REDACTED] or Charlton Tse at [REDACTED]

Slaughter and May
7 February 2020

