

## Chapter 37 Consultation Conclusions & Disclosure Guidance: New Changes and Disclosure Guidance

26 August 2020



### What You Need To Know – Background, Key Takeaways and Analysis

On 21 August 2020, The Stock Exchange of Hong Kong Limited (the “**Exchange**”) published its “**Consultation Conclusions on Review of Chapter 37 – Debt Issues to Professional Investors Only and Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt Issues to Professional Investors Only**”<sup>1</sup> (the “**Chapter 37 Consultation Conclusions & Guidance**”), which consists of:

1. firstly, the Exchange’s **consultation conclusions**<sup>2</sup> (the “**Consultation Conclusions**”) to the proposals set out in its original **consultation paper**<sup>3</sup> published on 6 December 2019 (the “**Consultation Paper**”). An overview of the Consultation Conclusions is set forth in Section 1 below; and
2. secondly, **additional guidance**<sup>4</sup> published by the Exchange (the “**Guidance Note**”), setting out recommendations on expected standards of disclosure and continuing obligations for Chapter 37 Debts (as defined below). An overview of the Guidance Note is set forth in Section 2 below.

The Chapter 37 Consultation Conclusions & Guidance applies to debt securities listed on the Exchange under Chapter 37 of the **Main Board listing rules** (the “**Listing Rules**”) (“**Chapter 37 Debts**”). To the extent equivalent rules exist for the Growth Enterprise Market (the “**GEM**”), equivalent amendments will also be made to the GEM listing rules pursuant to the Consultation Conclusions, and the recommendations under the Guidance Note will also apply to debts listed under Chapter 30 of the GEM listing rules, although this note will focus on the impact on Chapter 37 Debts.

<sup>1</sup> Announcement of the “Consultation Conclusions on Review of Chapter 37 – Debt Issues to Professional Investors Only and Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 - Debt Issues to Professional Investors Only” dated 21 August 2020

A Chinese version of such announcement is available at [https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/news/regulatory-announcements/2020/200821news?sc\\_lang=zh-cn](https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/news/regulatory-announcements/2020/200821news?sc_lang=zh-cn)

<sup>2</sup> “Consultation Conclusions on Review of Chapter 37 – Debt Issues to Professional Investors Only” (August 2020)

<sup>3</sup> “Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only” (December 2019)

<sup>4</sup> “Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt Issues to Professional Investors Only” dated 21 August 2020

#### What are the key changes?

- > **NAV requirement increased to HK\$1bn**
- > **Disclosure of intended investor market**
- > **Publication of OC**
- > **Recommended disclosure guidance**

#### What do they apply to?

**Securities listed under Chapter 37 of the Listing Rules**

#### When do they take effect?

**1 November 2020**

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The effective date of the amendments and guidance set out in the Chapter 37 Consultation Conclusions & Guidance is 1 November 2020. For new listing applicants that submit their applications before 1 November 2020, the listing qualifications and requirements in force as at 21 August 2020 shall apply.

As expected, the Chapter 37 Consultation Conclusions & Guidance implement a number of the proposals set out in the original Consultation Paper, each of which are explored in more detail below.

Some of the key reforms, such as (a) including clear disclosure in the listing document on the intended investor market in Hong Kong SAR for Chapter 37 Debts and (b) requiring the publication of listing documents on the Exchange website on the listing date, are intended to bring the Hong Kong market into line with existing practice in other jurisdictions, such as the European Union and Singapore, and represent a welcome attempt to resolve differences in the primary market and secondary market regimes for Chapter 37 Debts. Likewise, the recommendations set forth in the Guidance Note are not expected to be significantly contentious nor onerous to issuers, and are intended to promote greater transparency and consistency in both the level and quality of disclosure available to market participants, and in particular, to investors.

## 1. Overview of amendments under the Consultation Conclusions

An overview of, and brief commentary on, of the key amendments to be implemented under the Consultation Conclusions is set out below.

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
1	Increasing the minimum net asset value requirement (the " <b>NAV Requirement</b> ") from HK\$100 million to HK\$1 billion	<p><b>Adopted by the Exchange.</b></p> <p>The increase in the NAV Requirement is timely, given the current threshold of HK\$100 million has remained unchanged for fifteen years.</p> <p>The Exchange was invited by respondents to the Consultation Paper to consider other options, such as (a) raising the NAV Requirement to a level lower than HK\$1 billion, (b) considering alternative criteria in order to determine an issuer's (or guarantor's) eligibility such as its credit rating or (c) allowing the NAV of other obligors (such as a keepwell provider or a guarantor that does not wholly own the issuer) to be assessed for eligibility purposes (rather than looking solely at the NAV of an</p>

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<p>issuer or a guarantor that wholly owns the issuer).</p> <p>However, the Exchange reiterated its position that the NAV Requirement provides a clear and objective criterion to determine an issuer's (or guarantor's) listing eligibility, and that it will continue to look solely to the issuer (or a guarantor that wholly owns the issuer) in determining eligibility for listing.</p>
2	<p>Maintaining the current eligibility exemption available for State corporations</p>	<p><b>Regional State corporations will be required to comply with the eligibility requirements.</b></p> <p>Interestingly, despite a majority of respondents supporting the Exchange's proposal to maintain the eligibility exemption to State corporations generally, the Exchange has concluded that Regional State corporations (as defined below) will no longer be entitled to rely on the eligibility exemption for State corporations, and will need to comply with the eligibility requirements.</p> <p>"Regional State corporations" are defined as corporation(s) controlled or majority owned by regional or local authorities. Helpfully, the Exchange has clarified that this definition excludes corporations controlled or majority owned by central governments (which, in the case of the People's Republic of China ("PRC"), would include PRC central ministries and State-owned Assets Supervision and Administration Commission of State Council ("SASACs")). This means that corporations controlled or majority owned by PRC central ministries and SASACs can continue to rely on the eligibility exemption. The Exchange also noted that in certain cases, it may require a legal opinion from an issuer's legal adviser in order to assess whether</p>

Proposal under the original Consultation Paper	Exchange’s approach under the Consultation Conclusions and commentary on the approach
	<p>the issuer or guarantor is a State corporation under Chapter 37.</p> <p>However, the amendment will impact Regional State corporations, which could include local government financing vehicle (“<b>LGFV</b>”) issuers, as they may no longer be able to rely on the eligibility exemption. This appears to be acknowledged by the Exchange, which, in justifying its approach, noted instances of bond defaults by some Regional State corporations including recent instances of non-payment by LGFV bond issuers, as well as complaints received by the Exchange relating to Chapter 37 Debts issued by Regional State corporations that have defaulted.</p> <p>The Exchange also expressed concern that it would be inappropriate to maintain the eligibility exemption to all State corporations, given that in certain cases, Chapter 37 Debts issued by Regional State corporations may not necessarily receive financial support from the relevant government or state in the event of a default.</p> <p>The Exchange therefore cited such concerns, as well as its consultations with the Securities and Futures Commission (the “<b>SFC</b>”), in concluding that the eligibility exemption should not be granted to Regional State corporations.</p>
<p>3 Introducing a minimum issuance size of HK\$100 million (or equivalent) for Chapter 37 Debts</p> <p>However, such minimum issuance size requirement will not apply to tap issuances</p>	<p><b>Adopted by the Exchange.</b></p> <p>The Exchange explained that this amendment would ensure that only issuers with financial capacity and a proven track record of supporting debt issuances of a significant amount would be eligible for issuing Chapter 37 Debts.</p>

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<p>Helpfully, the Exchange clarified that the new minimum issue size requirement will not apply to:</p> <ul style="list-style-type: none"> <li>a. unlisted issuances under a medium term note programme notwithstanding that such programme is listed under Chapter 37; and</li> <li>b. tap issuances.</li> </ul>
4	<p>Requiring 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 Listing Rule 37.31</p>	<p><b>Adopted by the Exchange.</b></p> <p>In relation to the form of the “intended investor market” statement, the Exchange clarified that the sample statement provided in the original Consultation Paper (and set out below) should serve as an example only (rather than the prescribed wording) and the Exchange would be open to accepting alternative language to the same effect:</p> <p><i>“<b>Notice to Hong Kong investors:</b> The Issuer confirms that the [Bonds] are intended for purchase by professional investors only (as defined in the Securities and Futures Ordinance (Cap 571) and Rules made thereunder) and have been listed on The Hong Kong Stock Exchange Limited on that basis. Accordingly, the Issuer confirms that the [Bonds] are not appropriate as an investment for retail investors in Hong Kong. Investors should carefully consider the risks involved.”</i></p> <p>To avoid duplication, the above statement (or a similar alternative) would replace the existing disclaimer currently required to be included on the front cover of listing documents:</p> <p><i>“Investors should not purchase the bonds in the primary or secondary markets unless they are Professional Investors and understand the risks</i></p>

Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
	<p><i>involved. The bonds are only suitable to Professional Investors.”</i></p> <p><i>This amendment is a welcome enhancement to the Chapter 37 regime. It will allow the issuer the opportunity to state explicitly its investor market and confirm that the Chapter 37 Debts are not appropriate for retail investors in Hong Kong. This focus on disclosure of an issuer’s “intended investor market” is also in line with the approach taken in other key jurisdictions such as the European Union, where MiFID II requires, amongst other things, manufacturers to identify a target market for their financial instruments<sup>5</sup>.</i></p> <p><i>In addition, while the primary market availability of the listing document should be limited in Hong Kong to professional investors, the new “intended investor market” legending will be especially useful once the listing document becomes available in the secondary market, including through publication of the listing document on the Exchange website as described in paragraph 5 below.</i></p> <p><i>Such legending will also play an effective role in protecting the integrity of the secondary market in Chapter 37 Debts, in that such information on the “intended investor market” (i.e. the universe of investors for which the manufacturer believes the product to be generally appropriate) will be available to, and can be taken fully into account by, intermediaries in discharging their suitability obligations, in respect of each individual investor, taking account of its specific circumstances.</i></p>

<sup>5</sup> Article 16(3) of Directive 2014/65/EU on markets in financial instruments and Article 9(9) of the Commission Delegated Directive (EU) 2017/593

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<p><i>In appropriate cases, the legending may identify only institutional professional investors as the intended investor market for which the Chapter 37 Debts are appropriate.</i></p>
5	<p>Requiring publication of listing documents for Chapter 37 Debts on the Exchange's website on the listing date</p>	<p><b>Adopted by the Exchange.</b></p> <p>The Exchange has explained that this new requirement will enhance transparency and increase market awareness of the professional nature of Chapter 37 Debts, namely that such bonds are targeted at professional investors only.</p> <p>In addition, the Exchange has stated that publication of the listing document would need to be accompanied by:</p> <ul style="list-style-type: none"> <li>a. a disclaimer making clear that such publication would not amount to a public offer of the Chapter 37 Debts; and</li> <li>b. a statement identifying the "intended investor market" of the Chapter 37 Debts, similar to that described in paragraph 4 above.</li> </ul> <p>The Exchange also clarified that the new publication requirement will not apply to unlisted issuances under a medium term note programme listed under Chapter 37.</p> <p><i>As with the new "intended investor market" legending discussed in paragraph 4 above, this amendment is a welcome enhancement to the Chapter 37 regime. Requiring publication of the listing document on the Exchange's website will:</i></p> <ul style="list-style-type: none"> <li><i>i. bring Hong Kong into line with the other major listing venues for professionals-only listings such as</i></li> </ul>

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<p><i>London, Luxembourg, Ireland and Singapore;</i></p> <p><i>ii. ensure that the legending which identifies the restricted nature of the listing (including the “intended investor market” legending described in paragraph 4 above) remains in public view;</i></p> <p><i>iii. provide a record of the full terms and conditions of the Chapter 37 Debts, which may not otherwise be available on abbreviated sources such as Bloomberg (this is particularly important for covenanted, structured and/or otherwise complex instruments); and</i></p> <p><i>iv. establish a benchmark for the public information against which legal and Listing Rules provisions which protect against market abuse in respect of Chapter 37 Debts can be measured.</i></p> <p><i>In some ways, this is the most significant of the Chapter 37 Listing Rule changes under the Consultation Conclusions. The availability of Chapter 37 Debts in the secondary market, sometimes even to retail investors, has long been a source of regulatory concern. While at first sight perhaps counter-intuitive, making Chapter 37 listing documents public is intended to ensure that the professional-only market nature of the Chapter 37 Debts is adequately disclosed – an intermediary which sells bonds in the secondary market will need to demonstrate that it has discharged its suitability obligation notwithstanding that the intended investor market was professional investors.</i></p>
6	Maintaining the Exchange's current disclosure and vetting	<b>Adopted by the Exchange.</b>

	<b>Proposal under the original Consultation Paper</b>	<b>Exchange's approach under the Consultation Conclusions and commentary on the approach</b>
	<p>approach in relation to listing documents for Chapter 37 Debts, notwithstanding that the intended investors would include high net worth investors<sup>6</sup> (“<b>HNW Investors</b>”)</p>	<p><i>We believe this is an appropriate and positive outcome. Retaining the Exchange's current “light touch” approach will not only maintain Hong Kong's competitive position as a leading listing venue in the region and ensure that the Exchange's document review turnaround time and listing process remains comparable to other key competitors in the region, but it will also help to support the Hong Kong Government's initiatives to continue to develop the local bond market.</i></p>
<p>7 Whether there should 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<sup>7</sup></p>	<p><b>No such different standard was considered necessary by the Exchange.</b></p> <p><i>This is similarly an appropriate and positive outcome.</i></p> <p><i>There is no clear legal reason for differentiating between Institutional Investors and HNW investors in the Listing Rules, and this distinction is similarly not made in legislation such as the prospectus regime under the <i>Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong)</i> or section 103 of the <i>Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong (the “SFO”)</i>. If different (including more stringent and onerous) standards were applied to Chapter 37 Debts offered to HNW Investors, the relative competitiveness of the Exchange as a listing venue may be affected, given the importance of HNW Investors as a potential investor market for Chapter 37 Debts.</i></p>	

<sup>6</sup> High net worth investors refer to high net worth corporates, high net worth individuals and others as prescribed by rules made under section 397 of the SFO.

<sup>7</sup> Institutional Investors refer to professional investors as defined under section 1 of Part 1 of Schedule 1 to the SFO, excluding HNW investors.

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<p><i>The <b>Code of Conduct</b><sup>8</sup> now embeds distinctions between Institutional Investors and HNW Investors, so there is a more appropriate framework to address the potentially different needs of different types of professional investors at the point of sale – a much preferable outcome to additional regulation in the Listing Rules.</i></p>
8	<p>Publishing disclosure guidance to the market on specified “Special Features” found in certain Chapter 37 Debts and other disclosure-related matters</p>	<p><b>Adopted by the Exchange, as set out in the Disclosure Guidance described in Section 2 below.</b></p> <p><i>As a general comment, the Guidance Note may be seen as a further strengthening of the disclosure, now to be published and to remain available as a matter of record to intermediaries.</i></p>
9	<p>Codifying the PI Waiver (as defined in the Consultation Paper) by revising the definition of “professional investors” under Chapter 37 of the Listing Rules to include HNW Investors</p>	<p><b>Adopted by the Exchange.</b></p> <p><i>This is a welcome development, which together with the amendments described in paragraph 12 below, is expected to further streamline and enhance the efficiency of the Exchange listing process.</i></p> <p><i>The waiver requirement was a residue of the previous overhaul of the Chapter 37 Regime in 2011, and its elimination is a logical corollary of the Consultation Conclusions discussed in paragraphs 4, 5 and 7 above.</i></p>
10	<p>Amendments to the Listing Rules relating to an issuer’s or guarantor’s eligibility in the case of issuances by a real estate investment trust (“REIT”)</p>	<p><b>Adopted by the Exchange.</b></p> <p><i>The amendments are a positive development and seek to improve the operation of the Listing Rules in the case of issuances where an issuer and/or guarantor has recourse against the assets of a REIT for satisfying its</i></p>

<sup>8</sup> Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		<i>obligations under the relevant Chapter 37 Debts.</i>
11	Certain amendments to the continuing obligations of issuers and guarantors under the Chapter 37 Listing Rules	<p><b>Adopted by the Exchange.</b></p> <p>The amendments consist of new requirements on issuers and guarantors to:</p> <ul style="list-style-type: none"> <li>a. respond promptly to the Exchange's enquiries, and if requested by the Exchange, publish announcements, in relation to any unusual movements in the price or trading volume of an issuer's Chapter 37 Debts, the possible development of a false market in its Chapter 37 Debts, or any other matters;</li> <li>b. announce any default on its Chapter 37 Debts or matters leading to or involving the appointment of a receiver or manager, winding up, liquidation and/or equivalent action;</li> <li>c. publish quarterly announcements of its developments after trading suspension of Chapter 37 Debts; and</li> <li>d. announce information having a material effect on an issuer's ability to meet its obligations under its Chapter 37 Debts.</li> </ul> <p>The Exchange explained that the intention behind these amendments was to enhance transparency and facilitate the exercise of investors' rights. The Exchange further clarified that "default" under paragraph (b) above would include (but would not be limited to) any cross-default of Chapter 37 Debts triggered by a default on other obligations of the issuer and/or guarantor.</p> <p>In addition, the Exchange has introduced certain other amendments to the Chapter 37 Listing Rules to</p>

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
		clarify the operation and scope of the continuing obligations, though these do not introduce substantive changes.
12	Additional changes to further enhance the efficiency of the Exchange listing process and streamline the application process	<p><b>Adopted by the Exchange.</b></p> <p>These enhancements consist of:</p> <ul style="list-style-type: none"> <li>a. replacing 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 the guarantor) in relation to its due incorporation, capacity and authorisation;</li> <li>b. replacing the existing requirement to submit last published financial statements with a new requirement for an issuer (or the guarantor that an issuer relies on in fulfilling the eligibility requirements) to submit its audited financial statements to evidence its fulfilment of the eligibility requirements; and</li> <li>c. not requiring an issuer (or guarantor) to separately submit financial statements to the Exchange where the issuer (or the guarantor) is exempted from the eligibility requirements or where the required audited financial statements are disclosed in the listing document.</li> </ul> <p><i>In relation to paragraph (a), the Exchange did not specify in its Consultation Conclusions the form in which such "written confirmation" from the issuer should take, and so it remains to be seen whether an email confirmation from an authorised officer of the issuer, for example, would be sufficient to satisfy this new requirement.</i></p>

	Proposal under the original Consultation Paper	Exchange's approach under the Consultation Conclusions and commentary on the approach
13	Other housekeeping changes to improve the clarity of the Chapter 37 Listing Rules and to correct any typographical errors	<b>Adopted by the Exchange.</b>

## 2. Overview of the Guidance Note

The Guidance Note (which is intended to be read together with the Consultation Conclusions covered in Section 1 above) is divided into three parts:

- a. firstly, general guidance on disclosure that issuers should consider when preparing listing documents for Chapter 37 Debts more broadly;
- b. secondly, specific guidance on disclosure in relation to particular types of Chapter 37 Debts with special features (known as "DSSFs"); and
- c. finally, general guidance in relation to the continuing obligations under the Chapter 37 Listing Rules.

Importantly, the Exchange has stressed that the Guidance Note is not intended to be exhaustive nor prescriptive as to the level and types of disclosure to be included in a listing document, nor to the types or specific features of DSSFs. The disclosure standard, as set out in Listing Rule 37.29, should remain the driving principle for issuers, which is that a listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain.

### A. General guidance on disclosure that issuers should consider when preparing listing documents for Chapter 37 Debts

The first part of the Guidance Note sets out general guidance from the Exchange in relation to disclosure in a listing document for Chapter 37 Debts more broadly.

In line with the new amendments introduced under the Consultation Conclusions on prominent disclosure of an issuer's intended investor market (see paragraph 4 of Section 1 above), the Exchange emphasises that the disclosure in a listing document for Chapter 37 Debts should be commensurate with the customary expectation of its intended investor market, namely professional investors. Where this intended investor market includes HNW Investors, issuers should pay particular attention to what disclosure such investors would expect to be included in a listing document.

The types of disclosures proposed by the Exchange in its general guidance closely mirror the key sections that are commonly found in existing listing documents for Chapter 37 Debts, including (but not limited

to) financial information on the obligors, risk factors, terms and conditions, business description of the obligors and use of proceeds.

However, of particular interest are the following points noted by the Exchange in its general guidance:

- a. **Financial and business disclosure:** in determining the appropriate level of financial and business disclosure to be included on an obligor in a listing document under the Chapter 37 Listing Rules, issuers may wish to consider certain factors such as:
- i. whether the individual obligor has a “*fundamental role in the fulfilment of payment obligations under the debt securities*”<sup>9</sup>. For example, investors may expect a lower level of financial and business disclosure where an obligor merely provides more limited credit support such as by way of a non-enforceable letter of comfort or a standby letter of credit for the Chapter 37 Debts. In contrast, investors may expect a more detailed level of financial and business disclosure where an obligor is acting as a guarantor of the Chapter 37 Debts; or
  - ii. whether investors would be making a credit assessment on the basis of the consolidated financial statements of the corporate group rather than individual obligors. For example, in the case of subsidiary guarantors in high yield structures, professional investors may not customarily expect detailed financial information on individual subsidiary guarantors to be included in a listing document – rather, a credit assessment is made on the basis of the consolidated financial statements of the corporate group as a whole.
- b. **Risk factors:** in considering the appropriate level of risk factor disclosure, the Exchange reminds issuers to consider structural or other risks associated with the Chapter 37 Debts (particularly in the case of a DSSFs) such as subordination, security, credit support and the applicability of bail-in requirements. In addition, in the case of Chapter 37 Debts issued by State corporations, issuers should consider whether inclusion of prominent disclosure on the level of financial support that the issuer may receive from the state would be appropriate. For example, where an issuer will not receive any such financial support, risk factor disclosure stating that the repayment obligations under the Chapter 37 Debts remain the sole obligation of the issuer may be appropriate. In particular, an issuer which is a State corporation should consider including disclosure on its relationship with the government (including the nature and level of governmental ownership and control).
- c. **Terminology used in describing Chapter 37 Debts:** issuers are reminded to avoid the use of misleading terminology when describing Chapter 37 Debts. In particular, the title of the Chapter 37 Debts or the description of the obligors should reflect the actual type of credit

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<sup>9</sup> Paragraphs 4(a)(ii) and (vi) of the Guidance Note

support being provided – for example, the word “guaranteed” should only be used to describe a Chapter 37 Debt where the issuer’s obligations are in fact guaranteed by a separate entity.

- d. **Prominence of disclosure:** in addition to considering the level of disclosure, issuers are reminded to consider the *prominence* of such disclosure. In the case of a DSSF, for example, the Exchange has stated that it may be appropriate to include a disclaimer or cautionary statement on the front cover of the listing document highlighting any key structural or other features of such DSSF which could have an impact on investors’ rights.

## **B. Specific guidance on disclosure in relation to particular types of DSSFs**

The second part of the Guidance Note sets out specific guidance from the Exchange in relation to particular types of DSSFs.

The guidance focusses on reminding issuers of the appropriate and prominent disclosure of those features of a DSSF (including structural, commercial or legal features) which may operate differently from plain vanilla debt securities or any terms of a DSSF that could affect the rights of investors (together, known as the “**Product Features**”).

Whilst the Exchange emphasises that the Guidance Note is not intended to be prescriptive nor exhaustive as to the types of DSSFs, the Guidance Note does include the following as examples of DSSFs:

- > perpetual debt securities or other debt securities with variable or deferred payment terms;
- > debt securities with extendable maturity dates;
- > convertible bonds and exchangeable bonds;
- > debt securities with contingent write down or loss absorption features; and
- > debt securities with multiple credit support providers and structures (including, but not limited to, issuers, guarantors, keepwell providers, providers of any liquidity facility and/or equity interest or asset purchase undertaking, letter of comfort providers and standby letter of credit providers).

For each of the DSSFs described above, the Guidance Note provides a non-exhaustive list of the types of disclosure that issuers should consider including in a listing document, bearing in mind the customary expectations of the intended investor market, any specific Product Features of the particular DSSF and the associated risks of investing in the particular DSSF.

## **C. General guidance in relation to the continuing obligations under the Chapter 37 Listing Rules**

The third and final part of the Guidance Note sets out general guidance from the Exchange to remind issuers of their continuing obligations under the Chapter 37 Listing Rules. The guidance set out in this part is not

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intended to introduce new obligations but merely act as a reminder to issuers of their existing obligations.

For example, issuers of Chapter 37 Debts are reminded of the existing requirement to provide the Exchange with their annual accounts or any interim reports when they are issued or to notify the Exchange when such accounts or reports are published on a website. An issuer may also publish such financial information on the Exchange's website in order to enhance transparency, and it should do so where such financial information is required to be disclosed pursuant to the existing continuous disclosure requirements under the Listing Rules. Importantly however, the Guidance Note is not intended to introduce a new standalone obligation requiring all issuers of Chapter 37 Debts to publish ongoing financial information during the life of the Chapter 37 Debts.

Please do get in touch with your usual Linklaters contact if you would like to discuss any of the issues raised in this note or the Chapter 37 regime more generally.

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