

Press release

**LCQ17: Competitiveness of the Hong Kong stock exchange market
on trust listings**

Wednesday, June 8, 2011

Following is a question by the Hon Abraham Shek and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 8):

Question:

It has been reported that the Hong Kong Exchanges and Clearing Limited (HKEx) is now discussing the details on the introduction of business trust listing in Hong Kong, for which, under the current proposal, requires the trustee-manager to hold a controlling stake of not less than 50% of the total trust units; meanwhile, Hutchison Whampoa Limited announced in March this year that it will spin off its port business to a separate business trust listed in Singapore. Regarding the competitiveness of the Hong Kong stock exchange market on trust listings, will the Government inform this Council:

(a) given that real estate investment trust is the only kind of trusts allowed to be listed in Hong Kong at present, whether the Government has considered allowing the listing of other trusts, including but not limited to business trusts, by the end of this year; if it has, of the criteria and factors to be considered in establishing the listing mechanism for business trusts;

(b) whether it had conducted any consultation with the stakeholders in the past three years on establishing business trust listing; if it had, of the details of such consultation; whether a consensus view of the stakeholders in support of the proposed listing arrangements had been formulated, and if so, of the details of such proposal;

(c) given that in Singapore, it only requires the possession of 25% of trust units to control the respective business trusts, of the factors it has considered for proposing the threshold of not less than 50% of the total trust units for business trusts listed in Hong Kong, and whether such proposed arrangement is in line with any overseas practices; if so, of the details; if not, the reasons for that;

(d) given that a business trust does not have a separate legal identity and is only controlled by a trustee-manager, whether it has considered the feasibility of introducing any external regulation to regulate business trusts especially with regard to the requirements for enhancing information transparency and corporate governance of the trusts; if it has, of the details; if not, the reasons for that;

(e) as it has been reported that PCCW Limited has proposed a separate listing for its telecommunication operations in the form of a business trust, whether it has acknowledged and evaluated if the progress of establishing the listing mechanism for business trusts can timely meet the aforesaid Initial Public Offering listing proposal of PCCW Limited for such business trust; if not, of the measures it has considered in expediting the introduction of business trust listing in Hong Kong; and

(f) whether it has considered putting in place any institutional arrangement to monitor the risks of operating business trusts and the sale of any related financial product to the public; if it has, of the details; if not, the reasons for that?

Reply:

President,

My reply to the six parts of the question is as follows:

(a) & (d) The Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (Exchange) have been discussing with market practitioners and a number of entities seeking to list active businesses by way of a trust, the potential listing of business trusts in Hong Kong and the factors that should be taken into account in the relevant regulatory framework.

First, given that business trusts effectively operate as business enterprises, the Exchange is proposing to consider their listing applications and regulate them by applying the same principles in the Listing Rules as those applicable to any company seeking a listing on the Exchange. To achieve this, the Exchange would have to modify the current regulatory framework for listed companies in the Listing Rules to apply them to business trusts in a manner that fully preserves all the current Listing Rule requirements on investor protection, disclosure and corporate governance.

For example, business trusts are established by trust deeds and unlike companies, are not subject to the provisions on shareholder protection under the Companies Ordinance (or equivalent company laws in other jurisdictions) and other laws and regulations applicable to listed companies. The listing applicant will need to address existing requirements for investor protection standards by incorporating these matters into their trust deeds or by other acceptable means. The principle underlying this approach is to ensure that holders of units in business trusts enjoy investor protection standards comparable to those required of incorporated Hong Kong issuers, including investor's rights to approve significant matters relating to the trust and to attend and vote at general meetings.

Secondly, a key part of the regulatory regime for listed companies is provided in the Securities and Futures Ordinance (SFO). At present, some provisions in the SFO applicable to a listed corporation do not apply to a business trust, notably insider dealing and disclosure of interests in shares.

We consider it essential for investor protection that listed business trusts are subject to the relevant SFO provisions. We note that in other jurisdictions, some businesses have listed a "stapled" security, where a share in a company is "stapled" to a unit in a trust. These products trade as a single stapled security. As the security that is listed includes a share issued by corporation, the relevant SFO provisions may apply to such a structure.

The SFC and the Exchange are exploring with entities seeking to list an active business by way of a trust whether a structure that meets their commercial requirements can at the same time ensure that the relevant SFO provisions apply. These entities and the SFC are in the process of obtaining advice from leading counsel on the many and complex legal issues involved. Progress to date suggests that there are structures that will bring a listed business trust into the ambit of the relevant provisions of the SFO.

Separately, the primary business reasons advanced for listing by way of a trust are -

(i) tax benefits in some jurisdictions;

(ii) ability to make distributions if spare cash is available - trusts are not limited to only paying dividends out of realised profits; and

(iii) the trust can specify that surplus funds are paid out to investors, thus providing certainty to investors.

As there are no tax incentives in Hong Kong for business trust, a listed corporation can provide all the main advantages asserted for a listed business trust if first, it is incorporated in a jurisdiction where the company law allows distributions based on a solvency test, and second, its constitutional documents (i.e. Articles of Association) are amended to set a policy on distributions that mirror those included in the trust deed of a business trust.

(b) The SFC and the Exchange held a working group meeting with representatives from interested investment banks in April 2011 to discuss possible structures and key issues regarding listing business trusts under the current Hong Kong regulatory framework. There was a consensus that there are suitable ways to structure business trusts so as to ensure that the relevant SFO provisions would be applicable.

(c) As discussed in the answer to (a) above, the approach being considered is to ensure that the regulatory regime for a listed business trust mirrors that of a listed company. We note that the regulatory regime for listed managed investment schemes in Australia also mirrors that of a listed company and that the manager of a listed managed investment scheme could be replaced on the same basis as a company director, that is by simple majority of unit holders who vote at a duly convened meeting, without any restriction on who could vote. We consider that a change in the trustee manager for a listed business trust should require a simple majority of unit holders. In fact, after public consultation, the SFC amended its Code on Real Estate Investment Trusts in 2010 to institute a similar requirement.

(e) As disclosed by PCCW, the Exchange and the SFC are in discussions with PCCW as to the application of the Listing Rules and the relevant provisions of the SFO to the structure proposed by PCCW for a listing of a business trust.

(f) As stated in the answer to (a) above, the approach being considered is to ensure that the regulatory regime for a listed business trust mirrors that of a listed company. Consequently the risks derived from using a business trust structure should be in line with those of a corporation.

Ends