
AMENDMENTS TO THE MAIN BOARD RULES

Chapter 37

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

- 37.01 This Chapter deals with debt issues to Professional Investors only. It sets out the qualifications for listing, application procedures, contents of listing documents and the obligations that apply after listing.

Listing Approval

- 37.02 A listing application may be approved by:
- (a) ~~A~~ a member of the Listing Division to whom the Executive Director – Listing has delegated authority;
 - (b) ~~T~~the Executive Director – Listing (who may also delegate approval authority within the Listing Division); or
 - (c) ~~T~~the Listing Committee.

Applicants' Qualifications for Listing

- 37.03 An issuer must be a State, Supranational, body corporate (including a State corporation) or trust.
- 37.04 If an issuer is a body corporate it must be validly incorporated or established in its place of incorporation or establishment. If an issuer is a trust it must be validly established. An issuer must provide ~~evidence~~ written confirmation of this if it applies for listing.
- 37.05 If an issuer is a body corporate or trust it must have net assets of HK\$100 ~~million~~ 1 billion unless:
- (a) ~~i~~t is a Supranational; or
 - (b) ~~i~~t is a State corporation; or
 - (c) ~~i~~ts shares are listed on the Exchange; or
 - (d) ~~i~~ts shares are listed on another stock exchange; or
 - (e) ~~i~~t is a special purpose vehicle formed for listing asset backed securities; or

- (f) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.

If an issuer has recourse to the assets of a real estate investment trust in respect of the obligations under the debt securities, its fulfilment of the eligibility criterion above may be assessed by reference to the assets of the real estate investment trust.

37.06 If an issuer is a body corporate or trust it must have produced audited accounts for the two years before the listing application made up to a date at most 15 months before the intended date of the listing document unless:

- (a) it is a Supranational; or
- (b) it is a State corporation; or
- (c) its shares are listed on the Exchange; or
- (d) it is a special purpose vehicle formed for listing asset backed securities; or
- (e) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.

If an issuer has recourse to the assets of a real estate investment trust in respect of the obligations under the debt securities, its fulfilment of the eligibility criterion above may be assessed by reference to the audited accounts of the real estate investment trust.

37.07 If an issuer proposes to issue asset-backed securities:

- (a) it must be a single purpose undertaking.
- (b) it may add further assets to the pool of assets whilst its securities are listed.
- (c) it may list further classes of securities backed by separate pools of assets.

37.08 If an issuer does not meet the eligibility criteria above it is eligible for a listing of guaranteed debt securities if:

- (a) it is a body corporate that is validly incorporated or established; and
- (b) it is wholly owned by a State, a Supranational or by a body corporate ~~(including a State corporation)~~ that meets the eligibility criteria above; and
- (c) its owner guarantees its obligations; and
- (d) it and its owner agree to comply with the Listing Rules.

Securities' Qualifications for Listing

- 37.09 The debt securities must be freely transferable with a denomination of at least HK\$500,000 (or equivalent in other currencies).
- 37.09A Except in the case of a tap issue, the debt securities must be of a principal amount of at least HK\$100 million (or equivalent in other currencies).
- 37.10 The debt securities must have been validly authorised.
- 37.11 If an issuer is a body corporate (including a State corporation) its debt securities:
- (a) must comply with the law of the place where it is incorporated or established; and
 - (b) must comply with its memorandum and articles of association or equivalent documents.
- 37.12 If an issuer is issuing guaranteed debt securities under rule 37.08 the guarantee:
- (a) ~~M~~must have been validly authorised;
 - (b) ~~M~~must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate (including a State corporation); and
 - (c) ~~M~~must comply with the law of the place where the guarantor is incorporated or established.

Asset-backed Securities

- 37.13 This section sets out additional requirements that apply if debt securities are asset-backed securities.
- 37.14 If the asset backed securities are backed by equity securities or depositary receipts:
- (a) ~~T~~the equity securities or depositary receipts must represent minority interests and must not confer legal or management control of the issuer of the equity securities; and
 - (b) ~~T~~they must be listed on the Exchange or another stock exchange.
- 37.15 If asset backed securities are backed by options or conversion rights relating to equity securities then rule 37.18 applies to the securities resulting from the exercise of the option or conversion rights.
- 37.16 There must be a trustee or appropriate independent party to represent the interests of the holders of the asset-backed securities. It must have a right of access to information

relating to the assets.

Convertible Debt Securities

37.17 This section sets out additional requirements that apply if debt securities are convertible.

37.18 If debt securities are convertible they must be convertible into:

- (a) ~~S~~shares listed or to be listed on the Exchange or another stock exchange; or
- (b) ~~D~~depository receipts listed or to be listed on the Exchange or another stock exchange; or
- (c) ~~O~~ther assets that the Exchange has agreed in writing are acceptable.

37.19 If debt securities are convertible into shares that have not yet been issued:

- (a) ~~T~~he issuance of the shares must have been validly authorised; and
- (b) ~~T~~he listing of the shares must have been validly authorised.

37.20 If debt securities are convertible into shares (or into depository receipts) the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in the capital of the issuer of those shares or a change in the capital of the issuer whose shares underlie the depository receipts.

37.21 The Exchange treats debt securities with non-detachable warrants to subscribe for equity securities or other assets as convertible securities.

Options, Warrants and Similar Rights

37.22 This section sets out additional requirements that apply to options, warrants or similar rights.

37.23 The securities underlying the options, warrants or similar rights must be:

- (a) ~~D~~ebt securities that are listed or to be listed on the Exchange;
- (b) ~~D~~ebt securities listed or to be listed on another stock exchange; or
- (c) ~~O~~ther debt security that the Exchange has agreed in writing is acceptable.

37.24 If the underlying debt securities have not yet been issued:

- (a) ~~T~~heir issuance must have been validly authorised; and
- (b) ~~A~~ny listing of them must have been validly approved.

- 37.25 If options, warrants or similar rights are convertible into debt securities, the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in those debt securities.

Listing Document

- 37.26 This section sets out the information that an issuer must disclose in its listing document and other requirements relating to the listing document. For debt issuance programmes these requirements apply to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.

- 37.27 A listing document must contain a disclaimer statement:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

The disclaimer must be legible and appear on the front cover or inside cover of the listing document.

- 37.28 A listing document must contain a responsibility statement:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The issuer accepts full responsibility for the accuracy of the information contained in this document and confirms, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

The Exchange may require appropriate modification to the statement if an issue is guaranteed or issued pursuant to a debt issuance programme. The Exchange may allow others to make the statement but an issuer must seek prior consent for this.

- 37.29 A listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain. It need not comply with Appendix 1, part C.

- 37.30 A listing document must contain any additional information that the Exchange requires.

- 37.31 A listing document must contain a statement limiting its distribution to Professional Investors only.

- 37.31A The front cover of a listing document must contain a statement on the intended investor

market in Hong Kong (i.e. Professional Investors only) for the debt securities.

37.32 A listing document must be in English or Chinese.

37.33 A listing document may be in printed or electronic form.

Application Procedures

37.34 This section sets out the procedures that an issuer must follow to apply for listing of securities or listing of a debt programme. An application involves determining whether an issuer is eligible for listing and whether securities are eligible for listing. The Exchange will use the information that an issuer supplies to make these assessments. The documents an issuer submits must be in English or Chinese or translated into one of these languages.

37.35 An issuer must submit the following:

(a) ~~€~~completed application form. If an issue is guaranteed the guarantor must also complete the application form. This is set out in Appendix 5, part C.

(b) ~~£~~listing fee as provided in Appendix 8.

(c) ~~£~~draft listing document.

(d) ~~£~~draft formal notice of listing.

(e) ~~[Repealed [●]]~~If an issuer is not listed on the Exchange a copy of

(1) ~~[Repealed [●]]~~Its memorandum and articles of association, certificate of incorporation or equivalent (for example, trust deed) to show that the issuer is validly incorporated or established; and

(2) ~~[Repealed [●]]~~Its last published financial statements. These financial statements are not required if an issue is guaranteed.

(f) ~~[Repealed [●]]~~If the issue is guaranteed by a body corporate that is not listed on the Exchange a copy of the guarantor's

(1) ~~[Repealed [●]]~~Memorandum and articles of association, certificate of incorporation or equivalent, to show that the guarantor is validly incorporated or established; and

(2) ~~[Repealed [●]]~~Last published financial statements.

(g) ~~[Repealed [●]]~~If debt securities have been authorised by shareholders then a copy of the resolution.

- (h) ~~[Repealed [●]]~~ A copy of the resolutions by the issuer's governing body (for example, its board of directors or trustees) authorising—
- ~~(1) the issue and allotment of the debt securities;~~
 - ~~(2) the application for listing; and~~
 - ~~(3) issuing the listing document.~~
- (i) ~~[Repealed [●]]~~ If an issue is guaranteed, a copy of the resolutions by the guarantor's governing body authorising—
- ~~(1) the listing application; and~~
 - ~~(2) issuing of the listing document.~~
- (j) If an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.
- (k) a written statement by the issuer's duly authorised representative confirming:
- (1) where the issuer is not listed on the Exchange, the issuer has been validly incorporated or established in its place of incorporation or establishment; and
 - (2) the issuer has obtained all necessary internal authorisations to issue and allot the debt securities, make an application for listing and issue the listing document.
- (l) if an issue is guaranteed, a written statement by the guarantor's duly authorised representative confirming:
- (1) where the guarantor is not listed on the Exchange, the guarantor has been validly incorporated or established in its place of incorporation or establishment; and
 - (2) the guarantor has obtained all necessary internal authorisations to approve the listing application and the issuing of the listing document.
- (m) if an issuer (or a guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) is not exempted from rules 37.05 and 37.06, a copy of the audited financial statements of an issuer (or the guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) to evidence its fulfilment of rules 37.05 and 37.06.

Where the required financial statements are disclosed in the listing document, it is not necessary to separately submit them to the Exchange.

An issuer may submit drafts of the application form in (a) and the ~~authorisations and resolutions confirmation~~ in ~~(g)~~, ~~(hk)~~ and (il) to enable the Exchange to consider whether an issue and issuer are eligible for listing. The final ~~resolutions and authorisations confirmation~~ in ~~(g)~~, ~~(hk)~~ and (il) may be submitted after the listing application but before listing.

- 37.36 After the Exchange has considered an application it will issue a Listing Eligibility letter. In this letter it will advise an issuer whether it and its debt securities are eligible for listing. The Exchange will also indicate whether it requires inclusion of additional information in the listing document. The letter is valid for three months from the date of issue. For routine applications the Exchange aims to issue this letter 5 business days after it receives the application.
- 37.37 An issuer must not issue the listing document in final form until the Exchange has confirmed that the issuer may issue it. A draft may be circulated for the purpose of arranging underwriting, syndication and marketing of the offering to Professional Investors.
- 37.38 In the period from when the listing document is issued to the date of listing an issuer must advise the Exchange of any material event that it would have disclosed in the listing document if it had been aware of the event before the listing document was finalised.
- 37.39 An issuer must publish a formal notice before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 11.
- 37.39A An issuer must also publish on the Exchange's website the listing document (in English or Chinese) on the listing date. For debt issuance programmes this requirement applies to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue of listed debt securities under the programme.

Programmes

- 37.40 This section sets out the procedures for listing securities under a programme that the Exchange has approved.
- 37.41 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.
- 37.42 An issuer must submit the pricing supplement for an issue under a programme before 2:00 pm of the business day before listing is required to become effective. It must not issue the pricing supplement until the Exchange has confirmed that the issuer may issue it.
- 37.43 The Exchange will approve the listing of all securities issued under a valid programme

subject to the issuer:

- (a) ~~N~~otifying it of the final terms of each issue;
- (b) ~~C~~onfirming that the securities have been issued; and
- (c) ~~P~~aying the appropriate listing fee before listing.

Continuing Obligations

37.44 This section sets out the obligations that apply to an issuer if the Exchange agrees to list its securities. If the securities are guaranteed then the guarantor must also comply with ~~the these~~ obligations set out in rules 37.45, 37.46, 37.46A, 37.47, 37.47A, 37.47D, 37.47E and 37.53 and accordingly, references in these rules to “issuer” shall be construed accordingly to mean the “guarantor” and references to “issuer’s listed debt securities”, “its listed debt securities” and “the listed debt securities” shall be construed accordingly to mean the listed debt securities guaranteed by the guarantor. An issuer (and a guarantor, if any) must comply with these obligations:

- (a) until the securities expire; or
- (b) until they are withdrawn from listing.

37.45 If an issuer is required to announce information then:

- (a) it must do so by an announcement under rule 2.07C, except that the announcement may be in English or Chinese only; and
- (b) ~~T~~he announcement must include the following disclaimer:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

37.46 An issuer must comply with the Listing Rules in force from time to time.

37.46A Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed debt securities, the possible development of a false market in its listed debt securities, or any other matters, the issuer must respond promptly as follows:

- (a) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or

(b) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed debt securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect.

37.47 An issuer must as soon as reasonably practicable ~~immediately~~, after consultation with the Exchange, announce any information which:

(a) [Repealed 1 January 2013]

(b) is necessary to avoid a false market in its listed debt securities where in the view of the Exchange there is or there is likely to be a false market in its listed debt securities.

Note: If an issuer believes that there is likely to be a false market in its listed debt securities, it must contact the Exchange as soon as reasonably practicable.

(c) [Repealed 1 January 2013]

37.47A ~~The issuer~~ ~~If the securities are guaranteed, the guarantor~~ must as soon as reasonably practicable ~~immediately~~ announce any information which may have a material effect on its ability to meet the obligations under the listed debt securities.

37.47B (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.

(b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy it to the Exchange.

37.47C An issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension where there is information under rule 37.47 or rule 37.47A, or inside information which must be disclosed under the Inside Information Provisions, or inside information which is the subject matter of an application to the Commission for a waiver but its confidentiality has been lost, and the information cannot be announced promptly.

37.47D An issuer must, after trading in its listed debt securities has been suspended, publish quarterly announcements of its developments.

37.47E An issuer must as soon as reasonably practicable announce any information which relates to:

(a) a default on its listed debt securities;

- (b) the appointment of a receiver or manager either by any court having jurisdiction or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer;
- (c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer; or
- (d) the passing of any resolution by the issuer that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment.

37.48 An issuer must announce as soon as possible:

- (a) ~~if~~ aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue; or
- (b) ~~Any~~ public disclosure made on another stock exchange about its listed debt securities.

37.49 An issuer must notify the Exchange in advance of any proposal to:

- (a) ~~R~~replace a trustee for bondholders; or
- (b) ~~A~~amend the trust deed; or
- (c) ~~A~~amend the terms of convertible listed debt securities unless that amendment occurs automatically in accordance with their ~~the~~ terms of the debt securities.

An issuer must not proceed with any proposed change until the Exchange has advised whether it will impose conditions for the change.

37.50 An issuer must notify the Exchange as soon as possible if:

- (a) ~~it~~ has repurchased and cancelled all of an issue of its listed debt securities; or
- (b) ~~it~~ has redeemed all of an issue of its listed debt securities prior to the maturity date; or
- (c) ~~A~~all of an issue of convertible listed debt securities has been fully converted.

In each case, the issuer must apply to the Exchange for the listed debt securities to be delisted. The Exchange will then formally delist ~~the~~ such debt securities.

- 37.51 An issuer must notify the Exchange as soon as possible if its listed debt securities are listed on another stock exchange.
- 37.52 An issuer must provide the Exchange with a copy of any circular that that is sent to bondholders or to any trustee. If the circular is published on a website and the issuer notifies the Exchange when it is published on that site it does not have to send it a printed copy.
- 37.53 If an issuer is a body corporate it must provide the Exchange with its annual accounts and any interim report when they are issued. An issuer is exempt from this requirement if its securities are guaranteed by a body corporate in which case it must provide the guarantor's annual accounts and interim report. The Exchange will accept a printed or electronic copy. If the annual accounts or interim report are published on a website and the issuer notifies the Exchange when they are published on that site it does not have to send it a printed copy.

Authorised Representatives

- 37.54 An issuer must appoint two authorised representatives to communicate with the Exchange and must notify the Exchange of any change of representative. The representatives do not have to be resident in Hong Kong.

Other

- 37.55 If an issuer or its debt securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements.
- 37.56 The Exchange may accept or reject a listing application or make listing subject to additional conditions.
- 37.57 The Exchange may impose additional obligations on an issuer or guarantor. The Exchange will allow an issuer or guarantor to make representations before imposing requirements on it that are not imposed on issuers or guarantors of debt securities generally.

Definitions

- 37.58 In this Chapter the following definitions apply:

“asset-backed securities”	debt securities backed by financial assets which, at the time of the relevant issues, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the securities and repayment of principal on maturity, except those debt securities which are directly secured, in whole or in part, on real property or other tangible assets
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“bearer securities”	securities transferable to bearer
“convertible debt securities”	debt securities convertible into or exchangeable for equity securities or other property and debt securities with non-detachable options, warrants or similar rights to subscribe or purchase equity securities or other property attached-
“debt issuance programmes”	issues of debt securities where only part of the maximum principal amount or aggregate number of securities under the issue is issued initially and a further tranche or tranches may be issued subsequently
“debt securities”	debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities-
<u>“listed debt securities”</u>	<u>debt securities that are listed on the Exchange</u>
“Professional Investor”	<p>(a) For a person in Hong Kong a professional investor as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (excluding <u>including</u> those prescribed by rules made under section 397 of that Ordinance); or</p> <p>(b) For a person outside Hong Kong, a professional investor is a person to whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction-</p>
“State”	Includes any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person of, or of the government of, a state or any regional or local authority thereof
“State corporation”	any company or other legal person which is directly or indirectly controlled or more than 50 per cent. of whose issued equity share capital (or equivalent) is beneficially owned by, and/or by any one or more agencies of, a State <u>(which does not include any regional or local authority)</u> or all of whose liabilities are guaranteed by a State or which is specified as such from time to time by the Exchange
“stock exchange”	Any stock exchange that is a member of the World Federation of Exchanges
“Supranational”	any institution or organisation at a world or regional level which is specified from time to time by the Exchange