



Hong Kong

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AMENDMENTS TO HKEX'S LISTING RULES FOR DEBT ISSUES TO PROFESSIONAL INVESTORS TO TAKE EFFECT ON 1 NOVEMBER 2020

Amendments to The Rules Governing the Listing of Securities on the Hong Kong Stock Exchange (**the Listing Rules**) for debt issues only to professional investors will take effect on 1 November 2020 revising the requirements under Chapter 37 of the Listing Rules and Chapter 30 of the GEM Listing Rules. The Hong Kong Stock Exchange (**HKEx**) published its Consultation Conclusions on Review of Chapter 37 – Debt Issues to Professional Investors Only¹ (**the Consultation Conclusions**) on 21 August 2020 which adopted most of the changes proposed in its December 2019 Consultation Paper.²

The key HKEx Listing Rule changes include:

- raising the minimum net assets requirement from HK\$100 million to HK\$1 billion;
- requiring regional State corporations to meet the minimum net assets requirement and provide 2 years' audited financial statements;
- introducing a minimum issue size of HK\$100 million for Chapter 37 debt issues (other than tap issues);
- requiring a statement on the front cover of listing documents stating that the intended investor market in Hong Kong for Chapter 37 debt issues is professional investors only;

- requiring listing documents for Chapter 37 debt issues to be published on HKEx's website on the date of listing;
- providing guidance on disclosing certain features for some types of Chapter 37 debt and other disclosure-related matters; and
- revising the definition of "professional investors" under Chapter 37 to include high net worth investors under the Securities and Futures (Professional Investor) Rules.

Unless otherwise stated, references to the Listing Rules in this update are to the Listing Rules of the Main Board. The same changes will be made to the equivalent GEM Listing Rules. For the Main Board Listing Rule amendments, please click here,³ and for the GEM Listing Rules' changes, please click here.⁴

I. Eligibility Requirements

a. Increase in Minimum Net Assets Requirement for Chapter 37 Debt Issues

Under revised HKEx Listing Rule 37.05, issuers of debt to professional investors must have minimum net assets of HK\$1 billion (unless exempted), an increase from the current HK\$100 million net asset requirement.

1 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Conclusions-\(Aug-2020\)/cp201912cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Conclusions-(Aug-2020)/cp201912cc.pdf?la=en)
2 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Consultation-Paper/cp201912.pdf>

3 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_129_Attachment.pdf
4 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_65_Attachment.pdf

b. Removal of Eligibility Exemptions for Regional State Corporations

The Consultation Paper proposed that State corporations, which are defined to include companies which are majority-owned, or whose liabilities are fully guaranteed, by a State, including any regional or local state authority, would continue to be exempt from the minimum net asset requirement and the requirement to provide two years' audited accounts under Main Board Listing Rules 37.05b and 37.06b, respectively.

The exemption will continue to apply to State corporations that are controlled or majority-owned by a central government (such as PRC central ministries and the State-owned Assets Supervision and Administration Commission of the State Council). However, given past instances of debt defaults by some regional State corporations,⁵ the exemption will no longer apply to corporations owned by regional or local State authorities. The definition of "State corporations" will thus be revised to specifically exclude companies majority-owned or controlled by any regional or local State authority. These companies will therefore have to meet the net assets requirement and provide two years audited financial statements.

c. Minimum Issue Size for Chapter 37 Debt Issues

The revised Listing Rules introduce a minimum issue size of HK\$100 million (or its equivalent in other currencies) for Chapter 37 debt other than tap issues (new Listing Rule 37.09A).

In response to comments that the minimum issue size is too high and may deter companies from listing medium term notes on the HKEx, HKEx clarified that the minimum issue size of HK\$100 million will not apply to unlisted issues under a medium term note programme notwithstanding that the programme is listed under Chapter 37.

The same minimum issue size will apply to the GEM Rules. No professional debt issues have listed under Chapter 30 of the GEM Rules to date and HKEx thus notes in the Consultation Conclusions that it may reconsider the minimum issue size for GEM issuers in future if that position changes.

⁵ Bloomberg. 10 December 2019. "China Local Government Unit Escapes Default with Late Payment". <https://www.bloomberg.com/news/articles/2019-12-10/china-igfv-secures-investor-approval-on-late-bond-repayment?sref=tT0wSrTq>

II. Issuer Statement on Intended Investor Market

New Listing Rule 37.31A requires issuers to include a statement on the front cover of their listing documents that the intended investor market in Hong Kong for their Chapter 37 debt are professional investors only.

III. Online Publication of Listing Document

Issuers will be required to publish the listing document for a Chapter 37 debt issue on HKEx's website on the listing date in either English or Chinese under new Listing Rule 37.39A. In the case of a debt issue programme, the requirement applies to the base listing document and the supplementary listing documents, including but not limited to the pricing supplement, for each issue of listed debt securities under the programme.

Some respondents to the consultation expressed concern that the requirement could result in a breach of the public offering restrictions under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the prohibition on issuing invitations to the public under section 103(1) of the Securities and Futures Ordinance (Cap. 571). The HKEx responded that in its view, with the use of appropriate disclaimers, the publication of listing documents on HKEx's website on their listing date, where the primary offer of the debt would already be complete, would not amount to a public offer of the debt in breach of the restrictions under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. It also considered that in relation to the original primary offering of Chapter 37 debt, the exemption under section 103(2)(ga) of the Securities and Futures Ordinance for offers intended to be made only to professional investors would prevent a breach of section 103(1).

The following example disclaimer is given in the Consultation Conclusions at paragraph 62:

"This announcement and the listing document referred to herein have been published for information purposes only as required by [the Listing Rules] and do not constitute an offer to sell nor a solicitation of an offer to buy any securities. Neither this announcement nor anything referred to herein (including the listing document) forms the basis for any contract or commitment whatsoever. For the avoidance of doubt, the publication of this announcement and the listing document referred to herein shall not be deemed to be an offer of securities made pursuant to a prospectus issued by or on behalf of the issuer for the purposes of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong

nor shall it constitute an advertisement, invitation or document containing an invitation to the public to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities for the purposes of the Securities and Futures Ordinance (Cap. 571) of Hong Kong.”

HKEx also confirmed that it will not allow any information to be redacted in listing documents for Chapter 37 debt issues.

IV. Disclosure and Vetting

a. Current Disclosure and Vetting Approach

The current disclosure and vetting approach for Chapter 37 listing documents will continue as proposed in the Consultation Paper.

b. Guidance on Chapter 37 Debt Disclosures

The HKEx will proceed with its proposal to issue market guidance on the disclosure of certain special features and other disclosure-related matters for Chapter 37 debt issues. The market guidance will:

1. discuss the listing document disclosures which professional investors customarily expect for Chapter 37 debt issues that have special features and suggest how to bring these features and the associated risks to investors’ attention (e.g. by including a warning statement on the front page of the offering document);
2. remind issuers generally that listing document disclosures should be commensurate with the expectations of the intended investors; and
3. remind issuers to generally highlight in the summary of terms and conditions section of the listing document the structure and features of the relevant debt issue and the key terms affecting investors’ rights.

The HKEx has issued Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37⁶ which provides specific guidance on what should be disclosed in listing documents in relation to the features which make debt securities “complex products” under the SFC’s guidance⁷ on non-complex and complex products. It sets out specific guidance on the disclosures that would be expected for:

⁶ <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Debt-Securities/20200821.pdf>

⁷ SFC. 12 June 2019. Non-complex and complex products at <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/>

- perpetual bonds and bonds with variable or deferred payment terms;
- bonds with extendable maturity dates;
- convertible and exchangeable bonds;
- bonds with contingent write down or loss absorption features;
- bonds with multiple credit support providers or structures; and
- other types of complex debt securities.

General disclosure guidance is also provided which notes that disclosure should be commensurate with intended investors’ expectations, particularly where the intended investors include high net worth individuals. Generally, the key disclosures that should be included for professional investors include:

- a) a summary of the key terms and conditions of the Chapter 37 debt issue;
- b) financial information of the “obligors” which may include, without limitation, the issuer, a guarantor, a keepwell provider and/or a liquidity facility provider or provider of an equity interest or asset purchase undertaking or similar credit support, a provider of a letter of comfort, standby letter of credit or of similar credit support; and
- c) risk factors relating to the obligors, their business and the debt issue. The risks may include any structural or other risks associated with the debt issue (particularly a complex bond) such as subordination, security and credit support such as keepwell agreements, guarantees (particularly upstream guarantees from the issuer’s subsidiary companies) and equity interest purchase undertakings and the applicability of bail-in requirements. Issuers should also consider disclosing the risks that modifications or waivers made in relation to the debt or related documentation by the trustee or bondholders may present to the interests of the minority holders of the bonds and that the recourse available to minority holders in those circumstances may be limited;

[non-complex-and-complex-products/](#)

- d) the bond's terms and conditions;
- e) a description of the use of proceeds of the issue;
- f) business disclosure with respect to the obligors. The extent of disclosure will vary according to the role of the particular obligor, e.g. more information should be provided on an obligor who has a fundamental role in ensuring repayment of the debt;
- g) a summary of the key tax consequences of dealing in the bonds;
- h) any restrictions on the subscription and sale of the bonds; and
- i) any other material information necessary to enable investors to make an informed investment decision in relation to the bonds.

Where the issuer is a State corporation, consideration should be given to prominently disclosing the level of financial support that the issuer may receive from the State. Where the issuer will not receive financial support from the State, the risk factor disclosure should state that the repayment obligation is the sole obligation of the issuer and make clear that State ownership or control of the issuer does not necessarily provide any assurance as to the financial condition of the issuer. State corporations should consider disclosing their relationship with the government, including the nature and level of governmental ownership and control of the issuer.

For complex bonds, issuers might also consider including a disclaimer or cautionary statement on the listing documents' front cover highlighting the key product features that could affect investors' rights. The disclosure guidance gives the following example of a disclaimer:

"Investors should be aware that [insert description of product features and associated risks] and that there are various other risks relating to the [debt securities], the [company and its subsidiaries], their business and their jurisdictions of operations which investors should familiarise themselves with before making an investment in the [debt securities]. See "Risk Factors" beginning on page [insert the relevant page number]."

Issuers should clearly indicate who the intended investors are for their Chapter 37 bonds. If the bonds will only be issued to institutional investors (i.e. those defined in Part 1 of Schedule

1 to the SFO) and not to HNW investors under the Securities and Futures (Professional Investor) Rules, this should be clear in the listing document.

The HKEx proposes to update the market guidance from time to time to reflect changing market conditions.

The Consultation Paper invited comments on whether there should be different standards of disclosure for Chapter 37 debt issues that are offered to high net worth investors and those offered to institutional investors. The disclosure requirements will remain the same for listing documents irrespective of the type of professional investors targeted. However, HKEx noted that issuers should consider what information high net worth investors and institutional investors would typically expect when drafting Chapter 37 listing documents.

V. Definition of Professional Investors

The definition of "professional investors" under HKEx Listing Rule 37.58 will be revised to include high net worth investors under the Securities and Futures (Professional Investor) Rules which are currently excluded under that Listing Rule.

VI. Other HKEx Listing Rules Amendments

a. Issuer's or guarantor's eligibility concerning issue by REIT

HKEx will:

1. allow the eligibility of an issuer or guarantor with recourse against the assets of a real estate investment trust to be assessed by reference to the REIT's assets and audited financial statements, respectively, provided that an issuer's recourse to REIT assets is sufficient to satisfy its obligations under the Chapter 37 debt; and
2. exempt a REIT issuer (or a REIT guarantor) from the requirement to meet the minimum net asset requirement and to provide two years' audited financial statements if the REIT is listed on HKEx.

b. Enhancement of continuing obligations of issuers and guarantors under Chapter 37

1. To require prompt response to HKEx enquiries

New Listing Rule 37.46A requires that where the HKEx makes enquiries about unusual movements in the price or trading

volume of an issuer's listed debt securities, or the possible development of a false market, the issuer must respond promptly by providing relevant information to HKEx, and announce relevant information if requested by the HKEx or by confirming that the directors, having made reasonable enquiry, are not aware of any relevant information or information that needs to be disclosed to prevent a false market developing.

2. To require announcement of default or matters leading to or involving winding-up and/or liquidation

New Listing Rule 37.47A requires issuers to announce a default on its listed debt or any matter leading to or relating to its winding-up and/or liquidation, including the appointment of a receiver or manager by a court, an application to a court, the presentation of a winding-up petition and the passing of a resolution for voluntary winding-up.

3. Requirement to announce developments after trading suspension of Chapter 37 Debts

Issuers and/or guarantors are required to publish quarterly announcements on developments after trading in their Chapter 37-listed debt securities is suspended (new Listing Rule 37.47E). Developments to be covered in these announcements may include, but are not limited to, developments in the matters that lead to suspension. This announcement obligation also applies in the case of prolonged suspension, so long as trading in the Chapter 37 bonds is suspended.

4. To clarify the timing of making an announcement of information to avoid a false market or information having a material effect on a guarantor's ability to meet its obligations under debt securities

Under Listing Rule 37.47, issuers and guarantors are required to announce any information which is necessary to avoid a false market in their listed debt securities "immediately" after consultation with the HKEx.

This requirement has been revised to require these announcements to be made "as soon as reasonably practicable" after consultation with the HKEx.

5. To require issuers to announce information having a material effect on their ability to meet their obligations under listed debt securities

Listing Rule 37.47A currently requires issuers and guarantors to immediately announce any information which may have a material effect on their ability to meet their obligations under their listed debt. The Listing Rule amendments have changed the requirement to announce the information "as soon as reasonably practicable".

6. To clarify which entities need to comply with the continuing obligations

Listing Rule 37.44 has been amended to specify which continuing obligations apply to both issuers and guarantors. Under the revised Listing Rules, guarantors must also comply with the obligations set out in Listing Rules 37.45, 37.46, 37.46A, 37.47, 37.47A, 37.47D, 37.47E and 37.53.

7. To clarify the scope of debt securities with respect to the continuing obligations

The revised Listing Rules specify that issuers and guarantors are required to discharge their continuing obligations only with respect to their debt securities that are listed on HKEx, and not their other debt securities. References to "debt securities" in Listing Rules 37.47A, 37.48(b), 37.49(c), 37.50(c) and 37.51 have been replaced with "listed debt securities", which is defined as "debt securities that are listed on the Exchange".

c. Streamlining the listing application process

1. Constitutional documents and resolutions submitted to HKEx

The requirements under Listing Rules 37.35(e)(1), 37.35(f)(1), 37.35(g), 37.35(h) and 37.35(i) to submit constitutional documents and resolutions as part of the listing application documents will be replaced with a requirement for the issuer (or guarantor) to provide written confirmation as to its due incorporation, capacity and authorisation.

2. Last published financials submitted to HKEx

Listing Rules 37.35(e)(2) and 37.35(f)(2) require an issuer (or a guarantor, as the case may be) that is not listed on HKEx to submit to HKEx its last published financial statements as part of the listing application process.

This requirement will be replaced with a new requirement for an issuer (or the guarantor that an issuer relies on in fulfilling the minimum net assets and two years' audited financial statements requirements) to submit its audited financial

statements as evidence of fulfilment of these requirements. This new requirement does not apply where the issuer or the guarantor is exempted from these requirements or where the required audited financial statements are disclosed in the listing document.

d. Clarify the scope of supplementary listing document

Listing Rule 37.26 has been amended to clarify that a supplementary listing document includes a pricing supplement.

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