

CONSULTATION CONCLUSIONS
PROPOSED CHANGES TO
REQUIREMENTS FOR THE LISTING OF
DEBT ISSUES TO PROFESSIONAL
INVESTORS ONLY

October 2011



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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EXECUTIVE SUMMARY

This paper presents the results of the public consultation on our proposals to amend the requirements for the listing of debt issues to professional investors only.

In the Consultation Paper we presented two drafts of the proposed Rules. The drafting in Appendix I used the pronouns “we” and “you” in place of the “Exchange” and “Applicant”. Appendix II retained the references to the “Exchange” and “Applicant”. There were no substantive differences between the appendices. Respondents generally expressed a preference for Appendix II. Consequently, we have adopted that style of drafting.

The proposals in the paper were generally well received by respondents. We have made the following principal changes to our proposals in response to comments:

The proposal to align the definition of professional investor with that in the Securities and Futures Ordinance has been amended to exclude high net worth individuals so that it is based primarily on institutions. The definition has also been amended to accommodate offerings made outside Hong Kong. To further ensure that securities are not generally available to retail investors, a minimum board lot of \$500,000 has also been introduced.

The proposals to simplify the application procedures have been modified to provide additional flexibility in the application process – particularly in respect of the submission of documents. The proposed issuer eligibility criteria have been amended to clarify the requirements.

These and other minor amendments are discussed in Chapter 2.

We have finalised the Rule amendments to implement the proposals. They have been made by the board of the Stock Exchange of Hong Kong Limited and approved by the Securities and Futures Commission, and will become effective on 11th November 2011.

CHAPTER 1 - INTRODUCTION

1. On 17th December 2010, the Stock Exchange of Hong Kong Limited (“Exchange”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“HKEx”), published a consultation paper on Proposed Changes to Requirements for the Listing of Debt Issues for Professionals Only.
2. The consultation period ended on 18th February 2011. We received six submissions from professional and industry associations, market practitioners and an individual. A list of respondents is provided in Appendix VI.
3. The full text of all submissions is available on HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2010122r.htm>.
4. We received significant support for most of our proposals, with some recommended amendments. Chapter 2 summarises the major comments and our responses. We also received comments on other areas of the Rules not covered in this consultation. These comments will be considered when we review relevant areas of the Rules.
5. The Rule amendments are available on HKEx website at <http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb104.pdf> and at <http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/Documents/gem42.pdf>. They have been made by the Board of the Exchange and approved by the Securities and Futures Commission and will become effective on 11th November 2011.
6. We would like to thank all those who shared their views with us during the consultation process.
7. This paper should be read with the consultation paper which is posted on the HKEx website. The Rule references are to the Main Board Rules. Unless otherwise specified, the discussion applies equally to the GEM Rules.

CHAPTER 2 - MARKET FEEDBACK AND CONCLUSIONS

A Presentation

1. We proposed plainer language to make the Rules clearer and sought views on two drafting styles.
2. All four respondents on this issue preferred the style in Appendix II of the Consultation Paper. They considered that references to “the Exchange” and “Applicant” in Appendix II were less susceptible to confusion than references to “we” and “you”, particularly where the Rules were used by advisers. We will adopt the presentation in Appendix II of the Consultation Paper.
3. We proposed to adopt the expression “Debt Issues to Professional Investors Only” to more clearly indicate the scope of the Rules.
4. This was supported by three of the four respondents on this proposal. The dissenting respondent suggested that the expression “Non-Public Offering” should be adopted. We will adopt our initial proposal.

B Eligibility Requirements

Investors

5. We proposed that the definition of professional investor in the Rules should follow the definition in the Securities and Future Ordinance (the “SFO”).
6. This proposal was broadly supported by four of the five respondents on this issue. The dissenting respondent considered that it would not enhance clarity if the definition in the Rules referred to a definition elsewhere, in this case the SFO. It also expressed reservations about the current definition of professional investor in the SFO. As noted in our consultation paper, we consider that from a policy standpoint the definitions adopted in statute and in the Rules should be the same.
7. One respondent noted that cross-border offerings were common for non-retail offers and that these would be structured to comply with the regulations in the jurisdictions where the debt issues were offered. For these offers, a definition tailored solely by reference to the SFO might not be suitable. The respondent suggested that the definition should be extended to include a person to whom the securities may be offered or sold in accordance with a relevant exemption from public offer regulations in a jurisdiction outside Hong Kong. We agree that provision should be made in the Rules for offerings outside Hong Kong and will adopt this suggestion.

8. Some respondents suggested that the definition of professional should be amended to clearly indicate that it included professionals as defined in rules made under the SFO. This would bring high net worth individuals within the scope of the definition, moving it away from one based primarily on institutions, which was not our intention. Consequently we have not adopted this suggestion and have amended the definition to indicate that it excludes professionals as defined in rules made under the SFO.
9. Several respondents suggested that the definition of professional investor should be extended to include anyone in Hong Kong to whom the debt securities could be offered or sold without the offering document being a prospectus under the Companies Ordinance (the “CO”). Expanding the definition in the way suggested might result in securities being offered to investors that were more akin to retail investors. For example an offer to less than fifty investors does not require a prospectus. This would undermine the rationale for our other proposals and thus we do not propose to adopt it.
10. An offer of debt securities that is exempt from the prospectus requirements under the CO but is not made to professional investors as defined in the Rules will be required to follow the requirements in Chapters 22 to 36 and the listing document will be required to include the detailed disclosures prescribed in Appendix 1, part C of the Rules.

Listing Applicants

11. We proposed to remove provisions relevant only to retail investors from the eligibility requirements for applicants.
12. In general the proposals were broadly supported by the four respondents expressing views on them. We have made some amendments in response to comments to:
 - Indicate that applicants may be incorporated in Hong Kong or overseas. (See Rule 37.04)
 - Indicate that the requirements for applicants to have net assets of HK\$100 million and to have produced audited accounts for two years before listing also apply to trusts. (See Rules 37.05 and 37.06)
 - Indicate that Appendix 1, part C, which prescribes disclosure requirements for debt issues, does not apply. As Appendix 1, part C requires an applicant to include its financial statements this amendment also indirectly clarifies that applicants will not be required to include their most recent audited accounts in the listing document (which was a question asked by one respondent.) (See Rule 37.29)
13. We have also made minor drafting amendments to Rules 37.18(c), 37.20 and 37.23(c)

14. Two respondents suggested that it was not necessary for issuers to be wholly owned by guarantors – one suggested that majority ownership was sufficient; another that no ownership requirement was necessary. It has been our general practice to require that issuers be wholly owned by their guarantors and we propose to retain this. An applicant could apply for a specific waiver of this requirement which would be considered on the facts and circumstances of the particular case.
15. One respondent suggested that the requirement for net assets of HK\$100 million in Rule 35.05 was not necessary. It also suggested that Rule 37.06, requiring the issuer to have produced audited accounts for the two years before listing, was too restrictive and should be relaxed to provide flexibility for companies that are newly formed. These are existing requirements in the Rules. In the past they have been waived for issuers of asset backed securities and our proposals included a specific exemption for such cases. There are few other instances of the requirements having been waived. Consequently we propose to retain them. An applicant could apply for a specific waiver of these requirements which would be considered on the facts and circumstances of the particular case.
16. Two respondents suggested that Rule 37.20, requiring debt issues convertible into securities to include provisions to adjust the conversion rights following corporate actions (e.g. rights issues) was unnecessary. They suggested that whether an issue included such adjustment provisions was a purely commercial matter between the initial investors and the issuer. We have some sympathy with this view as it underpins many of the proposals in the consultation paper. However, after a security is listed, over time the initial investors may dispose of their interests to other investors who would benefit from such a provision. Consequently we consider that it should be retained.
17. In the context of continuing obligations, the same two respondents also questioned whether it was necessary for issuers to notify the Exchange in advance of proposals to replace a trustee, amend a trust deed or amend terms of a convertible issue as provided in Rule 37.49 so that the Exchange can consider whether to impose conditions for a change. One of the factors that we would have regard to in deciding whether to impose conditions would be whether the debt issue continued to be held by professional investors. We have amended that Rule to indicate that an issuer should not proceed with a proposed change until we have indicated whether we will impose conditions.
18. Although we did not include specific proposals, in the Consultation Paper we sought views on whether to introduce a requirement for applicants to deposit their issues into overseas settlement systems to further ensure that the issues would not be acquired by retail investors in the secondary market. Three respondents did not support this. Others did not provide comments. We will not introduce requirements in this area.

19. We also sought views on whether to introduce a minimum board lot size to limit retail investors' access to debt securities. One respondent suggested a minimum be set at an amount which the Exchange regarded retail investors would generally not be able to afford. The respondent also noted that many market participants were likely to adopt a minimum of US\$200,000 to meet the new minimum of €100,000 under the EU Prospectus Directive. Two respondents suggested that a minimum was not necessary. Others did not provide comments.
20. We consider that it would be appropriate to adopt a minimum to further limit retail investors' access to these debt securities. We have set that limit at HK\$500,000. (See Rule 37.09)

C *Listing Approval*

21. We proposed that the listing of debt issues for professionals may be approved by the Head of Listing who may in turn delegate this authority within the Listing Division.
22. Four respondents supported this proposal. Others expressed no views. Consequently we will adopt the proposals without amendment.

D *Listing Documents*

Disclosure Requirements

23. We proposed to replace the current detailed disclosure requirements with an obligation to include information that is customary for offers of debt securities to professionals.
24. Four respondents supported these proposals in principle, with one suggesting a minor amendment to Rule 37.29. One respondent suggested that the listing document should include financial information on the issuer or guarantor. Another expressed concern that an absence of prescribed disclosure requirements might create uncertainty as to content requirements and might become contentious in the event of investor losses.
25. Our proposal mirrors a requirement of the Singapore Stock Exchange where it does not appear to have given rise to concerns. As noted in the Consultation Paper professional investors are often in a position to shape the contents of an offering circular for debt securities so that it contains the information of relevance to them and our proposal reflects this. One of the respondents supporting the proposal also noted that under Hong Kong Ordinances (including the SFO and Misrepresentation Ordinance), common law and the securities laws of jurisdictions where the securities might be offered (for example, the federal securities laws of the United States) the issuer and underwriters would be liable if

the offering circular omitted material information or contained untrue or misleading statements of material facts.

26. We will proceed with our proposals

Prescribed Disclosures

27. We proposed to retain requirements to include responsibility and disclaimer statements in prescribed forms; and a statement limiting distribution of the offering circular to professionals. Four respondents supported these proposals; two expressed no views on them.
28. Two respondents expressed concern that Rule 37.31 limited the distribution of the offering circular to professional investors as defined in the SFO. As discussed above, we have now amended the definition of professional investor.
29. One respondent noted that the responsibility statement would normally be given on a corporate basis and suggested that the responsibility statement should be amended to reflect this. We agree. We will amend the form of the responsibility statement in Rule 37.29 to reflect that it will generally be given on a corporate basis.

E Application Vetting

30. We proposed to vet applications for compliance with our listing eligibility criteria and to vet listing documents for compliance with the obligations to include disclaimer and responsibility statements in prescribed forms, and a statement limiting distribution of the document to professionals only.
31. Four respondents supported these proposals; two expressed no comments on them. In light of this we will proceed with our proposals.

F Application Procedures

32. We proposed to streamline our application procedures.
33. Three respondents, whilst making several comments on the proposals supported them in principle; one supported the proposals without comment; and two expressed no views on them.
34. Three respondents sought additional flexibility on the timelines for submitting documents in relation to a listing application. They noted that in many cases authorisations by an applicant's board to allot securities, apply for listing, publish a listing document, and allot a debt issue might not be available at the time formal listing application is submitted. They also noted that in many cases the formal

application for listing could not be submitted until after pricing for an issue had been completed.

35. To address these comments we have amended Rule 37.35 to provide greater flexibility on when information may be submitted to us and to indicate that an application may be submitted in draft so that we can consider eligibility issues. Amendments have also been made to indicate that where an issue is convertible into shares copies of the authorisations for the issuing and listing of those shares are to be submitted and also to deal with applications by trusts.
36. One respondent sought further information on the Listing Eligibility Letter referred to in Rule 37.36. The purpose of the letter is to confirm that an issuer and issue are eligible for listing. It also confirms that we will not exercise our authority to require a listing document to include additional information (or sets out details of information to be included). It is not a listing approval letter. We have included an illustrative letter in Appendix I.
37. We have also made some amendments in response to comments to:
 - Expressly provide that the requirements in Rule 2.07C(4)(b), requiring announcements and documents to be in English and Chinese, do not apply to debt issues to professionals. (See Rule 37.45(a))
 - Retain the provision in current Rule 37.22 allowing circulation of a draft listing document for the purpose of arranging underwriting, syndication and marketing of the offering to professional investors. (See Rule 37.37)
 - To require disclosure to us of material events occurring between finalisation of a listing document and listing. It was suggested that notification should be limited to material adverse events. We consider all material events should be disclosed to us. (See Rule 37.38)
38. One respondent suggested that the application form in Appendix 5, part C should be amended to include an express authorisation enabling us to file a copy of the application with the SFC. The respondent also suggested that the information in paragraph 6 of this appendix (on substantial shareholders, directors, use of proceeds and experts' qualifications) was not relevant for applications to list debt offered to professionals. We have amended the application form to reflect these suggestions.
39. Our other proposals will be adopted without amendment.
40. Respondents made other comments as follows:
 - A respondent asked how we would confirm, as provided in Rule 37.37 that we had no further comments on a draft document. We currently do this by email and will continue with this practice.
 - A respondent suggested that the information necessary to assess an application should also be included in the application form. We do not consider this necessary as that information is set out in Rule 37.35. The respondent also

noted that paragraph 9 of the application form would rarely apply to issues of debt to professionals. We acknowledge this. Nonetheless, we propose to retain it for the few instances it is applicable. Where it is not applicable it is easy to indicate this on the application form.

- Two respondents suggested that it was not necessary for issuers to publish a notice of listing, as required in Rule 37.39. As this will be the only public record of listing, we propose to retain this requirement
- A respondent suggested that the application form should be published on the HKEx website. The form is set out in Appendix 5 of the Listing Rules, which are available on the website. We would also note that under the amended Rules it will no longer be necessary to submit completed checklists which were not on the website.
- A respondent noted that Rule 37.43 did not include timelines for drawdowns under a debt programme. A drawdown under a debt programme may be effected on the business day after we have been notified of it. This is set out in Rule 37.42.
- A respondent asked whether the application procedures applied to debt issuance programmes. The procedures do apply to programmes and this is indicated in Rule 37.34.
- A respondent sought confirmation that as a consequence of deleting Rule 37.23 it would no longer be necessary to submit publicity material to the Exchange for approval before it is released. We would normally only expect publicity material to be issued in connection with a public offer of debt, which by its nature would not be an issue to professionals only. We have not previously been asked to approve publicity material for issues to professionals. If there was to be publicity material for an issue it would not be necessary for it to be submitted to us for prior approval. We have amended Rule 37.37 to expressly provide that circulation of a draft listing document for the purpose of arranging underwriting, syndication and marketing of the offering to professional investors is permitted.

G Continuing Obligations

41. We proposed to remove provisions relevant only to retail investors from the continuing obligations.
42. Two respondents, whilst making several comments on the proposals, supported them in principle; two supported the proposals without comment; and two expressed no views on them.
43. Two respondents noted that as Rule 37.48 did not include a materiality threshold an issuer would be required to disclose all repurchases and redemptions of a debt issue. We have amended this Rule to require disclosure when 10% of an issue and each subsequent 5% has been repurchased. Thus an issuer repurchasing 9%, 2%, 3% and 2% of an issue on successive days would be required to make

disclosure on the second day (when it had acquired 11% of the issue) and the fourth day, when it had acquired 16% of the issue.

44. One respondent also noted that Rule 13.31(1) requires announcement of any purchase of a listed security. We would not regard 13.31(1) as applying to an issuer of debt securities. Rule 13.02 indicates that the continuing obligations of debt issuers are set out in the listing agreements for those issuers. Listing agreements will no longer be required for listings under Chapter 37; thus we have amended 13.02 to indicate that continuing obligations are set out in Chapter 37 of the Rules.
45. The respondent also observed that Rule 10.06(3) prevented companies from buying back shares and reissuing them. Rule 10.06(6)(c) indicates that shares for this purpose include “securities which carry a right to subscribe or purchase shares”. Consequently Rule 10.06(3) applies to convertible debt issues. The respondent noted that waivers had been granted by the Exchange in connection with liability management exercises (involving the repurchase of a convertible bond in exchange for a further bond) and asked the Exchange to consider issuing guidance to exempt issues under Chapter 37 from Rule 10.03. We do not consider this would be appropriate. Consequently it will still be necessary for issuers to apply for a waiver which will then be considered on its merits.
46. Two respondents questioned whether it was necessary for issuers to notify the Exchange in advance of proposals to replace a trustee, amend a trust deed or amend terms of a convertible issue as provided in Rule 37.49. As discussed in paragraph 17 above we do not propose to amend this requirement.
47. One respondent suggested that Rule 37.50 should be expanded to require an issuer to notify the Exchange if a debt issue was redeemed in full before maturity. We have adopted this suggestion.
48. We have made a minor amendment to Rule 37.54 to indicate that the Exchange is to be notified of changes in authorised representative. In this connection one respondent asked whether such changes should be notified using the form in Appendix 5. Our practice is to accept notification in any written form.
49. Our other proposals have been adopted without amendment

H Other Issues

GEM

50. We proposed to amend the GEM Rules to bring them into line with the proposals in the Consultation Paper. We sought views on whether eligibility under the GEM Rules should be limited to companies listed on GEM.

51. Three respondents supported this, two expressed no views and one suggested that the Exchange consider imposing eligibility requirements “similar to the Main Board Rules, subject to suitable tailoring for GEM.”
52. We have amended the GEM Rules to bring them into line with the Main Board. Eligibility under those Rules will be limited to companies that are listed on GEM (or will be at the time the debt issue is listed) in line with current requirements.

Other Matters

53. Respondents suggested several consequential changes to the Rules which we have adopted. Consequential changes are set out in Appendix III. Consequential changes for GEM are in Appendix V
54. A respondent observed that a company listing bonds on the Exchange would become a listed corporation within the meaning of the SFO and consequently would be required to comply with part XV of the SFO, even though it might not have shares traded on the Exchange. The respondent noted that whilst the SFC would normally grant waivers in such circumstances, the need to apply for these incurred costs. The respondent suggested the requirement should be removed. We have drawn this to the attention of the SFC.

CONSULTATION CONCLUSIONS

55. Except for the changes discussed above we have adopted our proposals and the Main Board amendments largely as proposed in the consultation paper. We have also amended the GEM Rules in line with the changes to the Main Board Rules.

APPENDIX I

ILLUSTRATIVE LISTING ELIGIBILITY LETTER

Our Ref LD388388
Exemplum Applicant Limited
Central
Hong Kong
Dear Sir

Exemplum Applicant Limited (“Issuer”); Exemplum Guarantor Limited (“Guarantor”)
HK\$100,000,000 5% Notes due 2020 guaranteed by the Guarantor (“Indicative Issue)
Case Number: 123 456 789

We refer to your application today in relation to the Indicative Issue.

We confirm that the Issuer, Guarantor and Indicative Issue meet the eligibility requirements in Chapter 37 of the Listing Rules.

We do not require additional information to be disclosed in the listing document for the Indicative Issue.

This letter is not an approval of the listing of the Indicative Issue. Listing approval will be granted subject to the following being completed no later than [three months from date of letter]:

- Submission of a completed formal application for listing reflecting the final terms of the Indicative Issue
- Issue of the listing document for the Indicative Issue
- Issue of the securities to the placees
- Submission of all outstanding documentation required under the Listing Rules

Please quote the above case number in any future correspondence.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited

Authorised Signatory

APPENDIX II AMENDMENTS TO CHAPTER 37 OF THE MAIN BOARD RULES

(Marked up to show changes from version in Consultation Paper)

The existing Chapter 37 of the Main Board Rules is deleted entirely and replaced with the following:

“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 member of the Listing Division to whom the Executive Director – Listing has delegated authority;
 - (b) The Executive Director – Listing (who may also delegate approval authority within the Listing Division); or
 - (c) 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 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 unless:
- (a) It is a Supranational; or

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(Marked up to show changes from version in Consultation Paper)

- (b) It is a State Corporation; or
- (c) Its shares are listed on the Exchange; or
- (d) Its shares are listed on another stock exchange; or
- (e) It is a special purpose vehicle formed for listing asset backed securities.

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.

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 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 board lot of at least HK\$500,000 (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

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(b) must comply with its memorandum and articles of association.

37.12 If an issuer is issuing guaranteed debt securities under Rule 37.08 the guarantee:

- (a) Must have been validly authorised;
- (b) Must comply with the guarantor's memorandum and articles of association, if the guarantor is a body corporate; and
- (c) 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) 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) 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 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) Shares listed or to be listed on the Exchange or another stock exchange; or
- (b) Depositary receipts listed or to be listed on the Exchange or another stock exchange; or

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- (c) Other assets that the Exchange has agreed in writing are acceptable to regard as eligible.
- 37.19 If debt securities are convertible into shares that have not yet been issued:
- (a) The issuance of the shares must have been validly authorised; and
 - (b) The listing of the shares must have been validly authorised.
- 37.20 If debt securities are convertible into shares (or into depositary receipts) the terms of the issue must provide for appropriate adjustments to the conversion ~~rights~~ 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 depositary 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) Debt securities that are listed or to be listed the Exchange;
 - (b) Debt securities listed or to be listed on another stock exchange; or
 - (c) Other debt security that the Exchange has agreed in writing is acceptable to regard as eligible
- 37.24 If the underlying debt securities have not yet been issued :
- (a) Their issuance must have been validly authorised; and
 - (b) Any 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 ~~rights~~ 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 for each issue under the programme.

APPENDIX II

AMENDMENTS TO CHAPTER 37 OF THE MAIN BOARD RULES

(Marked up to show changes from version in Consultation Paper)

- 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 ~~directors collectively and individually accept~~ 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 ~~their~~ knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”
- ~~An issuer may make this statement on a corporate basis.~~ 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.
- [Drafting Note: to explicitly state that Apprndix 1, part C does not apply.]
- 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.
- 37.32 A listing document must be in English or Chinese.
- 37.33 A listing document may be in printed or electronic form.

Application Procedures

APPENDIX II

AMENDMENTS TO CHAPTER 37 OF THE MAIN BOARD RULES

(Marked up to show changes from version in Consultation Paper)

- 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: ~~documents:~~
- (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) If an issuer is not listed on the Exchange a copy of
 - (1) 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) Its last published financial statements. These financial statements are not required if an issue is guaranteed.
 - (f) If the issue is guaranteed by a body corporate that is not listed on the Exchange a copy of the guarantor's
 - (1) Memorandum and articles of association, certificate of incorporation or equivalent, to show that the guarantor is validly incorporated or established; and
 - (2) Last published financial statements.
 - (g) If debt securities have been authorised by shareholders then a copy of the resolution.
 - (h) 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) ~~If the issue is guaranteed by a body corporate that is not listed on the Exchange then a copy of the guarantor's~~ If an issue is guaranteed, a copy of the resolutions by the guarantor's governing body authorising
 - (1) ~~Memorandum and articles of association or equivalent~~ the listing application; and
 - (2) ~~Last published financial statements~~ 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.

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(Marked up to show changes from version in Consultation Paper)

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

[Drafting Comment: to allow certificate of incorporation to be submitted as evidence that the issuer/guarantor is validly incorporated or established.]

- 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 include 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 ~~have dealt with~~ 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 on listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 11.

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.

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- 37.43 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:
- (a) Notifying it of the final terms of each issue;
 - (b) Confirming that the securities have been issued; and
 - (c) Paying 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 these obligations. An issuer 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.
 - (b) The 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.

- 37.47 An issuer must immediately announce any information which
- (a) Is necessary for investors to appraise its position or
 - (b) Is necessary to avoid a false market in its securities or
 - (c) May have a material affect on its ability to meet the obligations under its debt securities.

- 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. ~~Any redemption or cancellation of its debt securities~~
 - (b) Any public disclosure made on another stock exchange about its debt securities.

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

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- (a) Replace a trustee for bondholders; or
- (b) Amend the trust deed; or
- (c) Amend the terms of convertible debt securities unless that amendment occurs automatically in accordance with 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. ~~When the Exchange receives the notification it will consider whether to impose any 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) All of an issue of convertible debt securities has been fully converted.
- The Exchange will then formally delist the debt securities.

- 37.51 An issuer must notify the Exchange as soon as possible if its 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 Representative

- 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

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- 37.55 If an issuer or its 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 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
“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

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indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities.

“Professional Investor”

~~A professional investor as defined in Schedule 1 of the Securities and Futures Ordinance~~

(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 those prescribed by rules made under section 397 of that Ordinance); or

(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.

“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 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”

APPENDIX III CONSEQUENTIAL AMENDMENTS TO THE MAIN BOARD RULES

Appendix 2 is amended as shown below:

Appendix 2

Documents of Title

Part B

• • •

Bearer Securities

13. Except for debt issues to professional investors only, ~~Other than for selectively marketed securities,~~ proofs of securities and any coupons...

Appendix 4 is amended as shown below:

Appendix 4

Trust Deeds or Other Documents Securing or Constituting Debt Securities

This appendix does not apply to debt issues to professional investors only. If there is a trustee ...

Appendix 5 is amended as shown below:

Appendix 5 Formal Application (For Debt Securities) Form C2

This form must be lodged duly completed (by reference to the Notes ~~hereto~~), in the case of a new applicant, at least **THREE CLEAR BUSINESS DAYS** ~~prior to~~ before the hearing of the application by the Exchange, and in every other case, at least **TWO CLEAR BUSINESS DAYS** ~~prior to~~ before the date on which the listing document is to be bulk printed. An issuer which is not a company should adapt this form as necessary to change references that apply only to companies.

To: The Head of the Listing Division,

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The Listing Division
The Stock Exchange of Hong Kong Limited.

1 . . .

6. So far as is known, or can be ascertained after reasonable enquiry, by the directors of the issuer, the undermentioned is/are a substantial shareholder(s) of the company or of its holding company (Note 5):-

Name	Address	Extent of holding and which company
------	---------	-------------------------------------

The following ~~are~~ particulars of the qualifications, if any, and experience of the directors and secretary of the issuer (Note 6) are:

.....

The proceeds (if any) of the issue or sale of the securities for which application is now made, or the portion of them ~~thereof~~ to be received by the issuer, are intended to be used by the issuer for the following purpose(s)

.....

The following ~~are the~~ qualifications of the undermentioned person(s) whose opinion(s) as (an) expert(s) is/are referred to in any document included in this application are:-

Name	Qualifications	Document
------	----------------	----------

7. . . .

11. ISSUER'S SOLE UNDERTAKING

We, Limited, undertake to comply with the Listing Rules from time to time so far as they apply ~~applicable~~ to the issuer.

12. ISSUER'S AUTHORISATION FOR FILING WITH THE COMMISSION

We are required to file copies of our application with the Securities and Futures commission ("SFC") under section 5(1) of the Securities and Futures (Stock Market Listing) Rules ("Rules").

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Under section 5(2) of the Rules, we hereby authorise the Exchange to file all materials with the SFC on our behalf as and when we file them with the Exchange. If our securities become listed on the Exchange, we will be required to file copies of certain announcements, statements, circulars, or other documents made or issued by us or on our behalf to the public or to holders of our securities with the SFC under sections 7(1) and (2) of the Rules. Under section 7(3) of the Rules, we hereby authorise the Exchange to file all such documents with the SFC on our behalf as and when we file them with the Exchange.

All documents shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

In this letter, “application” has its meaning under section 2 of the Rules.

This authorisation shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant the approval. In addition, we undertake to execute any documents in favour of the Exchange perfecting this authorisation that the Exchange may require.

Yours faithfully,

Signed.

Name:

Director, Secretary or other
duly authorised officer
for and on behalf of
[Issuer’s Name]

NOTES

Note 1 Insert name of issuer of securities. If it is an overseas issuer, the place of incorporation or ~~other~~ establishment and the ~~applicable~~ law under which it is incorporated or ~~otherwise~~ established must be stated.

Note 2 This paragraph does not apply to ~~is not applicable for~~ States, Supranationals, issues of debt securities which are or are to be uniform in all respects with debt securities of the issuer of a class already listed or debt issues to professional investors only~~selectively marketed issuer of debt securities.~~

Note 3 Give particulars of the proposed method of listing of the securities, i.e., whether by offer for subscription, offer for sale, placing, exchange, substitution, conversion, exercise of option or warrant, or otherwise.

Note 4 “Identical” means in this context:—

(1) the securities are of the same nominal value with the same amount called up or paid up;

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CONSEQUENTIAL AMENDMENTS TO THE MAIN BOARD RULES

(2) they are entitled to interest at the same rate and for the same period, so that at the next ensuing distribution the interest payable per unit will amount to exactly the same sum (gross and net); and

(3) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank *pari passu* in all other respects.

Note 5 This paragraph does not apply to States, Supranationals, or State Corporations, or debt issues to professional investors only; and “substantial shareholder” means a person entitled to exercise, or control the exercise of, ten per cent. or more of the voting power at any general meeting of the issuer.

Note 6 This paragraph does not apply to States or issues of selectively marketed debt securities or, in the case of details in relation to its secretary, to Supranationals.

Note 7 This paragraph does not apply to States, Supranationals or debt issues to professional investors only selectively marketed debt securities.

Part C of Appendix 7 is amended as shown below:

Appendix 7

Part C

Type of Security: Debt

Type of Issuer: Incorporated or otherwise established in Hong Kong or elsewhere ~~except other than~~ States, Supranationals, State Corporations, Banks and debt issues to professional investors only ~~issuers of Selectively Marketed Debt Securities~~

The following is the text of the Listing Agreement ...

Part E of Appendix 7 is amended as shown below:

Appendix 7

Part E

Type of Security: Debt

Type of Issuer: ~~(i) Issuers of selective marketed securities other than States and Supranationals and~~ (ii) State Corporations and Banks

The following is the text of the Listing Agreement ...”

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Appendix 11 is amended as shown below:

Appendix 11

Form D

MODEL FORM OF FORMAL NOTICE FOR ~~SELECTIVE MARKETINGS~~ FOR DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

...”

Chapter 2A is amended as shown below:

- “2A.05A The Listing Committee has delegated to the Executive Director – Listing the power to approve any application for listing of debt securities under Chapter 37 (debt issues to professional investors only) and any application issued or guaranteed (in the case of guaranteed issues) by the following issuers or (in the case of guaranteed issues) guarantors:—
- i) States
 - ii) Supranationals;
 - iii) State corporations;
 - iv) banks and corporations having an investment grade credit rating (and the term “investment grade” shall have the same meaning as in note (2) to rule 15.13); and
 - v) issuers whose equity securities are listed on the Exchange and which have a market capitalization, at the time of the application, of not less than HK\$5,000,000,000.

Chapter 13 is amended as shown below:

Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

Preliminary

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13.02 This Chapter ...

The continuing obligations ~~for applicable to~~ issuers having debt securities in issue are set out in the listing agreement set out in Parts C, D and E of Appendix 7 and Chapter 37.

Chapter 22 is amended as shown below:

Chapter 22

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

METHODS OF LISTING

22.01 ~~This Chapter does not apply to debt issues to professional investors only. All other debt securities~~ Debt Securities ~~(other than selectively marketed securities)~~ may be brought to listing by any of the methods described below.

Chapter 23 is amended as shown below:

Chapter 23

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

QUALIFICATIONS FOR LISTING

Preliminary

23.01 ~~This Chapter does not apply to debt issues to professional investors only. This Chapter It~~ sets out the basic conditions which have to be met as a pre-requisite to the listing of debt securities, ~~with the exception of~~ except those issued by States and Supranationals ~~and those which are selectively marketed~~. They apply to every method of listing ~~(other than listing by way of selective marketing)~~ and to both new applicants and listed issuers, except where otherwise stated. The Conditions which have to be met by States and Supranationals are set out In

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Chapters 31 and 32 respectively. Modified requirements for State corporations and banks are set out in Chapters 33 and 34 respectively. ~~The requirements for debt issues to professional investors only are set out in Chapter 37~~

Chapter 24 is amended as shown below:

Chapter 24

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

APPLICATION PROCEDURES AND REQUIREMENTS

Preliminary

- 24.01 This Chapter does not apply to debt issues to professional investors only. This Chapter It sets out the procedures and requirements for applications for the listing of debt securities (~~other than selectively marketed securities~~), whether by new applicants or by listed issuers. Modified requirements for States, Supranationals and State corporations are set out in Chapters 31, 32 and 33 respectively. ~~The requirements in relation to selectively marketed securities are set out in Chapter 37.~~

Chapter 25 is amended as shown below:

Chapter 25

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

LISTING DOCUMENTS

Preliminary

- 25.01 This Chapter does not apply to debt issues to professional investors only. This Chapter It sets out the Exchange's requirements for the contents of listing documents relating to debt securities (~~other than selectively marketed securities~~).

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~~The requirements in relation to selectively marketed securities are set out in Chapter 37...~~

Chapter 26 is amended as shown below:

Chapter 26

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

LISTING AGREEMENT

Preliminary

26.01 This Chapter does not apply to debt issues to professional investors only issues ~~of selectively marketed securities~~. All other issuers and guarantors, in the case of guaranteed issues are required to sign a listing agreement with the Exchange in the form prescribed and provided by the Exchange by which they undertake to comply with the continuing obligations to which they will be subject as a condition of the listing of their debt securities.... ~~The requirements for Listing Agreements in relation to issues of selectively marketed securities are set out in Chapter 37.~~

• • •

26.03 The texts of each of the following forms of Listing Agreement, as prescribed and provided by the Exchange, are reproduced in parts C, D and E of Appendix & together with notes on their interpretation and application:-

Part C- Issuers except other than issuers of selectively marketed debt securities, States, Supranationals, State corporations, and banks and debt issues to professionals only.

Part D- States and Supranationals

Part E- (i) ~~issuers of selectively marketed securities other than States and Supranationals and~~ (ii) State corporations and banks.

Chapter 27 is amended as shown below:

Chapter 27

APPENDIX III CONSEQUENTIAL AMENDMENTS TO THE MAIN BOARD RULES

DEBT SECURITIES

OPTIONS WARRANTS AND SIMILAR RIGHTS

- 27.01 This Chapter does not apply to debt issues to professional investors only. This Chapter applies to options, warrants and similar rights to subscribe or purchase debt securities (“warrants”) which are issued or granted on their own by an issuer or any of its subsidiaries and to warrants which are attached to other debt securities. Warrants which are attached to other securities but which are non-detachable are convertible securities and are also subject to the provisions of Chapter 16 (convertible equity securities), or 28 (convertible debt securities) as appropriate.

Chapter 28 is amended as shown below:

Chapter 28

DEBT SECURITIES

CONVERTIBLE DEBT SECURITIES

- 28.01 This Chapter does not apply to convertible debt issues to professional investors only. All convertible debt securities must, prior to the issue thereof, be approved by the Exchange and the Exchange should be consulted at the earliest opportunity as to the requirements which will apply.

Chapter 29 is amended as shown below:

Chapter 29

DEBT SECURITIES

TAP ISSUES, DEBT ISSUANCE PROGRAMMES AND ASSET-BACKED SECURITIES

- 29.01 This Chapter sets out the requirements in relation to tap issues, debt issuance programmes and asset-backed securities. It does not apply to issues to professional investors only.

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Chapter 30 is amended as shown below:

Chapter 30

DEBT SECURITIES

MINERAL COMPANIES

30.01 Chapter 18 applies to a listing of debt securities by a mineral company except for rules 18.07(2) and 18.09(9). Chapter 18 does not apply to and except in the case of debt securities issued by State Corporations and debt issues to professional investors only.

Chapter 31 is amended as shown below:

Chapter 31

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

STATES

Preliminary

31.01 Chapter 37 applies to debt issues to professional investors only by States. Chapters 22, 24 to 29 and, where relevant, 35 and 36 apply to other debt issues by States subject to the modifications or exceptions detailed in this Chapter. Chapter 37 applies to issues of selectively marketed securities by States.

Chapter 32 is amended as shown below:

Chapter 32

DEBT SECURITIES

APPENDIX III CONSEQUENTIAL AMENDMENTS TO THE MAIN BOARD RULES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

SUPRANATIONALS

Preliminary

- 32.01 Chapter 37 applies to debt issues to professional investors only by Supranationals. Chapters 22, 24 to 29 and, where relevant, 35 and 36 apply to other debt issues by Supranationals subject to the modifications or exceptions detailed in this Chapter. ~~Chapter 37 applies to issues of selectively marketed securities by Supranationals.~~

Chapter 33 is amended as shown below:

Chapter 33

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

STATE CORPORATIONS

Preliminary

- 33.01 Chapter 37 applies to debt issues to professional investors only by State Corporations. Chapters 22, 24 to 29 and, where relevant, 35 and 36 apply to other debt issues by State Corporations subject to the modifications or exceptions detailed in this Chapter. ~~Chapter 37 applies to issues of selectively marketed securities by State Corporations."~~

Chapter 34 is amended as shown below:

Chapter 34

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

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BANKS

Preliminary

- 34.01 Chapter 37 applies to debt issues to professional investors only by Banks. Chapters 22, 24 to 29 and, where relevant, 35 and 36 apply to other debt issues by banks subject to the modifications or exceptions detailed in this Chapter. ~~Chapter 37 applies to issues of selectively marketed securities by banks.~~

Chapter 35 is amended as shown below:

Chapter 35

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

GUARANTORS AND GUARANTEED ISSUES

- 35.01 Chapter 37 applies to guaranteed debt issues to professional investors only. In all other cases where ~~Where~~ listing is sought for debt securities ...

Chapter 36 is amended as shown below:

Chapter 36

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

OVERSEAS ISSUERS

Preliminary

- 36.01 Chapter 37 applies to debt issues to professional investors only by overseas issuers. The Exchange Listing Rules apply to other debt issues by overseas issuers as they do to Hong Kong issuers, subject to the additional requirements, modifications or exceptions set out or referred to in this Chapter.

APPENDIX IV AMENDMENTS TO CHAPTER 30 OF THE GEM RULES

(Marked up to show changes from Main Board)

Chapter 30

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

- 30.01 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

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

Applicants' Qualifications for Listing

- 30.03 An issuer must be a company whose equity securities are listed on GEM or will be listed on GEM before any debt securities are listed. ~~State Corporation, body corporate (including a state corporation) or trust~~
- 30.04 ~~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 of this if it applies for listing.~~
- 30.05 ~~If an issuer is a body corporate it must have net assets of HK\$100 million unless:~~
- ~~(a) It is a Supranational; or~~
 - ~~(b) It is a State Corporation; or~~
 - ~~(c) Its shares are listed on the Exchange; or~~
 - ~~(d) Its shares are listed on another stock exchange; or~~
 - ~~(e) It is a special purpose vehicle formed for listing asset backed securities.~~

APPENDIX IV

AMENDMENTS TO CHAPTER 30 OF THE GEM RULES

(Marked up to show changes from Main Board)

- 30.06 ~~If an issuer is a body corporate 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.~~
- 30.07 ~~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.~~
- 30.04 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 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

- 30.05 The debt securities must be freely transferable with a board lot of at least HK\$500,000 (or equivalent in other currencies).
- 30.06 The debt securities must have been validly authorised.
- 30.07 The ~~If an issuer is a body corporate (including a state corporation) its debt securities:~~
- (a) must comply with the law of the place where the issuer it is incorporated or established; and
 - (b) must comply with the issuer's its memorandum and articles of association.
- 30.08 If an issuer is issuing guaranteed debt securities under Rule 30.04 the guarantee:
- (a) Must have been validly authorised;

APPENDIX IV AMENDMENTS TO CHAPTER 30 OF THE GEM RULES

(Marked up to show changes from Main Board)

- (b) Must comply with the guarantor's memorandum and articles of association, if the guarantor is a body corporate; and
- (c) Must comply with the law of the place where the guarantor is incorporated or established.

Asset-backed Securities

- 30.09 ~~This section sets out additional requirements that apply if debt securities are asset-backed securities.~~
- 30.10 ~~If the asset backed securities are backed by equity securities or depositary receipts:~~
- ~~(a) 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) They must be listed on the Exchange or another stock exchange~~
- 30.11 ~~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.~~
- 30.12 ~~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 Securities

- 30.09 This section sets out additional requirements that apply if debt securities are convertible.
- 30.10 If debt securities are convertible they must be convertible into :
- (a) Shares listed or to be listed on the Exchange or another stock exchange; or
 - (b) Depositary receipts listed or to be listed on the Exchange or another stock exchange; or
 - (c) Other assets that the Exchange has agreed in writing are acceptable.
- 30.11 If debt securities are convertible into shares that have not yet been issued:
- (a) The issuance of the shares must have been validly authorised; and
 - (b) The listing of the shares must have been validly authorised.
- 30.12 If debt securities are convertible into shares (or into depositary receipts) the terms of the issue must provide for appropriate adjustments to the

APPENDIX IV

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(Marked up to show changes from Main Board)

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 depositary receipts.

- 30.13 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

- 30.14 This section sets out additional requirements that apply to options, warrants or similar rights

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

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

- 30.16 If the underlying debt securities have not yet been issued:
- (a) Their issuance must have been validly authorised; and
 - (b) Any listing of them must have been validly approved.

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

Listing Document

- 30.18 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 for each issue under the programme.

- 30.19 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.”

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

30.20 A listing document must contain the following statement:

“Characteristics of The Growth Enterprise Market (GEM) of The Stock Exchange of Hong Kong Limited (the “Exchange”)

GEM has been positioned as a market designed to accommodate companies to which a higher investment risk may be attached than other companies listed on the Exchange. Prospective investors should be aware of the potential risks of investing in such companies and should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given the emerging nature of companies listed on GEM there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.”

30.21 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 allow others to make the statement but an issuer must seek prior consent for this.

30.22 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.

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

30.24 A listing document must contain a statement limiting its distribution to professional investors only.

30.25 A listing document must be in English or Chinese.

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

Application Procedures

30.27 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.

30.28 An issuer must submit the following documents:

- (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 89
- (c) Draft Listing document.
- (d) Draft formal notice of listing.
- (e) If an issuer is not listed on GEM a copy of its memorandum and articles of association, certificate of incorporation or equivalent to show that the issuer is validly incorporated or established.
- ~~(2) Its last published financial statements. These financial statements are not required if an issue is guaranteed.~~
- ~~(f) If the issue is guaranteed by a body corporate that is not listed on the Exchange a copy of the guarantor's (1) Memorandum and articles of association, certificate of incorporation or equivalent, to show that the guarantor is validly incorporated or established (2) last published financial statements~~
- (f) If debt securities have been authorised by shareholders then a copy of the resolution.
- (g) A copy of the resolutions by the issuer's governing body (for example, its board of directors authorising
 - (1) the issue and allotment of the debt securities
 - (2) the application for listing
 - (3) issuing the listing document.
- (h) If an issue is guaranteed, a copy of the resolutions by the guarantor's board of directors governing body authorising
 - (1) the listing application
 - (2) issuing of the listing document.
- (i) If an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.

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

30.29 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 include 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.

30.30 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.

30.31 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.

30.32 An issuer must publish a formal notice on listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 4410.

Programmes

30.33 This section sets out the procedures for listing securities under a programme that the Exchange has approved.

30.34 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.

30.35 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.

30.36 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:
(a) Notifying it of the final terms of each issue;
(b) Confirming that the securities have been issued; and

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- (c) Paying the appropriate listing fee before listing.

Continuing Obligations

- 30.37 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 these obligations. An issuer must comply with these obligations
- (a) until the securities expire or
 - (b) until they are withdrawn from listing.
- 30.38 If an issuer is required to announce information then
- (a) it must do so by an announcement under ~~Rule 2.07C~~ Rules 16.17 and 16.18, except that the announcement may be in English or Chinese only.
 - (b) The 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.”
- 30.39 An issuer must comply with the Listing Rules in force from time to time.
- 30.40 An issuer must immediately announce any information which
- (a) Is necessary for investors to appraise its position or
 - (b) Is necessary to avoid a false market in its securities or
 - (c) May have a material affect on its ability to meet the obligations under its debt securities.
- 30.41 An issuer must announce as soon as possible:
- (a) If aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue.
 - (b) Any public disclosure made on another stock exchange about its debt securities.
- 30.42 An issuer must notify the Exchange in advance of any proposal to
- (a) Replace a trustee for bondholders; or
 - (b) Amend the trust deed or.
 - (c) Amend the terms of convertible debt securities unless that amendment occurs automatically in accordance with 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.

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- 30.43 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) All of an issue of convertible debt securities has been fully converted
- The Exchange will then formally delist the debt securities.
- 30.44 An issuer must notify the Exchange as soon as possible if its debt securities are listed on another stock exchange.
- 30.45 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.
- 30.46 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 Representative

- 30.47 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

- 30.48 If an issuer or its securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements
- 30.49 The Exchange may accept or reject a listing application or make listing subject to additional conditions.
- 30.50 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 of debt securities generally.

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Definitions

30.51 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
“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.
“Professional Investor”	(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 those prescribed by rules made under section 397 of that Ordinance); or (b) For a person outside Hong Kong, a professional investor is a person to

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whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction.

"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 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

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Appendix 2 is amended as shown below:

Appendix 2

Documents of Title

Part B

...

Bearer Securities

13. Except for debt issues to professional investors only, ~~Other than for selectively marketed securities,~~ proofs of securities and any coupons...

Appendix 4 is amended as shown below:

“Appendix 4

Trust Deeds or Other Documents Securing or Constituting Debt Securities

The provisions of this appendix do not apply to debt issues to professional investors only.
If there is a trustee ...

Appendix 5 is amended as shown below:

Appendix 5

FORMS RELATING TO LISTING

Form C

Application Form – Debt securities

This form must be lodged duly completed ... as follows:

- (i) in circumstances where the application is required to be supported by a listing document at least 10 clear business days prior to the provisional hearing date of the application by the GEM Listing Committee or in the case of debt issues to

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~~professional investors only~~ a selectively marketed issue, such other period as may be agreed with the Exchange; or...

Appendix 10 is amended as shown below:

Appendix 10
MODEL FORMS OF FORMAL NOTICE
FORM D
~~For Selective Marketings~~
FOR DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Chapter 26 is amended as shown below:

Chapter 26
DEBT SECURITIES
~~**(OTHER THAN SELECTIVELY MARKETED SECURITIES)**~~
METHODS OF LISTING

26.01 ~~This Chapter does not apply to debt issues to professional investors only. All other debt securities~~ Debt Securities ~~(other than selectively marketed securities)~~ may be brought to listing by any of the methods described below.

Chapter 27 is amended as shown below:

Chapter 27
DEBT SECURITIES
~~**(OTHER THAN SELECTIVELY MARKETED SECURITIES)**~~
QUALIFICATIONS FOR LISTING

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Preliminary

27.01 ~~This Chapter does not apply to debt issues to professional investors only. This Chapter It sets out the basic conditions which have to be met as a pre-requisite to the listing of debt securities. They apply to every method of listing with the exception of those which are selectively marketed. The requirements for issues by way of selective marketing are set out in Chapter 30.~~

Chapter 28 is amended as shown below:

Chapter 28

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

APPLICATION PROCEDURES AND REQUIREMENTS

Preliminary

28.01 ~~This Chapter does not apply to debt issues to professional investors s only. This Chapter It sets out the procedures and requirements for applications for the listing of debt securities. ~~(other than selectively marketed securities)~~ The requirements in relation to selectively marketed securities are set out in Chapter 30.~~

Chapter 29 is amended as shown below:

Chapter 29

DEBT SECURITIES

~~(OTHER THAN SELECTIVELY MARKETED SECURITIES)~~

LISTING DOCUMENTS

Preliminary

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29.01 ~~This Chapter does not apply to debt issues to professional investors only. This Chapter It sets out the Exchange's requirements for the contents of listing documents relating to debt securities (other than selectively marketed securities). The requirements in relation to selectively marketed securities are set out in Chapter 30...~~

Chapter 31 is amended as shown below:

Chapter 31

DEBT SECURITIES

CONTINUING OBLIGATIONS

Preliminary

31.01 ~~This Chapter does not apply to debt issues to professional investors only. An issuer of debt securities and its guarantor, in the case of a guaranteed issue, shall comply...~~

Notes:

- ~~1 — This Chapter applies equally to issuers and guarantors, in the case of guaranteed issues of non-selectively marketed and selectively marketed debt securities~~
- 12 *References in this Chapter to issuers shall apply equally to guarantors in the case of guaranteed issues."*

Chapter 32 is amended as shown below:

Chapter 32

DEBT SECURITIES

OVERSEAS ISSUERS

Preliminary

32.01 ~~Chapter 30 applies to debt issues to professional investors only by overseas issuers. The GEM Listing Rules apply to other debt issues by overseas issuers as they do to Hong Kong issuers, subject to the additional requirements,~~

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modifications or exceptions set out or referred to in this Chapter. ~~This Chapter applies equally to overseas issuers of selectively marketed debt issues.~~

Chapter 33 is amended as shown below:

Chapter 33

DEBT SECURITIES

OPTIONS WARRANTS AND SIMILAR RIGHTS

- 33.01 This Chapter does not apply to debt issues to professional investors only. This Chapter applies to options, warrants and similar rights to subscribe or purchase debt securities (“warrants”) which are issued or granted on their own by an issuer or any of its subsidiaries and to warrants which are attached to other debt securities. Warrants which are attached to other securities but which are non-detachable are convertible securities and are also subject to the provisions of Chapter 22 (convertible equity securities), or 34 (convertible debt securities) as appropriate.

Chapter 34 is amended as shown below:

Chapter 34

DEBT SECURITIES

CONVERTIBLE DEBT SECURITIES

- 34.01 This Chapter does not apply to convertible debt issues to professional investors only. All convertible debt securities must, prior to the issue thereof, be approved by the Exchange and the Exchange should be consulted at the earliest opportunity as to the requirements which will apply.

Chapter 35 is amended as shown below:

Chapter 35

DEBT SECURITIES

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TAP ISSUES, DEBT ISSUANCE PROGRAMMES AND ASSET-BACKED SECURITIES

35.01 This Chapter sets out the requirements in relation to tap issues, debt issuance programmes and asset-backed securities. It does not apply to debt issues to professionals only.

APPENDIX VI

LISTING OF RESPONDENTS

Market Practitioner Firms

1. Allen & Overy
2. Linklaters
3. PricewaterhouseCoopers
4. Latham & Watkins

Professional and Industry Associations

5. The Hong Kong Institute of Certified Public Accountants

Individuals

6. Suen Chi Wai (solicitor)

