

# HONG KONG EXCHANGES AND CLEARING LIMITED

## Guidance on continuing obligations under Chapter 37 of the Main Board Listing Rules and Chapter 30 of the GEM Rules (Debt Issues to Professional Investors Only)

29 July 2022

|                                       |  |
|---------------------------------------|--|
| <b>Listing Rules and Regulations:</b> | <b>Main Board Listing Rules 2.12A, 2A.09, 2A.10, 3.06(1), 37.46A, 37.47A, 37.47E(a) and 37.53 to 37.54<br/>GEM Rules 3.10, 3.11, 5.25(3), 30.39A, 30.40A, 30.40E(a) and 30.46 to 30.47</b> |
| <b>Author:</b>                        | <b>Structured Products and Fixed Income, Listing Division</b>  |

**Important note:** *This guidance does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this guidance and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules or this guidance.*

### 1 Purpose

- 1.1 This guidance covers certain continuing obligations of an issuer/a guarantor of debt securities listed under Chapter 37 of the Main Board Listing Rules (“**Chapter 37 Debt(s)**”) and Chapter 30 of the GEM Rules.
- 1.2 All Rule references in this guidance are to the Main Board Listing Rules. The guidance herein also applies to debts listed under Chapter 30 of the GEM Rules.

### 2 Relevant Listing Rules

Prompt response to Exchange’s enquiries

- 2.1 Listing Rule 37.46A requires an issuer and/or guarantor(s) to respond promptly to the Exchange’s enquiries concerning unusual movements in the price or trading volume of their listed debt securities, the possible development of a false market in their listed debt securities, or any other matters.
- 2.2 Listing Rule 2.12A requires an issuer to provide to the Exchange as soon as possible or in accordance with the time limits imposed by the Exchange any information the Exchange (a) considers appropriate to protect investors or ensure the smooth operation of the market, or (b) requires for investigating a suspected breach of, or verifying compliance with, the Listing Rules.

### Authorised Representatives

- 2.3** Listing Rule 37.54 requires an issuer to (a) appoint two authorised representatives to communicate with the Exchange; and (b) notify the Exchange of any change of representative.
- 2.4** Listing Rule 3.06(1) requires an authorised representative to be at all times the principal channel of communication between the Exchange and the issuer.

### Announcement on default and information having material effect on issuer's or guarantor's ability to meet obligations under listed debt securities

- 2.5** An issuer and/or a guarantor of listed debt securities are required to announce as soon as reasonably practicable the following information under the Listing Rules:
- (a) any information which may have a material effect on its ability to meet the obligations under the listed debt securities (Listing Rule 37.47A); and
  - (b) default on its listed debt securities (Listing Rule 37.47E(a)).

### Provision of annual and interim financials to the Exchange

- 2.6** Listing Rule 37.53 requires an issuer or a guarantor, as the case may be (in each case, where it is a body corporate), to provide the Exchange with its annual accounts or any interim reports when they are issued or to notify the Exchange when such accounts or reports are published on a website.

## **3 Guidance**

### Prompt response to Exchange's enquiries

- 3.1** Maintaining a line of communication with the Exchange is a basic and fundamental aspect of the Listing Rules. It is imperative that issuers and/or guarantors of Chapter 37 Debts respond to the Exchange's enquiries or requests for information promptly, to assist the Exchange to discharge its principal function of maintaining and regulating an orderly market. If issuers and/or guarantors require more time to gather information requested by the Exchange, they should apply to the Exchange (together with information supporting such application) for an extension of time for providing a response.
- 3.2** As the directors of an issuer are individually and collectively responsible for the management and operations of an issuer, the Exchange expects directors of an issuer of Chapter 37 Debts to ensure that the issuer responds to the Exchange's enquiries in accordance with the Listing Rules.
- 3.3** Failure to respond to the Exchange's enquiries will be treated as a serious breach of the Listing Rules. In particular, non-compliant issuers (and their directors) and/or guarantors may be subject to disciplinary action following which the Listing Committee may cancel or suspend the listing of the Chapter 37 Debts, impose public or private

sanctions against the issuers (and their directors) and/or guarantors, and/or take such other action as it thinks fit under Listing Rule 2A.10<sup>1</sup>. The Exchange may also take into account the compliance history of the issuer and the guarantor of Chapter 37 Debts (including their respective directors) in reviewing their listing application under Chapter 37 of the Main Board Listing Rules.

#### Authorised Representatives

- 3.4** Any change of authorised representatives or their contact details must be notified to the Exchange in a timely manner, by completing the prescribed authorised representative form<sup>2</sup> (see Appendix 1 as attached) and returning it by email to [debt@hkex.com.hk](mailto:debt@hkex.com.hk). Failure to inform the Exchange of any such change is considered to be a breach of the Listing Rules by the issuer.
- 3.5** The principal responsibility of authorised representatives is to communicate with the Exchange in relation to the issuer's listed debt securities. Upon receipt of enquiries from the Exchange, authorised representatives should bring such enquiries to the attention of the issuer/guarantor (or their board of directors) for consideration and respond to the Exchange in a timely manner. Authorised representatives who have failed to facilitate the communication between the Exchange and the issuer may be subject to disciplinary action by the Exchange under Rule 2A.10<sup>3</sup>.

#### Announcement on default and information having material effect on issuer's or guarantor's ability to meet obligations under listed debt securities

- 3.6** The requirement to announce default on listed debt securities aims to facilitate holders exercising their rights thereunder to seek recourse against the issuers and/or the guarantors. As soon as a default occurs under the Chapter 37 Debts, issuer's and/or the guarantors' obligations to disclose such default arises, irrespective of whether they have received any notice from the holders and/or the trustee to declare that the principal and the accrued coupon under such Chapter 37 Debts shall immediately become due and payable.
- 3.7** It is common for the terms and conditions of Chapter 37 Debts to provide for a grace period allowing issuers/guarantors to cure any default before it constitutes an "event of default", which then entitles the holders and/or trustee to declare that the principal and the accrued coupon thereunder shall immediately become due and payable. Notwithstanding the availability of any such grace period, issuers and/or guarantors should assess if any failure to meet the obligations under their Chapter 37 Debts (or events leading to such failure) constitutes information having a material effect on their

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<sup>1</sup> On 19 January 2022, the Exchange took disciplinary action against, among others, an issuer of Chapter 37 Debt for its breach of, among other things, Rule 2.12A by failing to provide to the Exchange information as requested ([https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/2022/220119\\_SoDA.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Sanctions/2022/220119_SoDA.pdf?la=en)).

<sup>2</sup> Please contact the Exchange ([debt@hkex.com.hk](mailto:debt@hkex.com.hk)) for a copy of the form if necessary.

<sup>3</sup> In the same disciplinary action referred to above, the Exchange also sanctioned the authorised representative in relation to her breach of Rule 3.06(1) by failing to be the principal channel of communication between the Exchange and the issuer.

ability to discharge their obligations under their Chapter 37 Debts and, if so, announce accordingly.

Apart from the disclosure obligations specifically discussed in paragraphs 2.5, 3.6 and 3.7 above, issuers/guarantors are reminded to assess whether the relevant information warrants a disclosure as required by Rules 37.47(b), 37.47B(a) and 37.47E. In the event that the equity securities of the issuers/guarantors are also listed on the Exchange (“**Listed Issuers (equity)**”) or issuers/guarantors are part of a Listed Issuer (equity) group, the Listed Issuers (equity) themselves are reminded to assess their disclosure obligations under Chapter 13 of the Main Board Listing Rules (or Chapter 17 of the GEM Rules) and the inside information regime under Part XIVA of the Securities and Futures Ordinance (Cap. 571).

*Provision of annual and interim financials to the Exchange*

- 3.8** Issuers (and/or the guarantor(s) in case of guaranteed issue) should submit the relevant annual or interim financials by completing the Financial Statement Submission Form (for issuer / guarantor of listed debt securities only (DS002), available at [https://www.hkex.com.hk/Listing/Rules-and-Guidance/eForm-Corner?sc\\_lang=en](https://www.hkex.com.hk/Listing/Rules-and-Guidance/eForm-Corner?sc_lang=en)).
- 3.9** In the event that annual or interim financials are not issued in relation to any given financial period, issuers (and/or the guarantor(s) in case of guaranteed issue) should inform the Exchange ([debtfinacct@hkex.com.hk](mailto:debtfinacct@hkex.com.hk)) accordingly as soon as practicable. In the absence of any such notification or submission of annual or interim financials, issuers (and/or the guarantor(s) in case of guaranteed issue) may be considered to be in breach of Rule 37.53 of the Main Board Listing Rules.
- 3.10** The Exchange may also take into account the compliance history of the issuers/guarantors in relation to Rule 37.53 in reviewing their listing application under Chapter 37 of the Main Board Listing Rules.

THE STOCK EXCHANGE OF HONG KONG LIMITED  
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

**AUTHORISED REPRESENTATIVES**

To: The Stock Exchange of Hong Kong Limited - Listing Division

From:

.....  
Name of Debt Securities Issuer

.....  
Name of Guarantor, if applicable

Subject: Authorised Representatives / Paying Agent

**1. Authorised Representatives**

**Authorised Representative (1)**

Name (English & Chinese): \_\_\_\_\_

Position: \_\_\_\_\_

|           |           |        |                        |
|-----------|-----------|--------|------------------------|
| Telephone | Facsimile |        |                        |
| Office    | Home      | Mobile | Office                 |
| _____     | _____     | _____  | _____                  |
|           |           |        | E-mail address         |
|           |           |        | _____                  |
|           |           |        | Correspondence address |
|           |           |        | _____                  |

**Authorised Representative (2)**

Name (English & Chinese): \_\_\_\_\_

Position: \_\_\_\_\_

|           |           |        |                        |
|-----------|-----------|--------|------------------------|
| Telephone | Facsimile |        |                        |
| Office    | Home      | Mobile | Office                 |
| _____     | _____     | _____  | _____                  |
|           |           |        | E-mail address         |
|           |           |        | _____                  |
|           |           |        | Correspondence address |
|           |           |        | _____                  |

THE STOCK EXCHANGE OF HONG KONG LIMITED  
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**2. Details of the alternates of the Authorised Representatives are as follows:**

**Alternate to Authorised Representative (1)**

Name (English & Chinese): \_\_\_\_\_

Position: \_\_\_\_\_

Applicable period (if any): \_\_\_\_\_

|           |       |           |        |                |                        |
|-----------|-------|-----------|--------|----------------|------------------------|
| Telephone |       | Facsimile |        | E-mail address | Correspondence address |
| Office    | Home  | Mobile    | Office |                |                        |
| _____     | _____ | _____     | _____  | _____          | _____                  |

**Alternate to Authorised Representative (2)**

Name (English & Chinese): \_\_\_\_\_

Position: \_\_\_\_\_

Applicable period (if any): \_\_\_\_\_

|           |       |           |        |                |                        |
|-----------|-------|-----------|--------|----------------|------------------------|
| Telephone |       | Facsimile |        | E-mail address | Correspondence address |
| Office    | Home  | Mobile    | Office |                |                        |
| _____     | _____ | _____     | _____  | _____          | _____                  |

**THE STOCK EXCHANGE OF HONG KONG LIMITED**  
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

**3. Paying Agent**

Company Name  
(English & Chinese): \_\_\_\_\_

Contact Person: \_\_\_\_\_

| Telephone |       | Mobile | Facsimile | E-mail address | Correspondence address |
|-----------|-------|--------|-----------|----------------|------------------------|
| Office    | Home  |        | Office    |                |                        |
| _____     | _____ | _____  | _____     | _____          | _____                  |
| _____     | _____ | _____  | _____     | _____          | _____                  |

Remarks: \_\_\_\_\_

Submitted by: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name in Block Letters

**\* Please provide the Exchange immediately with details of changes to the above, if any, and the relevant details of suitable alternates, when appointed.**

# Appendix 1

## Authorised Representative Form

### Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "Group") (and each being "HKEX", "we", "us" or "member of the Group" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### Purpose

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

### Direct marketing

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

### Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

### Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

### Other transfers of your personal data

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

### How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

### Compliance with laws and regulations

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and



# Appendix 1

## Authorised Representative Form

regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

### Corporate reorganisation

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

### Access and correction of personal data

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link

<https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

### Termination or cancellation

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

### General

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

### Contact us

By Post:

Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
8/F., Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

By Email:

[DataPrivacy@HKEX.COM.HK](mailto:DataPrivacy@HKEX.COM.HK)