

HONG KONG EXCHANGES AND CLEARING LIMITED

Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt Issues to Professional Investors Only

21 August 2020

Listing Rules and Regulations:	Main Board Listing Rules 2A.09, 37.27 to 37.29 and 37.44 to 37.53 GEM Rules 3.10, 30.19 to 30.22 and 30.37 to 30.46
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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 Chapter 37 (Debt Issues to Professional Investors Only) of Listing Rules (“**Chapter 37**”) is a streamlined listing platform for debt securities offered to professional investors¹ only. It has no prescribed disclosure requirements while vetting is limited to the fulfilment of eligibility requirements and the inclusion of the prescribed disclaimer and certain statements in the listing documents. Once listed, the trading in debt securities listed on the Exchange under Chapter 37 (“**Chapter 37 Debt(s)**”) is currently predominantly conducted off-exchange and mostly cleared through overseas clearing systems.
- 1.2 This guidance provides (a) guidance on disclosure in listing documents for Chapter 37 Debts and in particular, those with special features (“**DSSF(s)**”) and (b) general guidance on an issuer’s continuing obligations on Chapter 37 Debts.
- 1.3 Special features refer to the non-exhaustive list of special features of certain debt securities that render such debt securities complex as posted on the Securities and Futures Commission’s (the “**SFC**”) website², which include perpetual or subordinated debt securities, or those with variable or deferred interest payment terms, extendable maturity dates, or those which are convertible or exchangeable or have contingent write down or loss absorption features, or those with multiple credit support providers and structures.

¹ Please note that definition of “professional investors” under Chapter 37 of Listing Rules tracks its definition under the Securities and Futures Ordinance (Cap.571 of the Laws of Hong Kong), including professional investors prescribed by rules made under section 397 of that Ordinance.

² <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-complex-and-complex-products/>

1.4 This guidance is intended to provide guidance to issuers and as a reminder of expected standards of disclosure, including risk disclosure, and continuing obligations, with respect to Chapter 37 Debts generally, and features commonly associated with DSSFs. This guidance is not intended to be exhaustive nor prescriptive as to (a) the types of, or the scope of, DSSFs, (b) the features of a particular DSSF which may require disclosure or (c) the form of that disclosure. In this context, issuers are reminded of the responsibility statement which is required to be included in a listing document (see Listing Rule 37.28).

1.5 All Rule references in this guidance are to the Main Board Listing Rules. The guidance herein also applies to listing documents for debts listed under Chapter 30 of the GEM Rules.

2 Relevant Listing Rules

2.1 Listing Rule 37.28 requires an issuer to accept full responsibility for the accuracy of the information in the listing document and confirm, 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 therein misleading. A responsibility statement to that effect is required to be included in the listing document.

2.2 Listing Rule 37.29 states that a listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain.

2.3 Listing Rules 37.44 to 37.53 set out the continuing obligations of issuers and/or guarantors with respect to Chapter 37 Debts.

3 Structure of this Guidance

3.1 This guidance consists of:

- (a) general guidance in relation to the considerations that issuers should bear in mind when considering the nature of the disclosure to be included in listing documents which would be commensurate with the customary expectation of the intended investors of Chapter 37 Debts (including DSSFs);
- (b) specific guidance in relation to particular types of DSSFs (each as discussed in paragraph 5 of this guidance), taking into account certain distinctive features of each type of DSSF, the type of disclosure that investors would customarily expect in a listing document in order to understand each type of DSSF and the associated risks of investing in each type of DSSF; and
- (c) general guidance in relation to the continuing obligations for Chapter 37 Debts that issuers should bear in mind.

4 General disclosure guidance

- (a) Disclosures in a listing document for a Chapter 37 Debt should be commensurate with the customary expectation of its intended investors, i.e. professional investors (as defined under Chapter 37 of Listing Rules). Where the intended investors include high net worth individuals³, issuers are in particular reminded to consider what information investors would customarily expect when drafting the listing document. In general, customary expected disclosures for professional investors would usually include⁴:
- (i) a summary of the key terms and conditions of the Chapter 37 Debts;
 - (ii) financial information on the obligors (which may include, without limitation, the list of obligors set out in paragraph 5.6.1 below). In particular, issuers should consider what level of financial disclosure would be required for investors to make an investment decision on the debt security including any credit assessment of the debt security, bearing in mind the customary expectation of investors and general market practice. For example, if the individual obligor has a fundamental role in the fulfilment of payment obligations under the debt securities, investors may require financial information on this individual obligor, whereas in other cases, investors may not require nor expect financial information on individual obligors within the corporate group if they are making a credit assessment on the basis of the consolidated financial statements of the corporate group;
 - (iii) risk factors relating to the obligors (which may include, without limitation, the list of obligors set out in paragraph 5.6.1 below), their business and the Chapter 37 Debts.

These risks include any structural or other risks associated with the Chapter 37 Debts (particularly in the case of DSSFs) such as subordination, security and credit support such as keepwell agreements, guarantees (particularly upstream guarantees) and equity interest purchase undertakings and the applicability of bail-in requirements.

In the case of Chapter 37 Debts issued by State corporations, issuers should consider prominent disclosure including disclosure on the level of financial support that the issuer may receive from the State, and where the issuer will not receive any such financial support, risk factor disclosure stating that the repayment obligations under the relevant Chapter 37

³ In this respect, the Exchange notes that intermediaries are required to comply with all suitability related requirements under the Code of Conduct for Persons Licensed by or Registered with the SFC when dealing with this type of investors, particularly those that are individuals.

⁴ Please note that in relation to debt securities that contain special features (see paragraph 1.3 above), the SFC requires intermediaries to provide minimum information on such debt securities when selling the same to their clients. See <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-complex-and-complex-products/minimum-information-and-warning-statements.html>.

Debts remain the sole obligation of the issuer may be appropriate, including making clear that any ownership or control by the State does not necessarily correlate to, or provide any assurance as to, the issuer's financial condition. In particular, an issuer which is a State corporation should consider including disclosure on its relationship with the government (including the nature and level of governmental ownership and control).

In addition, issuers may consider highlighting the risks that (a) modifications, waivers and other decisions may be made in relation to the Chapter 37 Debts or related contractual documentation by the trustee or by a prescribed proportion of the holders of the Chapter 37 Debts, and such modifications, waivers or decisions may be considered to be adverse to the interests of individual or minority holders of the Chapter 37 Debts, and that (b) in such circumstances, the recourse available to the minority holders may be limited;

- (iv) the full terms and conditions of the Chapter 37 Debts;
 - (v) a description of the use of proceeds from the issuance of the Chapter 37 Debts;
 - (vi) business disclosure on the obligors (which may include, without limitation, the list of obligors set out in paragraph 5.6.1 below). Again, issuers should consider what level of business disclosure would be required for investors to make an informed investment decision on the debt security including any credit assessment of the debt security, bearing in mind the customary expectation of investors and general market practice. For example, if the individual obligor has a fundamental role in the fulfilment of payment obligations under the debt securities, investors may require information on the business of this individual obligor, whereas in other cases, investors may not require nor expect business disclosure on individual obligors within the corporate group if they are making a credit assessment on the basis of the business disclosure on the corporate group as a whole;
 - (vii) a summary of the key taxation consequences associated with dealings in the Chapter 37 Debts;
 - (viii) any restrictions on the subscription and sale of the Chapter 37 Debts; and
 - (ix) any other material information that may be necessary to facilitate investors in making an informed investment decision.
- (b) Issuers should consider the particular features of the Chapter 37 Debts that investors would expect to be drawn to their attention. This is particularly important in relation to DSSFs where one or more of their features may operate

differently from plain vanilla debt securities or any terms that affect the rights of investors (together, the “**Product Features**”).

- (c) Issuers are reminded to avoid the use of misleading terminology when describing Chapter 37 Debts. In particular, the title of the Chapter 37 Debts or the description of the obligors should reflect the type of credit support being provided.
- (d) Consideration should be given by issuers to the prominence of the disclosure of:
 - (i) the key terms and the structure of Chapter 37 Debts, including any Product Features in the listing document to ensure that investors’ attention is properly drawn to them, such as highlighting such key terms and Product Features in the summary of the terms and conditions section of the listing document at the outset; and
 - (ii) the risks associated with the investment in Chapter 37 Debts (see also paragraph 4(a)(iii) above).

In the case of DSSFs, for example, it may be appropriate to include a disclaimer or cautionary statement on the front cover of the listing documents highlighting the key Product Features of such DSSFs which could have an impact on investors’ rights such as:

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

- (e) Issuers are reminded to include (a) on the front or inside cover of the listing document a disclaimer statement required under Listing Rule 37.27, (b) in the listing document a responsibility statement required under Listing Rule 37.28 and (c) on the front cover of the listing document a caution statement stating that **“The Stock Exchange of Hong Kong Limited (SEHK) has not reviewed the contents of this document, other than to ensure that the prescribed form disclaimer and responsibility statements, and a statement limiting distribution of this document to Professional Investors only have been reproduced in this document. Listing of the [Bonds] on SEHK is not to be taken as an indication of the commercial merits or credit quality of the [Bonds] or the issuer [and guarantor, where applicable] or quality of disclosure in this document.”**⁵.

⁵ For listings under Chapter 30 of the GEM Rules, issuers are reminded to also include a statement on the characteristics of GEM in the listing documents as required under GEM Rule 30.20.

- (f) Issuers are reminded to clearly indicate the intended investors for their Chapter 37 Debts. In case the Chapter 37 Debts are intended to be offered to certain type of professional investors only, for example those 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), the issuers should clearly indicate it in the listing documents (as opposed to simply indicating that the Chapter 37 Debts are to be offered to professional investors only).

5 Specific disclosure guidance in relation to particular types of DSSFs

5.1 The following section sets out specific guidance in relation to particular types of DSSFs, taking into account, amongst others, certain Product Features of each type of DSSF, the type of disclosure that investors would customarily expect in a listing document in order to understand the particular type of DSSF and the associated risks of investing in the particular type of DSSF.

5.2 Perpetual debt securities or other debt securities with variable or deferred payment terms

5.2.1 A perpetual debt security is a debt security with no fixed maturity date.

5.2.2 In this paragraph 5.2, references to “perpetual debt securities” includes any other debt securities with variable or deferred payment terms (to the extent applicable).

5.2.3 Issuers should consider the type of disclosure that investors would customarily expect in a listing document in order to understand the perpetual debt security, any Product Features of the perpetual debt security and the associated risks of investing in such a debt security. For example:

- (a) the ability of the issuer to defer or cancel distribution payments, in whole or in part, (either on an optional or mandatory basis), whether such deferral or cancellation can be exercised for an unlimited number of times and whether any deferred or cancelled distributions are cumulative or forfeited;
- (b) the impact of any “pushers” or “stoppers” in relation to distributions, and their consequential impact on investors;
- (c) the perpetual nature of the securities and the nature of any redemption rights by the issuer. Where investors have no right to require redemption, issuers should consider a more robust risk factor highlighting such a risk;
- (d) for perpetual debt securities which are subordinated in nature, the status of such perpetual debt security and how they rank relative to the issuer’s existing and future indebtedness;

- (e) the circumstances in which the rate of distribution could be reset or otherwise adjusted and the consequential impact on investors. In particular, where there is no reset or adjustment to the distribution rate, issuers should consider whether a more robust risk factor emphasising the perpetual nature of the debt securities would be appropriate; and
- (f) the limited remedies for default or non-payment under the perpetual debt securities.

5.2.4 To the extent this would be seen as helpful to investors in order to evaluate the issuer and the nature of the perpetual debt securities being sold, issuers may also wish to consider including disclosure highlighting any legal and/or commercial drivers behind the issuance of the perpetual debt securities – for example, whether the perpetual debt securities are being issued for accounting treatment recognition purposes, rating agency equity credit purposes or solvency requirements.

5.3 Debt securities with extendable maturity dates

5.3.1 A debt security with an extendable maturity date is a debt security where the maturity date of the debt security (the “**Original Maturity Date**”) can, at the option of the issuer, be extended (such extended date, the “**Extended Maturity Date**”) such that the final redemption amount (together with any accrued and unpaid interest) shall be automatically deferred and be due and payable on the Extended Maturity Date. In some cases, the terms and conditions of the EMT Security (as defined below) may provide that the final redemption amount unpaid on the Original Maturity Date may be paid by the issuer on any interest payment date occurring thereafter up to and including the Extended Maturity Date.

5.3.2 In this paragraph 5.3, debt securities with extendable maturity dates are known as “**EMT Securities**”.

5.3.3 Issuers should consider the type of disclosure that investors would customarily expect in a listing document in order to understand the EMT Security, any Product Features of the EMT Security and the associated risks of investing in such a debt security. For example:

- (a) the possibility of a delay in receipt of payment of the final redemption amount (together with any accrued and unpaid interest) on the EMT Security, including the fact that such delay will not result in any right of holders to accelerate payments under the EMT Security or take action against the obligors;
- (b) where the rate of interest or method for determining the rate of interest is different during the period from (but excluding) the Original Maturity Date to (and including) the Extended Maturity Date, a description of the new rate of interest or the new method for determining the rate of interest; and

- (c) if applicable, any restrictions imposed on the issuer under the terms and conditions of the EMT security where it has elected to extend the Original Maturity Date of the EMT Security.

5.4 Convertible bonds and exchangeable bonds

5.4.1 Listing Rule 37.58 defines “convertible debt securities” as debt securities convertible into⁶ or exchangeable⁷ 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 attached⁸.

5.4.2 In this paragraph 5.4, convertible bonds and exchangeable bonds are known as “**EQL Securities**”, the shares into which they are convertible or exchangeable are known as the “**Underlying Shares**” and the property into which exchangeable bonds are exchangeable is known as the “**Exchange Property**”.

5.4.3 Issuers should consider the type of disclosure that investors would customarily expect in a listing document in order to understand the EQL Security, any Product Features of the EQL Security and the associated risks of investing in the EQL Security. For example:

- (a) the nature of the Underlying Shares and dividends payable thereon;
- (b) in the case of exchangeable bonds only, the description of the Exchange Property together with any risks associated with the Exchange Property;
- (c) the conversion price or exchange ratio at which the EQL Security will be convertible or exchangeable into the Underlying Shares or the Exchange Property (as the case may be) together with a description of the conversion right or exchange right and the process for exercising such conversion right or exchange right;
- (d) the nature of any adjustments to (i) the conversion price (in the case of convertible bonds) or (ii) the Exchange Property (in the case of exchangeable bonds), and other anti-dilutive protection afforded to investors;
- (e) any ability on the part of the issuer to elect to pay a cash amount to investors in lieu of delivering shares upon any exercise of the conversion right or exchange right;

⁶ This refers to debt securities which are convertible into the shares of the issuer of the convertible bond or any other company within the issuer’s corporate group.

⁷ This refers to debt securities which are exchangeable into the shares of a company other than the issuer of the exchangeable bond or any other company within the issuer’s corporate group.

⁸ See also Listing Rules 37.17 to 37.21 in relation to additional requirements that apply if debt securities are convertible.

- (f) the nature of any redemption rights by the issuer and/or investors;
- (g) the nature of any lock up imposed on the issuer and/or major shareholders around future dealings in the EQL Security and/or the Underlying Shares for a restricted period;
- (h) any key risks relating to the Underlying Shares such as fluctuations in the price of the Underlying Shares and that any anti-dilution protection is limited;
- (i) the nature of any related party transactions; and
- (j) information on substantial shareholders of the issuer of the Underlying Shares.

5.5 Debt securities with contingent write down or loss absorption features

5.5.1 A contingent write down or loss absorption feature is a provision in a debt security issued by a financial institution which requires a principal amount of the instrument to be written down, or converted into ordinary shares, upon the occurrence of a particular trigger event.

5.5.2 In this paragraph 5.5, debt securities with contingent write down or loss absorption features are known as “**CWD Securities**”.

5.5.3 Issuers should consider the type of disclosure that investors would customarily expect in a listing document in order to understand the CWD Security, any Product Features of the CWD Security and the associated risks of investing in such a debt security. For example:

- (a) the ability of the issuer to cancel distributions, in whole or in part, (either on an optional or mandatory basis), whether such cancellation can be exercised for an unlimited number of times and whether any cancelled distributions are cumulative or forfeited;
- (b) the impact of any “stoppers” in relation to distributions, and their consequential impact on investors;
- (c) where the CWD Securities have no maturity date, the perpetual nature of such CWD Securities and the nature of any redemption rights by the issuer. Where investors have no right to require redemption, issuers should consider a more robust risk factor highlighting such a risk;
- (d) the ability of the issuer to require a principal amount of the instrument to be written down, or converted into ordinary shares, upon the occurrence of a trigger event, the consequences of such write down or conversion, a description of the relevant trigger event and its impact on a investor’s rights under the CWD Securities;

- (e) for CWD Securities which are subordinated in nature, the status of such CWD Securities and how they rank relative to the issuer's existing and future indebtedness;
- (f) the circumstances in which the rate of distribution could be reset or otherwise adjusted and the consequential impact on investors;
- (g) the limited remedies for default or non-payment under the CWD Securities; and
- (h) to the extent the CWD Securities qualify for regulatory capital treatment, disclosure of such regulatory capital treatment together with disclosure on the key regulatory capital requirements, current regulatory capital ratios and any applicable resolution regime.

5.6 Debt securities with multiple credit support providers and structures

5.6.1 A debt security with multiple credit support providers and structures is a debt security which has the benefit of security or other types of credit support and/or contains more than one obligor that may include, without limitation:

- (a) issuer;
- (b) guarantor (including, for example, a subsidiary guarantor providing an upstream guarantee);
- (c) keepwell provider and/or a provider of a liquidity facility and/or equity interest or asset purchase undertaking, or other similar credit support;
- (d) letter of comfort provider or a provider of other similar credit support; and
- (e) standby letter of credit provider or a provider of other similar credit support.

5.6.2 In this paragraph 5.6, debt securities with multiple credit support providers and structures are known as "**MCS Securities**".

5.6.3 Issuers should consider the type of disclosure that investors would customarily expect in a listing document in order to understand the MCS Security, any Product Features of the MCS Security and the associated risks of investing in such a debt security. For example:

- (a) a summary of the key terms of the credit support, including, where applicable, the ranking and status of the credit support. In some cases, an issuer should consider if it would be appropriate to include the form of the document evidencing the terms of the credit support in the listing document, such as the form of letter of comfort or the form of standby letter of credit;

- (b) clear identification of each credit support provider (for example, where there are multiple subsidiary guarantors of the MCS Security, a clear description of the identity of each subsidiary guarantor);
- (c) an issuer should consider the level of business disclosure and risk disclosure on the credit support provider and the credit support structure that would be appropriate, bearing in mind the identity and nature of the credit support provider, the relationship between the credit support provider and the issuer, the regulatory regime governing the performance of the credit support and the nature (including the complexity) of the credit support being provided including the level of “protection” afforded to holders by the credit support. For example, (i) where a credit support provider has limited business operations, revenue and/or assets, an issuer may consider including prominent disclosure and additional risk factor disclosure on such credit support provider’s ability to fulfil its obligations under the MCS Security or (ii) where the consolidated financial information in the listing document includes entities which are not credit support providers, an issuer may consider additional risk factor disclosure highlighting this to investors, particularly in circumstances where the contribution to the consolidated financial information by the credit support providers is not considered to be material; and
- (d) in the case of a standby letter of credit, where the payment cash flows on each scheduled payment date in relation to the MCS Security involve complex arrangements with regards to pre-funding, notifications and drawings, a description of such arrangements, and the consequences of, and risks associated with, any failure in the operation of such arrangements.

5.7 Other types of complex debt securities

- 5.7.1 Given that the list of special features that render debt securities complex is non-exhaustive, issuers should consider whether there are other particular features, structures or terms of the Chapter 37 Debts not described in this guidance which would warrant additional disclosure in the listing document due to their complexity, unusual nature, level of risk posed to investors or otherwise.

6 Issuer’s responsibility in preparing the listing document

- 6.1 Issuers are reminded that it is their responsibility to ensure that their listing documents contain information⁹ that are customarily expected by the investors for making an informed investment decision. Issuers are further reminded of the responsibility statement which is required to be included in a listing document (Listing Rule 37.28).

⁹ Under Listing Rule 37.28, issuers accept full responsibility for the accuracy of the information contained in the listing documents and confirm that there are no other facts the omission of which would make any statement therein misleading.

6.2 The Exchange will maintain its current approach in relation to disclosure requirements and vetting for Chapter 37 with unanimous support from respondents to the Exchange's recent market consultation.¹⁰

7 General guidance in relation to continuing obligations for Chapter 37 Debts

Issuers of Chapter 37 Debts are reminded of their continuing obligations in the Listing Rules. In particular:

- (a) issuers and guarantors should consider at all times whether they would be required to disclose information pursuant to the continuing disclosure obligations under Listing Rules 37.47(b), 37.47A and 37.47B(a);
- (b) issuers of Chapter 37 Debts (including issuers whose equity securities are not listed on the Exchange) are reminded of Listing Rule 37.46 which states that an issuer must comply with the Listing Rules in force from time to time. In particular, non-compliant issuers 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/or take such other action as it thinks fit under Listing Rule 2A.09; and
- (c) issuers of Chapter 37 Debts are reminded of Listing Rule 37.53 which 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. In addition, in order to enhance transparency, issuers may provide ongoing financial information to holders of Chapter 37 Debts.

¹⁰ See the Exchange's consultation on "[Review of Chapter 37 – Debt Issues to Professional Investors Only](#)" published on 6 December 2019 and its [conclusions](#) published on 21 August 2020.