

HKEX's New Amendments to the Listing of Debt Securities

Ricky Ho
21 April 2021

Introduction

On 21 August 2020, The Stock Exchange of Hong Kong Limited (the "HKEX") published a consultation conclusion on "Review of Chapter 37 - Debt Issues to Professional Investors Only" (the "Consultation Conclusions"), which followed the publication of "Consultation Paper on Review of Chapter 37 - Debt Issues to Professional Investors Only" (the "Consultation Paper") in December 2019. The Consultation Conclusion has adopted most of the proposed changes in the Consultation Paper and the amendments to Chapter 37 of the Rules Governing the Listing of Securities on Main Board of The Stock Exchange of Hong Kong Limited (the "Listing Rules") became effective on 1 November 2020.

Key amendments to Chapter 37 of the Listing Rules

The key amendments to Chapter 37 of the Listing Rules include: (1) enhancement of eligibility requirements; (2) tightening of the eligibility exemptions applicable for regional and local state-owned enterprises; (3) the amendment of the definition of "Professional Investor"; (4) the new requirement to publish the listing documents on the website of the HKEX; and (5) the enhancement of continuing

reporting obligations of issuers and guarantors relating to defaults and insolvency. A summary of the amendments is set forth below:

1. Enhancement of Eligibility Requirements

The new amendments include higher standards for listing, mainly on the minimum net asset value requirement and minimum issue size. These higher standards are intended to ensure that only issuers with large asset pools and proven track records of issuance of debts of significant amounts will be eligible and to bring the quality of listings in line with other popular debt listing venues including the Singapore, Luxembourg and Ireland exchanges:

- ▶ Under the revised Rule 37.05 of the Listing Rules, unless certain exemptions apply, issuers of debt to professional investors must have minimum net assets of HK\$1 billion, an increase from the then existing HK\$100 million net asset requirement.
- ▶ Under the revised Rule 37.09A of the Listing Rules, the minimum issuance size is set at HK\$100 million, with the exception of tap issuances. By comparison, there was no minimum

issuance size requirement under the former Listing Rules.

2. **Tightening of the Exemptions Applicable for Regional and Local State-owned Enterprises**

Under the Listing Rules, state corporations, which are defined to include companies which are majority-owned by, or whose liabilities are fully guaranteed by a state, would be exempt from the minimum net asset requirement and the requirement to provide two years' audited accounts under Rule 37.05b and Rule 37.06b of the Listing Rules, respectively.

The Ministry of Finance of the People's Republic of China issued the *Circular on the Regulation on the Financing Activities Conducted by Financial Institutions for Local Governments and State-owned Enterprises* on 28 March 2018, which made it clear that financial support or backing will not be provided by a state to its state corporations in case of default of their payment obligations, therefore the HKEX revised the definition of "state corporation" so as to specifically exclude companies majority-owned or controlled by any regional or local State authority. This change has the effect that companies controlled by regional or local authorities will have to fulfil the listing eligibility requirements of net assets of at least HK\$1 billion and issue size of at least HK\$100 million rather than simply relying on the state corporation exemptions.

3. **Amendment of the Definition of "Professional Investor"**

Former Rule 37.58 of the Listing Rules defines "professional investors" in Hong Kong to mean those investors as defined under Part 1 of Schedule 1 to the Securities and Futures Ordinance (Chapter 571 of the laws of Hong Kong) (the "**SFO**") (i.e. institutional investors) excluding, high net

worth investors as prescribed by rules made under section 397 of the SFO. As a result, "professional investors" defined under Chapter 37 of the Listing Rules was not aligned with those under the SFO.

In reality, almost all issuers apply for the professional investor waiver (the "**PI Waiver**") in the listing process to provide themselves with the flexibility in marketing the securities. However, since the PI Waiver is not codified in the Listing Rules, potential issuers may be less informed of such flexibility. The need to apply for the grant of the waiver also creates an additional administrative burden on issuers, and is inconsistent with the light-touch regulatory approach of the listing of debt securities regime under Chapter 37 of the Listing Rules (the "**Chapter 37 Debt Issuance Regime**").

Therefore, the definition of "professional investors" has been revised to include high net worth investors and other professional investors prescribed by rules made under the section 397 of the SFO, thus eliminating the need to apply for PI Waiver.

4. **New Requirement to Publish the Listing Documents on the Website of the HKEX**

Previously, Chapter 37 of the Listing Rules did not require publication of the listing documents because they are issued to professional investors only and not generally available to the public. However, not publishing the listing document means that investors may not be alerted to the caution statements in the listing document and may not have the benefit of all of the information in the listing document when determining whether to purchase debts securities listed on the HKEX under Chapter 37 Debt Issuance Regime.

Therefore, the HKEX amended its rules to require the publication of listing documents

on the listing date on the HKEX's website, which enhances transparency and increases market awareness of the nature of Chapter 37 Debt Issuance Regime which target professional investors only. This change also brings the HKEX in line with its main competitor like exchanges in Singapore, Luxembourg and Ireland which have historically required the disclosure of the listing document, although the allowance to publish the document only in Chinese is still unique and differentiates the HKEX from its competitors.

5. Enhancement of Continuing Reporting Obligations relating to Default and Insolvency

Another major change to the Listing Rules is the enhancement of the regulatory oversight over issuers and guarantors in terms of their continuing obligations. The HKEX adopted the proposal from the Consultation Paper, which includes the following:

- ▶ to require prompt response to HKEX enquires in case of unusual movements in the price or trading volume of an issuer's listed debt securities, or the possible development of a false market;
- ▶ to require announcement of default or matters leading to or involving winding-up and/or liquidation;
- ▶ to require announcement on developments after trading suspension of debts issuance under Chapter 37 Debt Issuance Regime;
- ▶ to clarify the timing of making an announcement of information to avoid a false market or information having a material effect on a guarantor's ability

to meet its obligations under debt securities;

- ▶ to require issuers to announce information having a material effect on their ability to meet their obligations under listed debt securities;
- ▶ to clarify both issuers and guarantors are required to comply with the continuing obligations; and
- ▶ to clarify that issuers and guarantors are required to discharge their continuing obligations only with respect to their debt securities that are listed on HKEX, and not their other debt securities.

Conclusion

Despite the amendments to Chapter 37 of the Listing Rules highlighted above, the HKEX also emphasized that it will maintain its current disclosure and vetting approach, light-touch approach, in relation to listing documents for debts under Chapter 37 Debt Issuance Regime, and which would serve at least four purposes:

- ▶ balance the need to safeguard investors and maintain an effective and appropriate listing platform;
- ▶ enhance eligibility requirements to raise the overall financial health of the market;
- ▶ enhance the continuing reporting obligations to better protect investors; and
- ▶ streamline the listing process to alleviate the administrative burden on issuers.

The author would like to thank Mr. Reagan Li (trainee solicitor) for his contribution in this article.

KEY CONTACTS



Ricky Ho
Associate
Ricky.Ho@eylaw.com.hk
+852 2629 1713

Contact us

LC Lawyers LLP
Suite 3106,
31/F One Taikoo Place,
979 King's Road,
Quarry Bay, Hong Kong
Tel: (852) 2629 3200
Fax: (852) 2956 1980
https://www.eylaw.com.hk/en_hk

Follow us on WeChat



© 2021 LC Lawyers LLP. All Rights Reserved.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.