

Streamlining Hong Kong listings of debt securities and issues surrounding the new "professional investor" regime

The Hong Kong Stock Exchange has recently amended its listing rules in respect of listing of debt securities issued to professional investors. These new rules aim to simplify the debt listing application and approval procedures and tailor disclosure to professional investors. However, there are some limitations to the regime, and some classes of investor will no longer be able to participate in offerings which have been structured to take advantage of the simplified procedures and disclosure requirements.

Simplifying the regime for debt listings

In December 2010, The Stock Exchange of Hong Kong Limited (the "HKSE") published a consultation paper on the proposed changes to the requirements for listing of debt issues to "professional investors" only. This consultation process ended in February of this year and the new rules which resulted from this process took effect on 11 November 2011. In this briefing, we outline the key changes for market participants.

The debt listing regime

Listing of debt securities falls within the scope of Chapters 22 to 37 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules"). These chapters set out a comprehensive regime covering methods of listing, qualifications for listing, application procedures and requirements and contents of listing documents, as well as some specific additional requirements for particular

types of securities and categories of issuer.

However, to date the majority of issuers sought to rely on a simplified regime, applicable to issues of "selectively marketed securities" under Chapter 37 of the Listing Rules. Chapter 37 sets out a more streamlined set of rules which applied to a listing of debt securities which "because of their nature, would normally be purchased and traded by a limited number of investors who are particularly knowledgeable in investment matters" by way of a selective placement or sale of the securities by registered dealers or financial institutions.

A new chapter in listing debt

This part of the Listing Rules has now been replaced with a new Chapter 37, which sets out the new listing regime for issues of debt to "professional investors" only.

The new Chapter 37 governs issues

Key issues

- A simplified application and listing process
- Changes to ongoing obligations
- Marketing and trading issues around the new "professional investor" regime

of debt securities on a standalone and programme basis, convertible securities and asset-backed securities to "professional investors" and is applicable to state, supranational, state corporation, body corporate and trust issuers.

Key changes under the new Listing Rules include a relaxation of issuer eligibility for companies with shares listed on the HKSE, imposition of "minimum board lot sizes" (which will be familiar to market participants with debt listed in Singapore) and simplification of the application process in terms of documentation, procedure and approvals.

Key differences

The new Listing Rules set out a number of changes, many of which are procedural in nature in relation to documentation to be submitted with listing applications. There are some changes however which are more significant, a summary of which is below.

Shortened approval timing

The HKSE has set out in new Listing Rule 37.36 that for routine applications, it aims to issue a "Listing Eligibility Letter" advising (i) the issuer as to its and its debt securities eligibility for listing and (ii) whether any additional information is required to be included in the listing document, within 5 business days from the submission of the application for listing. Previously, this approval process might have taken two weeks. The Listing Eligibility Letter is valid for three months from its date of issue.

Limitations on distribution of listing documents

One of the new requirements explicitly set out in the new Chapter 37 is that a listing document must contain a statement limiting its distribution to professional investors only. It is likely that this is a statement that will become a feature appearing prominently in offering documents. This reflects the HKSE's approach to limiting distribution of debt securities to professional investors only (as discussed later in this note).

Documentation and disclosure in listing documents

Listing documents (generally in the form of an offering circular or information memorandum) prepared in connection with a listing of selectively marketed debt securities under the old Chapter 37 were required to comply with a prescribed checklist of information set out in

Part C of Appendix 1 of the Listing Rules.

The new Chapter 37 moves away from this prescriptive regime, and instead requires a listing document to contain "the information that investors... would customarily expect it to contain" (Listing Rule 37.29), a formulation very similar to that

"The new rules create a simpler, more straightforward and streamlined process for seeking a debt listing in Hong Kong, but the limitations imposed on the distribution of debt securities under the regime could have a marketing and trading impact."

adopted by the SGX in Singapore for listings of this nature.

In practice, we expect that the form and content of listing documents will remain the same, as most practitioners are likely to take the view that the market expects a document to contain broadly the same information as the Listing Rules have historically required. That said, some requirements of the prescriptive framework that caused difficulties for certain issuers may be less problematic if the listing documentation can still be considered as meeting the requirement of Listing Rule 37.29

Board lot sizes

Despite consultation responses that, due to the "over the counter" as opposed to "on exchange" nature of trading in debt securities, the concept of a "board lot size" may not be meaningful in practice, the new Listing Rules do prescribe a minimum board lot of HK\$500,000 (or equivalent in foreign currencies). This is designed to place another barrier to the general availability of debt securities listed under the new Chapter 37 to retail investors.

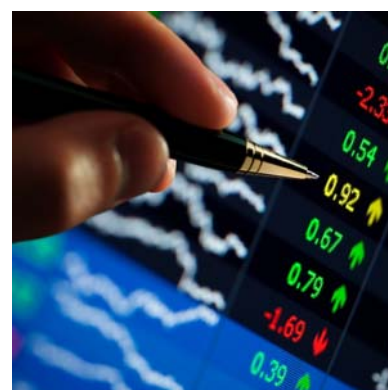
Issuer ongoing obligations

In a similar move away from the prescriptive approach for the content of listing documents, the ongoing obligations of an issuer whose debt securities are listed under the new Chapter 37 are now set out in a more generic way.

The main focus of the scope of issuer ongoing obligations is on the simultaneous announcement on different stock exchanges, and the requirement for a notification to the HKSE of any information which is material to an investor's investment decision.

Redemption of debt securities

A notable relaxation to the rule requiring any redemption or cancellation of debt securities which are listed under Chapter 37 will be of interest to market participants focussing on liability management, with a requirement only to announce once 10 per cent. of the securities are redeemed or cancelled, and at 5 per cent. intervals thereafter.



Limitations of the regime and its application to "professional investors" only

The new Chapter 37 creates a simpler, more straightforward and streamlined regime for listings in Hong Kong, which is likely to be greeted by most as a welcome change. However, a number of categories of investor who may have been able to purchase debt securities as "selectively marketed securities" under the old rules are now specifically excluded from the definition of "professional investors".

These excluded categories include high net worth individuals, corporations and partnerships in Hong Kong, and corporations owned by high net worth individuals whose sole business is to hold investments. If entities of this nature are outside Hong Kong and would be classified as professional investors under the securities regimes of their home jurisdiction they are able to invest in a debt securities offering listed under the new Listing Rules.

The effect of this carve-out to the definition of "professional investors" is that underwriters and issuers will have to consider whether the target investor base for an offering of debt securities is likely to include these entities. If they are to be part of the investor base, a listing of the securities would need to comply with the full debt listing regime in Chapters

Contacts



Connie Heng
Partner

E: connie.heng
@cliffordchance.com



Stewart Dunlop
Partner

E: stewart.dunlop
@cliffordchance.com



Matt Fairclough
Partner

E: matt.fairclough
@cliffordchance.com

22 to 36 and would not be able to use the streamlined regime discussed above.

This creates a situation whereby under the regulatory regime for offerings of securities in Hong Kong, debt securities may be offered and sold to these excluded categories of "professional investor" without the onerous requirement to prepare a long-form Hong Kong "prospectus" but a listing of the debt securities in Hong Kong under the simplified regime would not be possible. And this may impact the choice of listing venue for issuers.

Finally, issuers, underwriters and practitioners will need to consider carefully the spirit of the HKSE's consultation conclusions and the coupling of the streamlined listing regime with its more restrictive

application. It would appear from the consultation conclusions that the HKSE is concerned that securities listed under the new Chapter 37 should not be held by anyone other than the restricted category of professional investors. The new rules also leave an open question whether the HKSE intends to restrict the excluded categories of "professional investors" from buying the debt securities in the secondary market. If this is indeed the intention, it will create difficulties for issuers as they have little control over secondary "over the counter" trades effected through the clearing systems.

Given these uncertainties and the potential marketing impact, it remains to be seen how issuers and underwriters will respond to the new regime.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, 28th Floor, Jardine House, One Connaught Place, Hong Kong
© Clifford Chance 2011
Clifford Chance

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.