

Chapter 36

DEBT 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.
- 36.02 Overseas issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

Qualifications for Listing

- 36.03 The following additional requirements apply:—
- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of debt securities of an overseas issuer if:—
 - (a) it believes that it is not in the public interest to list them; or
 - (b) where the overseas issuer's equity capital does not have a primary listing on the Exchange, it is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong; and

Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents and/or Listing Agreement to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents and/or Listing Agreement as the Exchange may require.

- (2) (a) in the case of registered securities (other than those transferable by endorsement and delivery), provision must be made for a register of holders to be maintained

in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally. The Exchange may, however, consider an alternative proposal for registering transfers for Hong Kong holders in exceptional circumstances; and

- (b) in the case of bearer securities, provision must be made for the payment of interest and repayment of principal in Hong Kong, or such other place as the Exchange may agree.

Application Procedures and Requirements

36.04 Attention is particularly drawn to the requirement in rule 24.10(1) that the proof of the listing document submitted for review must be marked in the margin to indicate where the relevant items from Chapter 25 and/or Appendix 1 have been met. This will expedite the application.

36.05 The following modifications apply:—

- (1) in rules 24.11(6)(b) and (c) and (9), 24.13(1)(a) and 24.14(8) the references to “directors” should be read as references to members of the overseas issuer’s governing body;
- (2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 24.13(1)(a) may be signed by two members of the governing body of the overseas issuer or guarantor, in the case of a guaranteed issue, or by their agents authorised in writing rather than signed by or on behalf of every director or proposed director; and
- (3) the declaration to be lodged under rule 24.14(8) may require adjustment by virtue of the laws to which the overseas issuer is subject and may be signed by a director’s and secretary’s agent, authorised in writing, rather than by a director and the secretary.

Listing Documents

36.06 Attention is particularly drawn to:—

- (1) the requirement to include a statement of responsibility (see rule 25.11); and
- (2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 25.10).

36.07 The Exchange may be prepared to permit the omission of information where it considers it appropriate. In considering requests for any such omissions, the Exchange will have regard to:—

- (1) whether the overseas issuer has a listing on a regulated, regularly operating, open stock market recognised for this purpose by the Exchange and conducts its business and makes disclosure according to the accepted standards in Hong Kong; and
- (2) the nature and extent of the regulatory standards and controls to which the overseas issuer is subject in its country of incorporation or other establishment.

Overseas issuers who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.

36.08 The following modifications apply:—

- (1) some of the items of information specified in Part C of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given;
- (2) if the overseas issuer does not have a board of directors the statement of responsibility required under paragraph 2 of Part C of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately;
- (3) the documents to be published on the Exchange's website and the issuer's own website will be the documents corresponding to those mentioned in paragraph 54 of Part C of Appendix 1 and where any of such documents are not in the English language, certified English translations thereof must be published on the Exchange's website and the issuer's own website. In particular cases, the Exchange may require additional documents to be published on the Exchange's website and the issuer's own website; and
- (4) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be in English, or accompanied by a certified English translation. For example, overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents. The Exchange should be consulted in such cases.

Listing Agreement

36.09 The Exchange may be prepared to agree modifications to the listing agreement as it considers appropriate in a particular case. In particular, in the case of an overseas issuer whose primary listing is on another regulated, regularly operating, open stock market recognised by the Exchange, the Exchange may accept a Listing Agreement which incorporates equivalent continuing obligations to those imposed by that other stock market.

- 36.10 Conversely, the Exchange may impose additional requirements in a particular case. In particular, if the overseas issuer's equity capital has or is to have a primary listing on the Exchange, the Exchange may impose such additional requirements as it considers necessary to ensure that investors have the same protection as that afforded to them in Hong Kong.
- 36.11 Attention is particularly drawn to the obligations regarding the circulation and contents of an annual report and accounts which are set out in paragraph 7(1) of the Listing Agreement reproduced in Part C of Appendix 7 and paragraph 4(1) of the Listing Agreement reproduced in Part E of Appendix 7 and the accompanying notes on the interpretation and application of those paragraphs and the obligation to ensure simultaneous release of information to other exchanges and to the market in Hong Kong which is set out in paragraph 2(2) of those Listing Agreements.

Accountants' Reports

- 36.12 Attention is particularly drawn to the requirement for the reporting accountant to be independent both of the overseas issuer and of any other company concerned (see rule 4.03).
- 36.13 A report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong.
- 36.14 Reports in respect of overseas issuers are required to conform with accounting standards acceptable to the Exchange which will normally be at least International Financial Reporting Standards. The relevant standards will normally be those current in relation to the last financial year reported on and, wherever possible, appropriate adjustments should be made to show profits for all periods in accordance with such standards.
- 36.15 Where the Exchange allows reports to be drawn up otherwise than in conformity with Hong Kong Financial Reporting Standards or International Financial Reporting Standards, the Exchange may, having regard to the jurisdiction in which the overseas issuer is incorporated or otherwise established, require the report to contain a statement of the financial effect of the material differences (if any) from either of those standards.
- 36.16 As indicated in rules 4.14 to 4.16, where the figures in the report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

Listing Fees

- 36.17 Details of the initial listing fee, annual listing fee and other charges (if applicable) are set out in Appendix 8.

General

- 36.18 All documents furnished by an overseas issuer, including accounts, which are in a language other than English must be accompanied by a certified English translation. If the Exchange so requires, an additional translation must be prepared in Hong Kong at the overseas issuer's expense by such person or persons as the Exchange shall specify.
- 36.19 Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the Exchange Listing Rules, the Statutory Rules or any obligation imposed by the laws of Hong Kong shall not be less than that required to be supplied by the overseas issuer in its place of incorporation or other establishment.