

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp201009.pdf>

Where there is insufficient space, please attach additional pages as necessary.

A. Exemption for Qualified Property Acquisitions

(1) Scope of the QPA exemption

- 1 (a). Do you agree with the proposal to expand the QPA exemption to acquisitions of land or property development projects in the Mainland from government through the PRC Government Auction Process?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

- 1 (b). For the proposed exemption described in 1(a), do you agree with the proposal to exempt government or government entities falling under the current definition of “PRC Governmental Body” in Rule 19A.04?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

2. Do you propose other jurisdictions which should qualify for the QPA exemption?

Yes

No

If your answer is “Yes”, please provide details of the legislation and requirements for government land auctions in those jurisdictions and your analysis why they would fit the criteria described in paragraphs 23 and 27 of the Consultation Paper.

Limiting the QPA exemption to a bid / tender of government land in Hong Kong and Mainland China seems to run counter to the objective of the Exchange to open up its trading platform and make it more international.

We note that it may not be practicable to expect the Exchange to be able to readily understand the procedure and requirements of land auctions in all jurisdictions. However, we suggest that it may be more time and cost efficient for the Exchange to publish, for this purpose, a list of acceptable jurisdictions, which will cover the mature and sophisticated jurisdictions such as U.K., U.S.A., Canada and Singapore.

3. Do you agree with the proposal to grant similar waivers to government land acquisitions in other jurisdictions on an individual case basis?

Yes

No

Please provide reasons.

Please refer to our response in Question 2.

4. Do you agree with the factors for granting individual waivers described in paragraph 27 of the Consultation Paper?

Yes

No

Please provide reasons.

Please refer to our response in Question 2.

(2) Conditions for QPA exemption

5. Do you agree with the proposed change to the exemption conditions described in paragraph 34 of the Consultation Paper for property joint ventures with independent third parties?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

6. Do you agree with the proposed change to the exemption conditions described in paragraph 34 of the Consultation Paper for property joint ventures with Qualified Connected Persons?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

(3) General Property Acquisition Mandate

7. Do you agree with the proposal to remove the requirements relating to the General Property Acquisition Mandate currently applying to the formation of joint ventures with Qualified Connected Persons?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper. However, please refer to our comment to Question 10.

(4) Disclosure requirements

8. Do you agree with the proposal to accelerate the disclosure of information relating to the joint ventures for Qualified Property Acquisitions (which is currently required to be made in the annual report) to the announcement/circular stage?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

(5) Property valuation

9. Do you agree with the proposal to exempt property valuation requirement for acquisitions falling under the QPA exemption?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

(6) Changes to the Rules

10. Do you have any comments on the draft Rule amendments relating to the QPA exemption in Part A of Appendix I of the Consultation Paper?

Yes

No

If you answer is “Yes”, please state.

Various provisions say that “each joint venture arrangement must be in [the Qualified Issuers’] ordinary and usual course of business, on an arm’s length basis and on normal commercial terms; ...

It appears from paragraph 8 of the consultation paper that the policy intention behind the “ordinary and usual course of business” qualification relates to the use of a joint venture as a form of investment for property development projects and that must be the Qualified Issuer’s ordinary and usual course of business.

If our understanding as set out in the preceding paragraph is correct, we are of the view that this qualification seems too restrictive because the form in which an issuer makes an investment, whether on a sole, partnership or joint venture basis should be determined by the directors on a case by case basis in the best interest of the company. In addition, based on this understanding, when a proposed joint venture involves two listed issuers where one issuer can enjoy the QFA exemption but the other issuer cannot, it means the qualified issuer in practice cannot enjoy the commercial benefits of this exemption because its listed joint venture partner must comply with the requirements in Chapter 14 and/or Chapter 14A.

If our understanding is not correct and the “ordinary and usual course of business” qualification is in fact intended to refer to the terms of the joint venture arrangement, again this seems too restrictive because the terms of each joint venture arrangement would be unique and are subject to negotiation between the parties. We are of the view that the directors’ confirmation of the terms of the joint venture arrangement are on normal commercial terms, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole should provide sufficient comfort to public investors regarding the terms of the joint venture.

It seems that it is more logical if the “in the ordinary and usual course of business” qualification is meant to refer to the subject business activity, not the joint venture arrangement. However, we fail to see what this will add to the relevant provisions when the definition of “Qualified Issuer” already refers to “... actively engaged in property development as a principal activity”.

Please therefore consider and clarify whether it is necessary to refer to “in the ordinary and usual course of business” in Rule 14.04(1)(f)(ii), Rule 14.33A(2)(b) and (d), and Rule 14A.72(2), where reference is made to the joint venture arrangement.

B. Formation of joint ventures

11. Do you agree with the proposal to exempt “revenue joint venture projects” described in paragraph 61 of the Consultation Paper?

Yes

No

Please provide reasons.

We agree with the rationale stated in the consultation paper.

12. Do you agree that the proposed draft Rule amendments in Part B of Appendix I of the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

Please refer to our comment to Question 10 on the same point regarding the proposed Rule 14.04(1)(f)(ii).

13. Do you have other comments on this consultation paper?

Yes

No

If your answer is “Yes”, please state.

- End -