

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed changes discussed in the Consultation Paper downloadable from the SFC website at: <https://www.sfc.hk/sfcConsultation/EN/sfcConsultFileServlet?name=PropertyValuation&type=1&docno=1> or HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp201012.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

Part I: Proposals To Amend Property Valuation Requirements For Applicants

Proposals for all Applicants

1. Do you agree with the proposed disclosure guidance for material property interests in paragraph 61 of the Consultation Paper?

Yes

No

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

The Group considers that information in respect of property interests should be required only where such property interests are “material” which should be determined by reference to their value. Hence information should only be required where a property interest meets the proposed threshold requiring it to be the subject of a property valuation report. The Group’s view is that the proposed additional requirement for disclosure of “relevant information” in respect of “material properties” in new MB Rule 5.10 and GEM 8.36 (irrespective of whether a valuation report is required by the Rules) will make the property disclosure requirements unnecessarily complicated and out of step with the requirements of overseas stock exchanges reviewed by the Exchange.

There is a concern in particular that “relevant information” (examples of which are given in the notes to MB Rule 5.10 and GEM 8.36) which will need to be disclosed for “material” properties could only be authoritatively provided by a qualified property valuer. This is true particularly of matters given as examples of “market analysis” in paragraph (a) of the notes (such as supply and demand information, occupancy rates, trends in property yield, sales prices, rental rates etc.). Matters such as restrictions on the use of the property, details of encumbrances, liens, pledges and defects in title (included at paragraphs (c), (e) and (g) of the notes), are legal issues which would additionally need to be the subject of a legal opinion in the relevant jurisdiction. The Group is therefore of the view that all information to be required in respect of property interests should be required as contents of the valuation report provided by a qualified valuer. It would not be appropriate to require the issuer or the sponsor to provide this information as they lack the requisite professional expertise.

As stated above, the “materiality” of a property should be the direct function of its

value and not the matters referred to in the “materiality guidance” at paragraph 58 of the Consultation Paper. A further concern is that this guidance is not enshrined in the proposed revised Listing Rules. The Group would therefore query the status of this guidance if the proposed new Rules are adopted as currently drafted. If any concept of materiality which is not related to value is to be introduced, guidance as to materiality should be included as a note to the relevant Listing Rule.

Particular problems with the materiality guidance are that:

1. Paragraph (a) – the criteria as to whether a property interest is used for a reportable segment of the applicant will presumably make virtually all property interests “material” (for example all factory buildings would automatically be material). Another query is whether in the sentence “If so, whether it contributes a significant portion of revenue of the applicant”, “it” refers to the property interest or the reportable segment.
2. Paragraphs (b) and (c) – whether or not there are encumbrances or defects in title should not determine the issue of materiality. They should instead be matters for disclosure if a property interest is material. If disclosure is required of say defects in title which will adversely affect the applicant’s business, then the title defects (or other similar property matters) should only render a property interest material if they might reasonably be expected to have a material adverse affect on the applicant’s business or operations. Breach of environmental regulations is not a defect relating to property and should not go as to the materiality of a property interest.

Turning to the proposed disclosure guidance, as already mentioned, the nature and extent of the information required is quite onerous. It is the Group’s view that such information is best given by property valuers who are experts in the field and that if there is to be any additional disclosure obligation in respect of “material properties”, there should be a property valuation report requirement for such properties and the matters included in the disclosure guidance to new Rule 5.10 should be specified as content requirements for property valuation reports. If this information is to be required, it should also be subject to a materiality requirement.

2. Do you agree that the proposed definition of property activities is appropriate?

Yes

No

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

3. Do you agree with the proposed definition of a property interest in paragraph 67 of the Consultation Paper?

Yes

No

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

4. Do you agree with the proposed guidance on what should be treated as a single property interest in paragraph 69 of the Consultation Paper?

Yes

No

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

Subject to guidance including examples being given of terms such as “integrated facility”, “similar operational/business purpose” and “single operating entity”.

5. In addition to the information mentioned in paragraph 74 of the Consultation Paper, is there any other information that should be disclosed in a valuation report that is not required at present by the Listing Rules? Also, is there any information that is no longer required to be disclosed in a valuation report?

Yes

No

If your answer is “Yes”, please state.

However, if the Exchange proposes to require the inclusion of “relevant” information under proposed MB Rule 5.10 and GEM 8.36, this should only be required as part of a property valuation report for those properties above the proposed thresholds.

6. Do you agree with the proposal to maintain the effective date at which the property was valued under Rule 5.07 at not more than 3 months before the date of the listing document?

Yes

No

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

7. Do you think that the prospectus law should retain requirements for property valuations in line with the proposals in this paper? Alternatively is it sufficient for the prospectus law to rely on the general disclosure obligation under the Companies Ordinance?

Yes

No

Please give reasons.

The Group agrees that property valuation requirements should be retained in the Companies Ordinance. It will of course be necessary to ensure consistency between the requirements under the Companies Ordinance and the Listing Rules.

Proposals for Property Activities

8. Do you agree not to require property valuations and disclosing valuation information if the carrying amount of a property interest of an applicant's property activities is below a percentage of its total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

9. Do you agree not to require valuation of a property interest with carrying amount below 1% of total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

The Group considers that a higher percentage figure, say 2%, should apply since the vast majority of properties will exceed 1% of total assets except in the case of the very largest companies.

10. Do you agree that the total carrying amount of property interests that do not require valuation cannot exceed 10% of the applicant's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

11. Do you agree that a listing document should include full text of valuation reports for all property interests that are required to be valued under property activities except where summary disclosure is allowed?

Yes

No

If your answer is "No", please give reasons and alternate views.

12. Do you agree to allow summary disclosure if the market value of a property interest as appraised by the valuer is less than 5% of the property interests that are required to be valued under property activities?

Yes

No

If your answer is "No", please give reasons and alternative views.

13. Do you agree with the form for summary disclosure of property interests in Appendix II of the Consultation Paper?

Yes

No

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

14. Do you agree that an applicant should be required to include an overview in the listing document describing all property interests not covered by a valuation report?

Yes

No

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

The Group considers that information should only be required for those properties above the specified thresholds and that information should be the information required to be included in a valuation report. Information in respect of properties below the proposed thresholds will be immaterial and should not therefore be required to be included.

15. Do you agree that the proposed class exemption notice should apply to prospectus for unlisted companies as well as applicants?

Yes

No

If you answer is “No”, please give reasons and alternate views.

16. Do you agree that the proposed class exemption notice in Appendix III of the Consultation Paper will implement the proposals for property activities?

Yes

No

If you answer is “No”, please give reasons and alternate views.

17. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for property activities?

Yes

No

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

Proposals for Non-Property Activities

18. Do you agree that a full text of valuation report is required if the carrying amount of a property interest is or is above 15% of an applicant’s total assets?

Yes

No

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

19. Do you agree that the 15% threshold should be calculated using:

(a) the carrying amount of a property interest; and

(b) total assets

reflected in the accountants’ report of the applicant?

Yes

No

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

20. Do you agree with the proposed disclosure requirement for property interests in paragraph 98 of the Consultation Paper?

Yes

No

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

21. Do you agree that an applicant should be required to include an overview in the listing document describing all property interests not covered by a valuation report?

Yes

No

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

Please see the answer to question 14 above.

22. Do you agree that property interests ancillary to mining activities will not be required to be valued if the prospectus includes a valuation by an independent professionally qualified valuer of the associated mineral or petroleum assets or resources?

Yes

No

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

However, it should be noted that the statement at paragraph 100 of the Consultation Paper that “Relevant valuation on mineral and petroleum assets or resources prepared by an independent professionally qualified valuer is already required to be disclosed under Chapter 18 of the Listing Rules” is incorrect. There is no requirement for a valuation report to be included in a listing document for a mining listing applicant under Chapter 18. Valuation reports are required by Rule 18.09 only where a listed issuer is proposing to acquire mineral or petroleum assets as part of a Major Acquisition or above. A new applicant mineral company is required to include a Competent Person’s Report (on the extent of its resources/reserves) and other information as set out at Rule 18.05. On the issue of mandatory valuations at the IPO stage, the Exchange commented in its Consultation Conclusions on New Listing Rules for Mineral Companies that “*Valuations are rarely provided on IPOs and there are concerns that valuations of an applicant’s portfolio of reserves and resources may be misleading especially in volatile commodity markets*” (at paragraph 160 on page 42 of the Consultation Conclusions). The exemption as drafted is therefore

unlikely to offer any benefit to mineral company applicants unless it is extended to cover the situation where a Competent Person's Report is included in the listing document.

The Group agrees that the valuation of property interests ancillary to mining activities is likely to be meaningless and unduly burdensome. It further considers that this will be the case irrespective of whether or not a valuation report is included in the listing document. A mining applicant will only be eligible to list if it has a portfolio of Indicated Resources (in the case of minerals) or Contingent Resources (in the case of petroleum) which is substantiated by a Competent Person's Report and is of sufficient substance to justify a listing (Rule 18.03(2)). Given that there is no requirement on listing for a valuation of a mining applicant's mineral or petroleum reserves or resources, the Group considers that Rule 5.01C should be amended as follows:

"Rules 5.01A and 5.01B and Rule 5.10 do not apply to property interests ancillary to the exploration for and/or extraction of Natural Resources (as defined in Chapter 18) if the listing document includes either a valuation by an independent professionally qualified valuer of the Natural Resources or a Competent Person's Report (as defined in Chapter 18) in respect of the Natural Resources."

The Rule 5.10 disclosure obligation should not apply to Chapter 18 listing applicants given in particular that most of this information is already required to be included in a mining applicant's listing document under Rule 18.05. For example, Rule 18.05(3) requires information as to "the nature and extent of its prospecting, exploration, exploitation, land use and mining rights and a description of the properties to which those rights attach, including the duration and other principal terms and conditions of the concessions and any necessary licences and consents." Disclosure of any legal claims which may influence the applicant's rights to explore or mine and the existence of any claims over the land on which exploration or mining is carried out is further required by Rules 18.05(4) and 18.05(6)(h).

23. Do you agree that the proposed class exemption notice should apply to prospectus for unlisted companies as well as applicants?

Yes

No

If you answer is "No", please give reasons and alternate views.

24. Do you agree that that proposed class exemption notice in Appendix III of the Consultation Paper will implement the proposals for non-property activities?

Yes

No

If you answer is “No”, please give reasons and alternate views.

25. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for non-property activities?

Yes

No

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

Part II: Proposals To Amend Property Valuation Requirements For Issuers

26. Do you agree with the proposed disclosure guidance for material property interests in paragraph 61 of the Consultation Paper?

Yes

No

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

For the reasons given in response to Question 1 above, the only information required to be given in respect of properties should be that required to be included in a property valuation report required under Rule 5.02.

27. Do you agree that it is unnecessary to introduce different valuation requirements for acquisition or disposal of non-property activities and property activities for issuers?

Yes

No

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

28. Do you agree with the proposal to remove valuation requirements if the company being acquired or disposed of is listed on the Exchange, except for a connected transaction (see paragraph 123 of the Consultation Paper)?

Yes

No

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

29. Do you agree that an overview of property interests not covered by a valuation report be disclosed in the circular?

Yes

No

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

Information should be required only where any percentage ratio is 25% or above where none of the circumstances in new Rule 5.02A exist. Information in respect of properties below the proposed thresholds will be immaterial and should not be included.

30. Do you agree not to require property valuations and disclosing valuation information for acquisition or disposal of an unlisted company if the carrying amount of a property interest is below a percentage of the issuer’s total assets?

Yes

No

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

31. Do you agree not to require valuation of property interest with carrying amount below 1% of the issuer’s total assets?

Yes

No

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

A higher percentage, possibly 2%, should apply for the reasons given in response to Question 9 above.

32. Do you agree that the total carrying amount of property interests that do not require valuation cannot exceed 10% of the issuer's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

33. Do you agree with the proposed definition of property interest in paragraph 67 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternate views.

34. Do you agree with the proposed guidance on what should be treated as a single property interest in paragraph 69 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternate views.

Subject to guidance including examples being given of terms such as "integrated facility", "similar operational/business purpose" and "single operating entity".

35. Do you agree that a circular should include full text of valuation reports for all property interests that are required to be valued except where summary disclosure is allowed?

Yes

No

If your answer is “No”, please give reasons and alternate views.

36. Do you agree to allow summary disclosure if the market value of a property interest as appraised by the valuer is less than 5% of the property interests that are required to be valued?

Yes

No

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

37. Do you agree with the form for summary disclosure of property interests in Appendix II of the Consultation Paper?

Yes

No

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

38. Do you agree that an overview of property interests not covered by a valuation report be disclosed in the circular?

Yes

No

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

Information relating to properties which do not require a valuation report will be immaterial and should not therefore require disclosure.

39. Do you agree that for an acquisition or disposal of an unlisted company, valuations will not be required for property interests ancillary to mining activities if the circular includes a valuation by an independent professionally qualified valuer of the associated mineral or petroleum assets or resources?

Yes

No

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

It should be noted however that a valuation report is only required under Chapter 18 in relation to major acquisitions or above (Rule 18.09(3)). Major disposals and above require a Competent Person’s Report but not a Valuation Report. The Group therefore requests that the Exchange consider extending the scope of the exemption under Rule 5.02A(c) to situations where the circular includes a Competent Person’s Report in relation to a disposal of assets.

40. Do you agree with the proposal relating to a very substantial acquisition in paragraph 121 of the Consultation Paper?

Yes

No

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

41. Do you agree with the proposal to retain the existing valuation requirements for connected transactions?

Yes

No

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

42. Do you agree that valuation will continue to be required if the connected transaction involves an acquisition or disposal of a company listed on the Exchange?

Yes

No

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

43. Do you agree with the proposals relating to connected transactions in paragraph 125 of the Consultation Paper?

Yes

No

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

For the reasons already stated, the Group does not agree with the requirement for circulars to include the general information in Rule 5.10. All information required to be included in relation to property interests should be contained in the valuation report. That information should only be included for transactions above the specified thresholds.

44. In addition to the information mentioned in paragraph 74 of the Consultation Paper, is there any other information that should be disclosed in a valuation report that is not required at present by the Listing Rules? Also, is there any information that is no longer required to be disclosed in a valuation report?

Yes

No

If your answer is “Yes”, please state.

However, if the Exchange proposes to require the inclusion of “relevant” information under proposed MB Rule 5.10 and GEM 8.36, this should only be required as part of a property valuation report for those properties above the proposed thresholds.

45. Do you agree with the proposal to maintain the effective date at which the property was valued under Rule 5.07? (Please note that the same question has been raised for applicants in question 6).

Yes

No

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

46. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for issuers?

Yes

No

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

- End -