



**THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG**



By Hand Delivery

7 April 2008

Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong  
(Attn.: Corporate Communications Department)

Dear Sirs

**HKEx Combined Consultation Paper**  
**Issue 14: Codification of Waiver to Property Companies**

We are pleased to enclose our response to Issue 14 of the subject Consultation Paper.

Yours sincerely



Louis Loong  
Secretary General

*Question 13.10:* Do you agree that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended so as to put beyond doubt that the disclosure obligation arises where a conviction falls under any one (rather than all) of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii))?

Yes

No

Please provide reasons for your views.

*Question 13.11:* Do you agree that the draft Rules at Appendix 13 will implement the proposal set out in Questions 13.9 and 13.10 above?

Yes

No

Please provide reasons for your views.

#### Issue 14: Codification of waiver to property companies

*Question 14.1:* Do you agree that the Proposed Relief should provide relaxation of strict compliance with the shareholders' approval requirements of the Rules only to listed issuers that are actively engaged in property development as a principal business activity?

Yes

No

Please provide reasons for your views.

*The hardship and practical difficulties in conducting property acquisitions (the "Hardship") are encountered by "property companies" generally. Under the Listing Rules, a "property company" is defined as a company whose main non-cash assets consist solely or mainly of properties and whose income is mainly derived from those properties. The Hardship may deny a "property company" from its main source of income and is prejudicial to the interest of its shareholders.*

*In our view, the provisions of the Listing Rules shall not work to the detriment of the interests of the shareholders of "property development companies" or other "property companies" (including but not limited to "property investment companies"). We are therefore of the opinion that the Proposed Relief should be made to all "property development companies" and all other "property companies" (including but not limited to "property investment companies").*

*Question 14.2: Do you agree with the proposed criteria in determining whether property development is a principal activity of a listed issuer (described at paragraphs 14.12 and 14.13 of the Combined Consultation Paper)?*

- Yes  
 No

Please provide reasons for your views.

*The criteria in determining whether a company is a "property company" should be similar to the proposed criteria (i.e. whether the director's report include property development or property investment as a principal business activity, property development or property investment is a business segment), not depend on whether a company's non-cash assets consist solely or mainly of properties.*

*Question 14.3: Do you agree that the scope of the Proposed Relief should be confined to acquisition of property assets that fall within the definition of Qualified Property Projects?*

- Yes  
 No

Please provide reasons for your views.

*The scope of the Proposed Relief should cover all property acquisitions through public auctions and public tenders in Hong Kong and elsewhere because:-*

- (a) Hong Kong listed companies are increasingly global operators;*  
*(b) Transparency is not an issue for public auctions and public tenders; and*  
*(c) Integrity issues, if any, should be dealt with by the appropriate law enforcement agencies in accordance with the law.*

Are you aware of any examples of Hong Kong listed issuers encountering difficulties in strict compliance with the Rules when participating in other types of auctions or tenders? If yes, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.

*Seeking shareholders' approval prior to auctions and tenders will put the bidding strategies (including the pricing strategy) in the public domain. this will substantially reduce the listed issuers' chances of success in the bidding process. This is prejudicial to the interests of the shareholders as a whole.*

*If the bids are to be made through joint ventures, the disclosure of bidding strategies will not be acceptable to the listed issuers' joint venture partners.*

*Submitting bids subject to shareholders' approval will not be acceptable to the vendors as, to them, acceptance of bids subject to shareholders' approval is equivalent to granting an option to the listed issuers. When the property prices fall between the public auctions/tenders and the EGM dates, the likelihood is that the shareholders will not approve the acquisition.*

*Furthermore, the time tables of auctions/tenders may not allow sufficient time for listed issuers to seek shareholders' approval.*

*Question 14.4:* Do you agree that Qualified Property Projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules set out in Main Board Chapter 14?

Yes

No

If yes, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.

*The Proposed Relief should be made available to property projects whether or not they contain capital elements and regardless the size of the capital elements because:-*

*(a) the Proposed Relief should be made available to "property companies" generally and should not be restricted to "property development companies" - see response to question 14.2;*

*(b) it is a growing business model for "property development companies" to develop properties, rent the same out and then divest the same to REITs and pension schemes etc.*

*Question 14.5:* Do you agree that the scope of the exemption from strict compliance with Main Board Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons should be limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects?

Yes

No

Please provide reasons for your views.

*The Qualified Connected Person should not be limited to parties which are connected by virtue of being joint venture partners undertaking Qualified Property Projects with the listed issuer and should extend to include any connected person as defined under the Listing Rules based on the reasons that:-*

*(a) the listed issuer will also encounter the similar confidentiality issue when jointly submit a tender with its connected persons; and*

*(b) the shareholders' interests would be protected as the independent shareholders will control and exercise their votes whether to approve such General Property Acquisition Mandate and the terms of such approval and the general mandate would only be applicable to Qualified Property Acquisitions with joint venture on arm's length basis and normal commercial terms and associated with Qualified Property Projects.*

*Question 14.6:* Do you agree that the General Property Acquisition Mandate is useful to confer protection on shareholders and is necessary as regards property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures)?

Yes

No

If yes, should the General Property Acquisition Mandate include any limit on the size of the Annual Cap by reference to some quantifiable thresholds? Please provide reasons for your views.

*We consider that the General Property Acquisition Mandate is necessary and should be approved by shareholders at a general meeting. There should also be a limit on the size of the Annual Cap.*

*Question 14.7:* Are the disclosure obligations described at paragraph 14.51 of the Combined Consultation Paper appropriate?

Yes

No

Please provide reasons for your views.

*Question 14.8:* Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out in Issue 14 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Issue 15: Self-constructed fixed assets

*Question 15.1:* Do you agree that the notifiable transaction Rules should be amended to specifically exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary and usual course of its business?

Yes

No

Please provide reasons for your views.

*Question 15.2:* Do you agree that the draft Rules at Appendix 15 will implement the proposal set out in *Question 15.1* above?

Yes

No

Please provide reasons for your views.