

CONSULTATION PAPER
ON PROPOSED CHANGES TO
REQUIREMENTS FOR QUALIFIED
PROPERTY ACQUISITIONS AND
FORMATION OF JOINT VENTURES

September 2010



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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How to respond to this Consultation Paper

We invite written comments on this paper no later than **12 November 2010**. Responses should, if possible, be made by completing and returning the questionnaire (**Questionnaire**) which is available at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp201009q.doc> by one of the following methods:

By mail or hand delivery to Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Re: Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures

By fax to (852) 2524-0149

By e-mail to response@hkex.com.hk

Please mark in the subject line:

Re: “Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures”

Our submission enquiry number is (852) 2840-3844.

In the Questionnaire, we invite views on the proposed changes, and where appropriate support of the answers with reasons. Respondents should reply to the questions against the backdrop of this Consultation Paper. Respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions, unless you request us not to.

Our policy on handling personal data is in **Appendix II** and the Questionnaire.

Next Steps

We will carefully consider and analyse all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual we will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

EXECUTIVE SUMMARY

This paper proposes exemptions where property issuers acquire government land through auctions or tenders, on a sole or joint basis, in their ordinary and usual course of business. It also proposes a relaxation on treating formation of joint ventures as a transaction under the notifiable transaction Rules when they are used by issuers to carry out revenue transactions in the ordinary and usual course of business.

The proposals discussed in Chapter 2 of this paper include:

A. Qualified Property Acquisition exemption -

- expanding the scope of the exemption to cover government land acquisitions in the Mainland through auctions or tenders (the current exemption applies to land acquisitions in Hong Kong only);
- removing the exemption conditions that restrict the joint venture's financing and profit distribution arrangements when the Qualified Property Acquisition is undertaken on a joint basis;
- removing the exemption condition that requires an issuer to obtain an annual general mandate from shareholders before it engages in any Qualified Property Acquisition(s) on a joint basis with a Qualified Connected Person (i.e. a person connected only because it is a joint venture partner with the issuer in existing single-purpose joint property projects) in the coming year;
- requiring certain information relating to Qualified Property Acquisitions and joint ventures be disclosed in the issuer's announcement and circular instead of the next annual report;
- introducing an exemption from the property valuation requirement for Qualified Property Acquisitions; and

B. Formation of joint ventures -

- revising the notifiable transaction Rules to exempt formation of a joint venture from being treated as a transaction if it is engaging in a single-purpose project of a revenue nature.

Unless the Rules are different and discussed separately, all rule references are to the Main Board Rules. We propose to make corresponding changes to the GEM Rules.

The draft Rule amendments are in **Appendix I**.

CHAPTER 1 INTRODUCTION

Purpose of this paper

1. The Stock Exchange of Hong Kong Limited, a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited, reviews its Listing Rules (the “**Rules**”) from time to time to ensure that they address developments in the market and international best practice, and also represent acceptable standards which help promote investor confidence.
2. We conducted this review in response to some issuers’ comments on the Qualified Property Acquisition exemption (as detailed below). As a related matter, we have also reviewed the notifiable transaction requirements regulating formation of joint ventures which apply to all issuers.
3. This paper invites views on:
 - the proposed changes to the Qualified Property Acquisition exemption under the notifiable and connected transaction Rules; and
 - the proposal to exempt the formation of a joint venture from being treated as a transaction under the notifiable transaction Rules if it is engaging in a single-purpose project of a revenue nature.

Background

Definition of “transaction”

4. In 2004, we amended the notifiable transaction Rules as part of the Rule amendments to address corporate governance issues. A definition of “transaction” was added to codify the then practice in applying the notifiable transaction requirements.
5. The formation of a joint venture is explicitly defined as a transaction (see Rule 14.04(1)(f)). This type of transaction is classified based on the issuer’s total commitment to establish the joint venture including, for example, its capital contributions, loans and guarantees.
6. The definition of transaction excludes “*any transaction of a revenue nature in the ordinary and usual course of business*”, unless it is expressly defined as a “transaction” in the Rules (the “**Revenue Exemption**”) (see Rule 14.04(1)(g)). The formation of a joint venture, which is expressly defined as a transaction, is not eligible for the Revenue Exemption.

Impact of the Rules on land acquisitions by issuers who are property developers

7. A listed property developer may acquire land in its ordinary and usual course of business:

- If the land is acquired for construction and sale in the issuer’s ordinary and usual course of business, the land acquisition is a revenue transaction. It is exempt under the Revenue Exemption.
 - If the issuer retains all or part of the property development project for investment holding and/or leasing, the land acquisition is a transaction of a capital nature or contains a capital element. The Revenue Exemption does not apply.
8. In addition, a listed property developer may acquire land on a joint basis with other party or parties for development in its ordinary and usual course of business. The formation of the joint venture is a transaction, and is classified based on the total project costs (which include land acquisition and development costs). This requirement applies whether the project is developed for sale (i.e. revenue nature) or for investment purpose (i.e. capital nature).
 9. If the joint venture partner is a connected person, the formation of the joint venture is also subject to connected transaction Rules.

Exemption for Qualified Property Acquisitions

10. In 2006, we introduced an exemption for **Qualified Property Acquisitions** (the “**QPA exemption**”)¹. It exempts from the shareholder approval requirements under Chapter 14 and/or 14A when a **Qualified Issuer**² acquires land or property development project(s) in Hong Kong from government or government-controlled entities through public auctions or tenders in the following circumstances:
 - a. the acquisition is undertaken on a sole basis and contains a capital element;
 - b. the acquisition is undertaken through a joint venture with an independent third party; or
 - c. the acquisition is undertaken through a joint venture with a **Qualified Connected Person**³.
11. The QPA exemption is subject to a number of conditions, including that the property project must be single purpose and that the joint venture arrangement must be in the issuer’s ordinary and usual course of business, on an arm’s length basis and on normal commercial terms. Further, the joint venture agreement must require unanimous consent from the joint venture partners on any change of business nature and scope, or transactions that are not on an arm’s length basis. The agreement must also specify that the partners will provide financing and distribute profits in proportion to their respective equity interests in the joint venture.

¹ The QPA exemption was initially in the form of a general waiver. It was codified into Rules 14.33A and 14A.72 to 79 in January 2009 after we consulted the market in 2008.

² An issuer actively engaged in property development as a principal business activity (see Rule 14.04(10B)).

³ A person who is a connected person of a Qualified Issuer only because it is a substantial shareholder (with or without board representation) in one or more non-wholly owned subsidiaries of the issuer formed to participate in property projects, each of which is single-purpose and project specific (see Rule 14A.10(10A)).

12. In all cases, the issuer must comply with the announcement and circular requirements for the Qualified Property Acquisitions under the notifiable and/or connected transaction Rules. Under scenario (c), the issuer must also obtain an annual general mandate from its shareholders before it engages in the joint property projects.
13. The QPA exemption addresses hardships and practical difficulties for Qualified Issuers in complying with the shareholder approval requirement under the notifiable and/or connected transaction Rules when they acquire government land in Hong Kong for development in their ordinary and usual course of business.

Issues and proposals

14. The issues and proposals are set out in Chapter 2 of this paper.
15. In preparing this market consultation, we have conducted a soft consultation to solicit views from interested groups of issuers on the current requirements and our proposals. We thank them for sharing with us their views and suggestions in this exercise.

CHAPTER 2 ISSUES AND PROPOSALS

A. Exemption for Qualified Property Acquisitions

(1) Scope of the QPA exemption

16. The current QPA exemption applies to land acquisitions in Hong Kong from government or government-controlled entities through public auctions or tenders. It does not apply to acquisitions outside Hong Kong.
17. Acquisitions of land in the Mainland by property issuers are subject to the notifiable transaction Rules unless they are exempt under the Revenue Exemption.

Issues

18. Some property developers have expressed practical difficulties in complying with the Rules when they bid or tender for government land in the Mainland for development projects that contain a capital element or through joint ventures. In particular, these issuers find it difficult to comply with the shareholder approval requirement (applicable to major or above transactions) because:
 - The PRC bureaux do not accept a bid conditional on shareholder approval.
 - It is also difficult to seek prior shareholder approval before submitting a tender as the tender period is generally very short.
 - The shareholder circular would prematurely disclose information about the bid, such as the bidding price. They are commercial secrets and would adversely affect the interests of the issuer and its shareholders, and the disclosure would normally be objected to by the joint venture partners.
19. Acquiring government land through auction process is a common practice in the Mainland:-
 - The Ministry of Land and Resources of the PRC government requires that state-owned land for commercial, industrial and residential uses can only be granted through a competitive bidding process, namely by tender (招標), auction (拍賣), or listing-for-sale (掛牌) (collectively the “**PRC Government Auction Process**”).
 - Based on the statistics published by the Ministry of Land and Resources, the total consideration for land granted in the Mainland amounted to approximately RMB1,590 billion in 2009. Approximately RMB1,500 billion of the grant was through the PRC Government Auction Process, of which approximately RMB1,300 billion represented property developers acquiring land for real estate development projects.

20. The problems in Rule compliance affect many issuers operating property development businesses in the Mainland, in particular those small to medium size property issuers who may need to consolidate their resources to bid for property projects. This trend is likely to continue given that the Mainland property market has grown significantly over the past few years, as have the size and value of the land available for bid.

Our view

21. The rationale of the notifiable transaction Rules is to require an issuer making material changes to its business to inform shareholders or afford them an opportunity to vote on the changes. The Rules need to strike a balance between shareholder protection and allowing management to operate the issuer's business. Some provisions in the notifiable transaction Rules recognise this need. For example, the Revenue Exemption recognises that management should have discretion to operate its core business and thus revenue nature items are exempt. The Self-constructed Capital Assets exemption⁴ relaxes the aggregation requirements for capital assets constructed by the issuer in its ordinary course of business. For instance, a property developer who constructs a property for investment holding (i.e. capital asset) would not need to aggregate the cost of the land with the construction costs when classifying the transaction. This exemption recognises that directors should have discretion in planning for business development that is part of the issuers' core business.
22. We consider the purpose and intent of the Rules is not to restrict activities in the issuers' ordinary course of business. The issuers' businesses should be operated by their management who have the required expertise.
23. For government land acquisitions by property developers in the Mainland, we believe that the practical issues merit considering exemption:
 - Acquiring land through auctions or tenders is a common operational model for developers operating in the PRC and well known to the market. Shareholders and investors in these issuers should be aware of this when investing in their shares. The frequency and normality of these land acquisitions suggest they are not material changes to the issuers' business, and investors can expect to rely on the management to make these decisions.
 - Similar to the Hong Kong government auction system, the PRC Government Auction Process is fairly structured and established. It allows little discretion on setting individual terms. Under the auction and the listing-for-sale process, price is the only determining factor. Under the tender process, the selection process is based on price and meeting the pre-established evaluation criteria.

⁴ This exemption was introduced in September 2009. Under which, if an issuer constructs a capital asset in its ordinary and usual course of business, the Exchange will not normally aggregate a series of transactions in the course of the construction as if they were one transaction.

- The timing and duration of the auction process generally do not allow for the time to call a shareholder meeting. The requirement for obtaining prior shareholder approval would make acquisitions of government land in the Mainland impracticable for many property developers.
 - The concern with the confidentiality of bid information whose disclosure undermines the issuers' competitiveness and chances for success of the bids is similar to the issues with Hong Kong land auctions.
24. Issuers face these practical issues whether the acquisitions are made on a sole basis or through property joint ventures with independent third parties or Qualified Connected Persons.
25. It is necessary to consider expanding the QPA exemption to government land acquisitions in the Mainland. We note the commentary in the 2008 consultation paper that *“where investors are required to forego their right to vote on an Acquisition to be undertaken by a listed issuer, there must exist, as a pre-condition, a high degree of confidence in the transparency and integrity of the auction process in order to compensate for the dispensation from shareholders’ approval for the Acquisition.”* We believe that while the transparency of the auction process is desirable, it is not a necessary criterion for granting exemption where land acquisition is part of the issuers’ ordinary course of business. There is no distinction between dealing with third parties (where there is no transparency in the negotiation process), and dealing with the government. The price transacted is with an independent party and would be at market. The issuers’ boards would consider the terms and whether they are fair to shareholders.
26. The proposal is intended to exempt all acquisitions of state-owned land from the government through the PRC Government Auction Process. We propose to exempt government or government entities falling under our current definition of “PRC Governmental Body”⁵ in Rule 19A.04. We were advised in our soft consultation that this definition would be sufficiently broad to cover the situations in the Mainland where state-owned land is granted to property issuers through the PRC Government Auction Process.

⁵ Under Rule 19A.04, PRC Governmental Body includes

- (a) PRC Central Government, including the State PRC Central Government, including the State Council of the PRC (中國國務院), State Ministries and Commissions (國家部委), Bureaus and Administrations directly under the State Council (國務院直屬機構), State Council Offices and Institutions (國務院辦事機構及直屬國務院事業單位), Bureaus supervised by State Ministries and Commissions (國家部委代管局);
- (b) PRC Provincial-level Governments, including Provincial Governments (省政府), Municipalities directly under the Central Government (直轄市) and Autonomous Regions (自治區), together with their respective administrative arms, agencies and institutions; and
- (c) PRC local governments immediately under the PRC Provincial-level Governments, including prefectures (區), municipalities (市) and counties (縣), together with their respective administrative arms, agencies and institutions.

However, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.

27. In other jurisdictions, property developers may encounter similar difficulties in complying with the Rules when they acquire land through public auctions. We may be prepared to extend the QPA exemption to other jurisdictions in similar circumstances to those in paragraph 23. Alternatively, we may consider granting waivers on an individual basis. Factors for consideration would include:
- whether the government land is acquired through a competitive bidding process regulated by legislation and/or requirements in the relevant jurisdiction;
 - whether the bidding process is fairly structured and established, and bidders have no discretion to change pre-established terms;
 - whether acquiring government land through a bidding process is a common practice in that jurisdiction; and
 - the problems faced by the issuer in complying with the notifiable transaction Rules for the land acquisition.

Proposals

28. We propose to expand the QPA exemption to acquisitions of land or property development projects in the Mainland from PRC Governmental Bodies (as currently defined in Rule 19A.04) through public auctions or tenders.
29. We propose to amend the Rules to state that the Exchange may be prepared to apply the QPA exemption to acquisitions of government land by Qualified Issuers in other jurisdictions based on the circumstances of individual cases.

Consultation Questions

Q1: (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? Please provide reasons.

(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? Please provide reasons.

Q2: Do you propose other jurisdictions which should qualify for the QPA exemption? 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.

Q3: Do you agree with the proposal to grant similar waivers to government land acquisitions in other jurisdictions on an individual case basis? Please provide reasons.

Q4: Do you agree with the factors for granting individual waivers described in paragraph 27? Please provide reasons.

(2) Conditions for QPA exemption

30. Under the current Rules, the QPA exemption is subject to a number of conditions. In particular, it requires the joint venture agreement to specify that:
- the joint venture partners will provide financing to the joint venture on a several basis and in proportion to their respective equity interests; and
 - the net proceeds from the sale and/or leasing of the land or property will be distributed in full to the joint venture partners in proportion to their respective shareholdings.
31. Since the introduction of the QPA exemption in 2006, only one issuer has used it. In the soft consultation process, some participants raised concerns about these conditions. They commented that the “pro-rata” requirements sometimes do not reflect the actual commercial operation of a joint venture. In some cases, profit distribution need not be proportional to invested capital due to differences in venturers’ expertise in and contribution to the property projects. They considered that the QPA exemption should also apply to other forms of legitimate joint venture arrangements.
32. We acknowledge that property joint ventures are common industry practice in the property sector. The “pro rata” requirements reflect one form of arrangement that is fair and reasonable. These requirements in the Rules are not intended to restrict an issuer’s activities in the ordinary course of business.
33. In light of the issue raised, we invite views on removing the “pro-rata” requirements, provided that the directors consider the joint venture arrangements fair and reasonable.

Proposal

34. We propose to amend the QPA exemption to remove the restrictions on the joint venture’s financing and profit distribution arrangements. Instead, the issuer’s board of directors should confirm that the terms of the joint venture, including the financing and profit distribution arrangements, are fair and reasonable and in the interests of the shareholders as a whole. Where the joint venture partner is a Qualified Connected Person, the independent board committee and independent financial adviser should also confirm this.

Consultation Questions

- Q5: Do you agree with the proposed change to the exemption conditions described in paragraph 34 for property joint ventures with independent third parties? Please provide reasons.*
- Q6: Do you agree with the proposed change to the exemption conditions described in paragraph 34 for property joint ventures with Qualified Connected Persons? Please provide reasons.*

(3) General Property Acquisition Mandate

35. Under the QPA exemption, a Qualified Property Acquisition made by a joint venture with Qualified Connected Persons is not subject to shareholder approval at the time of the acquisition. Instead, the issuer must seek a prior mandate for these acquisitions (**General Property Acquisition Mandate**)⁶.
36. The exemption currently requires the mandate, including a proposed annual cap on the issuer's financial and capital commitment for the formation of joint ventures for Qualified Property Acquisitions, to be approved by shareholders in general meeting. The circular must contain details of the proposed mandate, including the opinion from the independent board committee and the independent financial advisers that the cap and the underlying assumptions are reasonable for the mandate to be voted upon. The issuer is required to disclose information relating to the approved mandate in its annual report. It is also required to submit to the Exchange, upon the successful acquisition being legally binding, a written confirmation on any material business dealings or relationship between its controlling shareholder and the joint venture partner.
37. The connected transaction Rules safeguard against potential abuse by connected persons by giving shareholders an opportunity to vote on the terms of the transaction set out in the agreement. The General Property Acquisition Mandate is a modified form of the connected transaction requirement. Independent shareholders are asked to give the issuer a prior mandate to engage in property projects with a Qualified Connected Person, and to propose a monetary cap on the size of the investment, in the absence of specific terms.
38. Upon review we believe the requirement for a prior mandate and a proposed cap to be unnecessary. The purpose of the connected transaction Rules is to safeguard against persons who may have significant influence over the issuer. Here the relationship and the risk of potential abuse are remote. Qualified Connected Persons are connected persons only because they are joint venture partners with the property issuer in existing single-purpose property joint ventures; they have no connection at the issuer's level. In these cases, all the shareholders of the issuer are independent. Furthermore, as property joint ventures are common industry practice in the property sector, the joint venture partners are likely to be other property developers and competitors of the issuer, rather than persons who are in a position to exert significant influence over it.
39. Some issuers also raised concerns that the mandate requirements are impractical. It is difficult to predict land supply and the structure and scale of possible property joint ventures, or identify the partners, if any, for the coming year. Further, the joint venture arrangements and selection of partners are driven by the commercial considerations of individual projects and cannot be described in the absence of a project. As a result, issuers find it difficult to seek prior shareholder approval as they cannot establish meaningful terms and caps for shareholders to vote upon.

⁶ In addition to the mandate requirements, the issuer is also required to comply with the notification, announcement, circular and reporting requirements under Chapter 14A for each successful Qualified Property Acquisition when it is notified of the success of a bid by the joint venture. The circular must contain letters from the independent board committee and the independent financial adviser stating their opinion on the acquisition and the joint venture.

40. We agree that the mandate requirements may not achieve their purpose as intended but create compliance issues.

Proposal

41. We propose to amend the QPA exemption to remove the General Property Acquisition Mandate requirements applying to the formation of joint ventures with Qualified Connected Persons described in paragraph 36 above. These transactions would still be subject to announcement and circular requirements under chapter 14A.

Consultation Question

Q7: 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? Please provide reasons.

(4) Disclosure requirements

42. The announcement and circular requirements in Chapter 14 and/or Chapter 14A apply to Qualified Property Acquisitions falling under the QPA exemption at the time of the successful bidding for the land by the issuer or the joint venture.
43. In addition, the QPA exemption requires the issuer's annual report to include details of each Qualified Property Acquisition made during the financial year. If the acquisition is undertaken on a joint basis, the annual report must also include:
- the joint venture's terms and status and its dividend and distribution policy;
 - the joint venture's financial and capital commitment and the issuer's share in it; and
 - if the joint venture partner is a Qualified Connected Person, the independent board committee's review of the acquisition (which should be based on an opinion from an independent financial adviser) and its confirmation that:
 - the successful transaction has been carried out according to the initial purpose of the joint venture, and the terms of agreement(s) governing the transaction are fair and reasonable and in the interests of the issuer's shareholders; and
 - the exemption conditions and requirements set out in the Rules have been met.
44. We consider it appropriate and sufficient for the issuer to disclose this information in its announcement and circular for the acquisition as it is available at that time, instead of in its next annual report.

Proposal

45. We propose to amend the QPA exemption to specify that the announcement and circular for each successful Qualified Property Acquisition should include the items currently required in the annual report as described in paragraph 43 above. The current requirement for disclosure in the annual report will be deleted. For acquisitions through joint ventures with Qualified Connected Persons, the issuer will still need to comply with the annual reporting requirements for non-exempt connected transactions under Chapter 14A.

Consultation Question

Q8: 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? Please provide reasons.

(5) Property valuation

46. Rule 5.02 requires an issuer to prepare a property valuation report for inclusion in its shareholder circular when it buys or sells a property (or a company whose assets consist solely or mainly of property) which constitutes a major transaction or above. The purpose is to inform shareholders of the market value of the property involved and to assist them in making their voting decision.
47. The requirement does not apply if the property is acquired from the Hong Kong government at a public auction or by sealed tender. This recognises that the auction price reflects market value of the property through a competitive bidding process.
48. Currently, a property issuer who uses the QPA exemption need not prepare a property valuation report for inclusion in its information circular. This is because, as a condition of the QPA exemption, the land or property project must be acquired in Hong Kong from government through public auctions or tenders.
49. In light of the proposal to expand the QPA exemption to government land acquisitions in the Mainland through auctions or tenders and other jurisdictions described in paragraph 27, there is a question whether a property valuation report need to be provided in the information circular.
50. In our soft consultation process, views were expressed that the price arrived at through a competitive bidding process for the government land or property project already reflects the market value of the property. There is no need to prepare a property valuation report after the success of a bid.

Proposal

51. We propose to remove the property valuation requirement for Qualified Property Acquisitions falling under the QPA exemption.

Consultation Question

Q9: Do you agree with the proposal to exempt property valuation requirement for acquisitions falling under the QPA exemption? Please provide reasons.

(6) Changes to the Rules

52. We have drafted amendments to the Rules relating the QPA exemption to implement the proposals in sections A(1) to (5). We have also made drafting changes to simplify and clarify the Rules.
53. We summarise below the QPA exemption under the proposed Rules:

Conditions

- The QPA exemption would apply to acquisitions of government land in Hong Kong or the Mainland through public auctions or tenders by Qualified Issuers, on a sole or joint basis, of revenue nature and / or containing capital elements.
- If a Qualified Property Acquisition is undertaken on a joint basis, the following conditions would continue to apply:
 - the property project must be single purpose;
 - the joint venture arrangement must be in the issuer's ordinary and usual course of business, on an arm's length basis and on normal commercial terms; and
 - the joint venture agreement must require unanimous consent from the joint venture partners for any change of business nature and scope or for transactions that are not on an arm's length basis.

In addition, the issuer's board would have to confirm that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the issuer and its shareholders as a whole.

If the joint partner is a Qualified Connected Person, the independent board committee and the independent financial adviser would have to confirm that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the issuer and its shareholders as a whole.

Requirements

- A Qualified Property Acquisition which constitutes a major or very substantial acquisition is subject to the announcement and circular requirements under Chapter 14. The announcement and circular for a Qualified Property Acquisition should contain details of the acquisition and the joint venture, and information to demonstrate that the exemption conditions have been met.

A Qualified Property Acquisition undertaken on a joint basis with a Qualified Connected Person is also subject to the annual reporting requirements under Chapter 14A. In addition, the circular must contain letters from the independent board committee and the independent financial adviser stating their opinion on the transaction.

- A valuation report on the property under a Qualified Property Acquisition is not required.

Consultation Question

Q10: Do you have any comments on the draft Rule amendments relating to the QPA exemption in Part A of Appendix I? If your answer is “Yes”, please state.

B. Formation of joint ventures

54. Currently, formation of a joint venture is a “transaction” under the notifiable transaction Rules.
55. We have considered, but decided not to remove formation of joint ventures from the definition of a transaction. Normally, a joint venture arrangement binds the joint venturers to a set of commitments upon establishment of the joint venture. The issuer who is the joint venturer may not have discretion on agreed terms after establishment. The joint venture may involve a significant capital commitment by the issuer (determined upon establishment). This is the reason for imposing notifiable transaction requirements when the joint venture is formed. Joint ventures usually involve capital projects of a long duration and the significant commitment should be subject to the Rules.
56. However, our review of the QPA exemption has brought out practical issues on the treatment of joint venture formation in some situations. We note that different industries have developed their unique business practices over time. For some of them, joint venture has become a mechanism through which companies conduct their normal businesses. Property developers are an example. Others include financial institutions who set up joint ventures to conduct structured finance transactions as part of their normal commercial arrangements. Some investment companies also use joint ventures as vehicles in their asset portfolio management.
57. The current Rules have not envisaged and catered for these special circumstances of a joint venture. It is not the intent of the Rules to restrict activities in the issuer’s ordinary course of business. When an issuer uses joint venture as a mechanism to carry out its ordinary course of businesses, it is appropriate to see through the physical form of the joint venture and look into its substance.
58. We have compared our Rules with rules of the UK, Singapore and Australia in regulating joint ventures. We note that our Rules are generally more stringent:-
 - In the UK, the definition of transaction excludes transactions of a revenue nature and in the ordinary course of business. The UK Financial Service Authority announced in its 2007 Policy Statement that it would be neutral as to form, such that if an activity would normally qualify for the exemption, its analysis would not change simply because such activity was undertaken through a joint venture vehicle.
 - The Australian and Singaporean rules do not consider formation of joint ventures as a transaction. The Singaporean rules are stricter for forming a joint venture with related parties, which is a related party transaction. There are exemptions if the size is immaterial or if the risks and rewards are proportional to the shareholdings in the joint venture.
59. We consider it appropriate to make the Revenue Exemption available to issuers using joint ventures as mechanisms to carry out revenue transactions in their ordinary course of business. For this purpose, the project undertaken by the joint venture must be single-purpose and of revenue nature to the issuer. This “see through” approach would benefit all issuers fitting into the described circumstances.

60. The current Rules apply a capital vs. revenue concept to assess what is a material change to the issuer's business. Where transactions are conducted in the ordinary and usual course of business of the issuer, only revenue nature transactions are exempt under the Revenue Exemption. We do not propose to exempt joint ventures which carry out projects containing a capital element. Formation of these joint ventures will constitute notifiable transactions if their size tests exceed the thresholds in the Rules.

Proposal

61. We propose to exempt the formation of a joint venture from being treated as a notifiable transaction where:-
- the joint venture engages in a single purpose project which is of a revenue nature to the issuer;
 - the joint venture arrangement is in the issuer's ordinary and usual course of business, on an arm's length basis and on normal commercial terms; and
 - the joint agreement contains clause(s) to the effect that the entity may not, without the joint venture partners' unanimous consent:
 - change the nature or scope of its business; or
 - enter into any transactions which are not on an arm's length basis.

Consultation Questions

- Q11: Do you agree with the proposal to exempt "revenue joint venture projects" described in paragraph 61? Please provide reasons.*
- Q12: Do you agree that the proposed draft Rule amendments in Part B of Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*
- Q13: Do you have other comments on this consultation paper? If your answer is "Yes", please state.*

APPENDIX I DRAFT RULE AMENDMENTS

Mark-up version:

A. Exemption for Qualified Property Acquisitions

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

...

14.04 For the purposes of this Chapter:—

- (1) any reference to a “transaction” by a listed issuer:
- (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;
- ...
- (g) to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer;

Notes: 1 *To the extent not expressly provided in rules 14.04(1)(a) to (f), any transaction of a revenue nature in the ordinary and usual course of business of a listed issuer will be exempt from the requirements of this Chapter. However, listed issuers should note that any such transaction may nevertheless be required to be disclosed under the listed issuer’s general obligation to keep the market informed of all price-sensitive information (see rule 13.09).*

2 *Any transaction involving the acquisition and disposal of properties will generally not be considered to be of a revenue nature unless such transactions are carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer. ~~For the purpose of determining whether property development is a principal activity of a listed issuer for it to be a Qualified Issuer (as defined in rule 14.04(10B)), consideration will be given to the following factors:~~*

~~(a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of the issuer’s latest published annual financial statements;~~

Keys to amendments:

P: Proposals in Chapter 2 of this paper

D: Drafting changes

D [Move to definition of “Qualified Issuer” – Rule 14.04(10B)]

~~(b) property development activity is being reported as a separate and continuing business segment (if not the only segment) in the issuer's latest published financial statements; and~~

~~(c) the issuer's format for reporting segmental information is in business segments, and its latest published annual financial statements have fully complied with the requirements of Hong Kong Accounting Standard 14 or International Accounting Standard 14, as appropriate, which require, amongst others, reporting of segment revenue and segment expense.~~

D [Move to definition of "Qualified Issuer" - Rule 14.04(10B)]

3 Where a listed issuer, for the financial reporting purpose, has transferred an asset from the fixed asset account to the current asset account, a subsequent disposal of the asset by the listed issuer will not be exempt under rule 14.04(1)(g).

4 In considering whether or not a transaction is of a revenue nature, a listed issuer must take into account the following factors:

(a) whether previous transactions or recurring transactions that were of the same nature were treated as notifiable transactions;

(b) the historical accounting treatment of its previous transactions that were of the same nature;

(c) whether the accounting treatment is in accordance with generally acceptable accounting standards; and

(d) whether the transaction is a revenue or capital transaction for tax purposes.

These factors are included for guidance only and are not intended to be exhaustive. The Exchange may take into account other factors relevant to a particular transaction in assessing whether or not it is of a revenue nature. In cases of doubt, the listed issuer must consult the Exchange at an early stage.

...

(10A) ~~[Repealed /date/]~~ "Qualified Connected Person" means any person that is a connected person (defined in rule 14A.11) of the Qualified Issuer, solely because such person is a substantial shareholder with or without representation on the board in one or more non-wholly owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;

D [Remove defined term not used in Chapter 14]

(10B) “Qualified Issuer(s)” means an listed issuer(s) actively engaged in property development as a principal business activity. For determining whether property development is a principal activity of an issuer, consideration will be given to the following factors:

(a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of its latest published annual financial statements;

(b) property development activity is reported as a separate and continuing business segment (if not the only segment) in its latest published financial statements; and

(c) its format for reporting segmental information is in business segments, and its latest published annual financial statements have fully complied with the requirements of relevant accounting standards adopted for the preparation of its annual financial statements on reporting of segment revenue and segment expense.

D [Move from Rule 14.04(1)(g) Note 2]

(10C) “Qualified Property Acquisition(s)” means an acquisition(s) of land or property development project in Hong Kong from Government or Government-controlled entities, or in the Mainland from a PRC Governmental Body (as defined in rule 19A.04), through a public auction or tender Qualified Property Project(s) that contain a capital element. Depending on the percentage ratios, Qualified Property Acquisition may fall into one of the classifications set out in rule 14.06;

Note: The Exchange may be prepared to relax this requirement to accept land or property development projects acquired in other jurisdictions from governmental bodies through public auctions or tenders.

P[Issue A(1)]

D [Combine with definition of Qualified Property Project]

(10D) ~~[Repealed /date]“Qualified Property Project(s)” means land or property development project(s) acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders;~~

D [Combine with definition of Qualified Property Acquisition]

...

...

*Exemptions for Qualified Property Acquisitions
which constitute major transactions or very substantial acquisitions*

14.33A A Qualified Property Acquisition which constitutes a major transaction or very substantial acquisition is exempted from shareholders’ approval ~~if: Listed issuers should refer to the relevant rules for specific requirements. The table below summarises the notification, publication and shareholders’ approval requirements for a Qualified Issuer pursuant to a Qualified Property Acquisition.~~

D [Simplify Rule]

	Notification to Exchange	Publication of an announcement in accordance with rule 2.07C	Circular to shareholders	Shareholders' approval	Report in next published annual report and accounts
Qualified Property Acquisition undertaken on a sole basis that contain a capital element ¹	Yes ³	Yes ³	Yes ³	No ⁴	Yes ⁴
Qualified Property Acquisition Undertaken with non-connected person ²	Yes ³	Yes ³	Yes ³	No ²	Yes ⁵

Notes: 1. ~~The conditions for the exemption from shareholders' approval requirement under rules 14.40 to 14.46 and rules 14.49 to 14.53 are stated in rule 14.33A(2) below.~~

2. ~~The conditions for the exemption from shareholders' approval requirement under rules 14.40 to 14.46 and rules 14.49 to 14.53 are stated in rule 14.33A(4) below.~~

3. ~~Notification, announcement and circularisation requirements under chapter 14 apply as usual.~~

4. ~~Annual reporting requirements are further described in rule 14.33A(2)(e) below.~~

5. ~~Annual reporting requirements are further described in rule 14.33A(4)(g) below.~~

(1) ~~Rule 14.33A applies to Qualified Issuer(s) (as defined in rule 14.04(10B)) engaging in acquisition of Qualified Property Project(s) (as defined in rule 14.04(10D)).~~

(12) ~~it is A Qualified Property Acquisition (as defined in rule 14.04(10C)) undertaken on a sole basis, which is by a Qualified Issuer in the its ordinary and usual course of business of the Qualified Issuer, is exempted from shareholders' approval requirement under rules 14.40 to 14.46 and rules 14.49 to 14.53, provided that all of the following conditions are satisfied; or~~

(a) ~~the Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of its bid for the Qualified Property Project. For this purpose all requirements regarding announcements under chapter 14 apply in accordance with the classification and percentage ratios as usual;~~

(b) ~~the Qualified Issuer must send to holders of its listed securities a circular with details of the successful Qualified Property Acquisition as in any other transactions falling under chapter 14; and~~

D [Simplify Rule]

D [Centralise announcement & circular requirements under proposed Rule 14.33B(3)]

~~(c) the Qualified Issuer must include appropriate details of the successful Qualified Property Acquisition and brief description of the status of the Qualified Property Acquisition in its next published annual report and accounts.~~

P[Issue A(4)]

~~(3) For the purpose of chapters 14 and 14A, Qualified Property Acquisition undertaken by a Qualified Issuer on a joint venture basis can be categorised as follows:~~

~~(a) joint venture with non-connected person(s);~~

~~(b) joint venture with "Qualified Connected Person(s)"; or~~

~~(c) joint venture with connected person(s) other than "Qualified Connected Person(s)".~~

~~(24) it is undertaken by a Qualified Issuer and other party or parties on a joint basis and: Shareholders' approval requirement under rules 14.40 to 14.46 and rules 14.49 to 14.53 is exempted for situations falling within rule 14.33A(3)(a) as described above, provided that all of the following conditions are satisfied:~~

~~(a) the project will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document;~~

~~(b) each joint venture arrangement must be in its the ordinary and usual course of business of the Qualified Issuer, on an arm's length basis and on normal commercial terms;~~

~~(c) without prejudice to any other necessary consent, the joint venture agreement must contains clause(s) to the effect that the joint venture entity may not, without its the joint venture partners' unanimous consent:~~

~~(i) change the nature or scope of its business, and if there are changes then they such changes must still be consistent with the scope or purpose specified in the auction or tender document; or~~

~~(ii) enter into any transactions which are not on an arm's length basis, whether with a connected person or not; and~~

~~(d) the Qualified Issuer's board has confirmed that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.~~

D [Simplify Rule]

~~(d) the joint venture agreement must specify that the Qualified Issuer and its joint venture partner(s) will provide financing in the form of equity, shareholders' loan and/or financial commitments to, or on behalf of, the joint venture on a several basis and in proportion to their respective equity interests;~~

P[Issue A(2)]

- (e) ~~the joint venture agreement must specify that for the purpose of distribution of profit, the net proceeds from the sale and/or leasing of the land or property to be developed, redeveloped or refurbished after repayment of borrowings and payment of other costs and liabilities will be distributed in full to the joint venture partners in proportion to their respective equity interests, as also for repayment of shareholders' loans and as distribution of the joint venture's profit, if any;~~
- P[Issue A(2)]**
- 14.33B (1) (f) — the The Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of a bid by it or the joint venture for a Qualified Property Acquisition falling under rule 14.33A and send a circular to its shareholders. circularise details regarding the successful Qualified Property Acquisition. For this purpose, all requirements regarding announcement and circular under chapter 14 applies in accordance with the classification and percentage ratios as usual; and
- D [Simplify Rule]**
- D [Centralise announcement & circular requirements under proposed Rule 14.33B(3)]**
- (2) (g) — ~~the Qualified Issuer must publish, in its annual report and accounts issued subsequent to the successful bid of each and every Qualified Property Acquisition undertaken together with non-connected person(s) in the joint venture, at least the following details The announcement and circular must contain:~~
- (a) details of the acquisition;
- (b) details of the joint venture, if any, including
- (i) the joint venture's terms and status of the joint venture;
- (ii) ~~the status of the joint venture, including details of the successful Qualified Property Acquisition(s) made during the financial period;~~
- (iii) its the dividend and distribution policy of the joint venture; and
- (iii-iv) the joint venture's financial and capital commitment of the joint venture and the Qualified Issuer's share in it therein; and
- (c) information to demonstrate that the conditions in rule 14.33A(1) or (2) were met.
- P[Issue A(4)]**
- (3) The announcement and circular requirements under chapter 14 apply to the acquisition and the joint venture, if any, according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.
- P[Issue A(5)]**
- (5) ~~Requirements relating to situations falling within rule 14.33A(3)(b) are dealt with in chapter 14A under rules 14A.72 to 14A.79.~~
- D [Simplify Rule]**
- Note: Exemption under this rule 14.33A does not apply to situations falling within rule 14.33A(3)(c).*

...

Chapter 14A

EQUITY SECURITIES

CONNECTED TRANSACTIONS

...

General matters concerning definitions and interpretation

14A.10 In this Chapter:

...

(10A) “Qualified Connected Person” means any person that is a connected person ~~(defined in rule 14A.11)~~ of the Qualified Issuer, solely because ~~it~~ such person is a substantial shareholder with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;

(10B) “Qualified Issuer(s)” ~~has shall have the meaning in rule 14.04(10B)~~ means listed issuer(s) actively engaged in property development as a principal business activity;

(10C) “Qualified Property Acquisition(s)” ~~has shall have the meaning in rule 14.04(10C)~~ means acquisition(s) of Qualified Property Project(s) that contain a capital element. Depending on the percentage ratios, Qualified Property Acquisition may fall into one of the classifications set out in rule 14.06;

(10D) “Qualified Property Project(s)” ~~means land or property development project(s) acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders;~~

...

(13) a “transaction” by an issuer, whether or not it is of a revenue nature in the ordinary and usual course of business as defined in rule 14.04(1)(g), includes:

(a) the acquisition or disposal of assets including deemed disposals set out in rule 14.29;

...

(f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement;

...

(i) sharing of services; and

D [Simplify Rule]

(j) providing or acquiring raw materials, intermediate products and finished goods, and

(k) a Qualified Property Acquisition.

D [Simplify Rule (already covered by sub-paragraphs (a) and (f) above)]

Exemption for Qualified Property Acquisitions and General Property Acquisition Mandate

General

14A.72 The table below summarises the notification, publication and shareholders' approval requirements for a Qualified Issuer pursuant to a Qualified Property Acquisition undertaken with a Qualified Connected Person.

	Notification to Exchange	Publication of announcement in accordance with rule 2.07C	Circular to shareholders	Shareholders' approval and independent shareholders' approval	Report in next published annual report and accounts
Qualified Property Acquisition undertaken with Qualified Connected Person	Yes ²	Yes ⁴	Yes ¹	General Property Acquisition Mandate obtained in advance from shareholders in annual general meeting	Yes ³

D [Simplify Rule]

Notes: 1. See rules 14A.75 and 14A.76 below for details.

2. Notification to the Exchange under rule 14A.47 applies when the General Property Acquisition Mandate has been approved by a vote of shareholders at an annual general meeting as well as when the Qualified Issuer is advised of the success of a bid by the joint venture for a Qualified Property

3. Details of the annual reporting requirements are stated in rule 14A.77.

Exempt from shareholders' approval requirements but subject to requirements for notification, circularisation, reporting, announcement and General Property Acquisition Mandate

14A.723 A Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person where a Qualified Issuer has previously obtained a General Property Acquisition Mandate is exempted from shareholders' approval requirement under rules 14.40 to 14.46 and rules 14.49 to 14.53 and the independent shareholders' approval requirements under rules 14A.18 to 14A.19, if: but is subject to notification, circularisation, reporting and announcement requirements as described under chapter 14 and chapter 14A, where applicable, as well as, pursuant to the General Property Acquisition Mandate, additional

D [Centralise announcement, circular & reporting requirements under proposed Rule 14A.73(3)]

~~notification, announcement, circularisation and reporting requirements as described under rules 14A.74 to 14A.79 below.~~

D [Centralise announcement, circular & reporting requirements under proposed Rule 14A.73(3)]

- (1) it satisfies the requirements in rule 14.33A(2)(a) to (d); and

Conditions for General Property Acquisition Mandate

~~14A.74 (1) For situations described in rule 14A.73 above, and for a Qualified Issuer to be eligible for prior shareholders' approval by way of a General Property Acquisition Mandate, Qualified Property Project(s) set up with Qualified Connected Person(s) in a joint venture arrangement must satisfy the conditions set out under (a) to (e) below:~~

- ~~(a) the project(s) will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document;~~
- ~~(b) each joint venture arrangement must be in the ordinary and usual course of business of the Qualified Issuer, on an arm's length basis and on normal commercial terms;~~
- ~~(c) without prejudice to any other necessary consent, the joint venture agreement must contain clause(s) to the effect that the entity may not, without the joint venture partners' unanimous consent:
 - ~~(i) change the nature or scope of its business, and if there are changes then such changes must still be consistent with the scope or purpose specified in the auction or tender document; or~~
 - ~~(ii) enter into any transactions which are not on an arm's length basis, whether with a connected person or not;~~~~

D [Simplify Rule]

- (2) the independent board committee and the independent financial adviser have confirmed that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.

- ~~(d) the joint venture agreement must specify that the Qualified Issuer and its joint venture partner(s) will provide financing in the form of equity, shareholders' loan and/or financial commitments to, or on behalf of, the joint venture on a several basis and in proportion to their respective equity interests; and~~
- ~~(e) the joint venture agreement must specify that for the purpose of distribution of profit, the net proceeds from the sale and/or leasing of the land or property to be developed, redeveloped or refurbished after repayment of borrowings and payment of other costs and liabilities will be distributed in full to the joint venture partners in proportion to their respective equity interests, as also for repayment of shareholders' loans and as distribution of the joint venture's profit, if any.~~

P[Issue A(2)]

- (2) ~~A proposed "Annual Cap" must be set on a maximum aggregate annual basis in relation to the Qualified Issuer's attributable portion of financial and capital commitment in respect of the formation of one or more~~

P[Issue A(3)]

~~property joint ventures for Qualified Property Acquisitions under a General Property Acquisition Mandate. In this case, the size of the Qualified Issuer's financial and capital commitment therein will be calculated in the manner set out in rule 14.15(2).~~

- ~~(3) A proposed Annual Cap must be expressed in terms of monetary value rather than a percentage of the issuer's annual revenue as derived from its latest published audited accounts or where consolidated accounts have been prepared, its latest published audited consolidated accounts (see rule 14A.35(2) for reference).~~
- ~~(4) Both the independent board committee (as referred to in rules 13.39(6), 13.39(7) and 14A.58(3)(c)) and the independent financial adviser (as referred to in rules 13.39(7)(b) and 14A.22) must have opined affirmatively that the proposed Annual Cap and the underlying assumptions are reasonable for the proposed General Property Acquisition Mandate to be voted upon.~~
- ~~(5) The General Property Acquisition Mandate, including the maximum monetary value to be attached to a proposed Annual Cap, must be approved by shareholders in annual general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting, and shareholders' meeting waiver under rules 14.44 or 14A.43 is not applicable for this purpose.~~

Circular regarding General Property Acquisition Mandate

- 14A.75 ~~(1) Where a General Property Acquisition Mandate is proposed as a resolution in an annual general meeting of a Qualified Issuer, the circular to shareholders should contain information as described under rules 14A.58 to 14A.62, where applicable, and must also contain the following:~~
- ~~(a) a separate letter from the independent board committee;~~
 - ~~(b) a separate letter from the independent financial adviser;~~
 - ~~(c) a confirmation statement that both the independent board committee and the independent financial adviser have opined affirmatively that the proposed Annual Cap and the underlying assumptions are reasonable for the proposed General Property Acquisition Mandate to be voted upon;~~
 - ~~(d) a statement that the duration of the General Property Acquisition Mandate and the Annual Cap would continue to be in force only until:
 - ~~(i) the conclusion of the first annual general meeting of the Qualified Issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions, or~~
 - ~~(ii) revoked or varied by ordinary resolution of the shareholders in a general meeting, whichever occurs first;~~~~
 - ~~(e) the purpose and intended use of the General Property Acquisition Mandate, including a statement that the General Property Acquisition~~

P[Issue A(3)]

~~Mandate is only applicable to the Qualified Issuer proposing to enter into one or more Qualified Property Acquisition(s) undertaken with Qualified Connected Person(s);~~

~~(f) a statement that the conditions that are required to be fulfilled as set out in rule 14A.74(1)(a) to (e) above have been met;~~

~~(g) in relation to the proposed Annual Cap, the circular must contain:~~

~~(i) detailed description of the proposed Annual Cap for the purpose of the General Property Acquisition Mandate and an explanation of how and the basis upon which it was calculated; and~~

~~(ii) details of the assumptions upon which the proposed Annual Cap was based must be stated.~~

~~*Note: See rules 14A.74(2) to (3) above.*~~

~~(h) a statement by the directors of the Qualified Issuer that in their opinion the working capital available to the group will be sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary in light of the expected Qualified Property Acquisitions and the Annual Cap proposed.~~

~~(2) A Qualified Issuer must notify the Exchange in accordance with rule 14A.47 when the General Property Acquisition Mandate has been approved by a vote of shareholders at an annual general meeting.~~

Announcement and circular requirements following notification of a successful Qualified Property Acquisition under a General Property Acquisition Mandate

~~14A.76 (1) A Qualified Issuer must notify the Exchange in accordance with rule 14A.47(1) when it has been notified of the success of a bid for a Qualified Property Acquisition undertaken together with Qualified Connected Person(s) under a General Property Acquisition Mandate. The notification must be made immediately upon the bid becoming legally binding.~~

~~14A.73 (12) A Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of a bid by a joint venture for a Qualified Property Acquisition falling under rule 14A.72 and send a circular to its shareholders, circularise details regarding the successful Qualified Property Acquisition. For this purpose all requirements regarding announcement and circular under chapter 14A apply in accordance with the classification and percentage ratios as usual.~~

~~(3) A Qualified Issuer must submit to the Exchange written confirmation, upon the successful Qualified Property Acquisition being legally binding, that the controlling shareholder(s) of the Qualified Issuer and the associates (as defined in rule 14A.11(4)) of the controlling shareholder(s) do not have any material business dealings or relationships with the joint venture partner(s) or its controlling shareholder(s) or its/their associates. For this purpose, any material business dealings or relationships with the joint venture partner(s), its controlling shareholder(s) or its/their associates do not include existing property joint venture arrangement(s) with the joint venture~~

P[Issue A(3)]

D [Centralise announcement, circular & reporting requirements under proposed Rule 14A.73(3)]

D [Simplify Rule]

D [Centralise announcement, circular & reporting requirements under proposed Rule 14A.73(3)]

P[Issue A(3)]

partner(s) or its controlling shareholder(s) or its/their associates that would meet the conditions of the exemption.

Reporting and reviewing requirements in annual report and accounts

~~14A.77 (1) A Qualified Issuer must publish, in its annual report and accounts issued subsequent to the passing of a resolution approving a General Property Acquisition Mandate, at least the following:~~

- ~~(a) detailed description of the General Property Acquisition Mandate and the pertaining Annual Cap, and an explanation of how and the basis upon which the Annual Cap was calculated;~~
- ~~(b) details of the assumptions upon which the Annual Cap was based;~~
- ~~(c) the remaining and used up Annual Cap expressed in terms of monetary value, rather than a percentage of the Qualified Issuer's annual revenue or other relative measures; and~~
- ~~(d) the remaining and used up Annual Cap stated on an aggregate annual basis in relation to the attributable portion of financial and capital commitment in respect of the formation of one or more property joint ventures for Qualified Property Acquisitions by the Qualified Issuer. In this case, the size of the Qualified Issuer's financial and capital commitment therein will be calculated in the manner set out in rule 14.15(2).~~

P[Issue A(3)]

~~(2) A Qualified Issuer must publish, in its annual report and accounts issued subsequent to the successful bid of each Qualified Property Acquisition undertaken with a Qualified Connected Person in a joint venture under a General Property Acquisition Mandate, at least the following details. The announcement and circular must contain:~~

~~(a) information required in rules 14.33B(2)(a) and (b); and~~

- ~~(a) the terms of the joint venture;~~
- ~~(b) the status of the joint venture, including details of the successful Qualified Property Acquisition(s) made during the financial period;~~
- ~~(c) the dividend and distribution policy of the joint venture;~~
- ~~(d) the financial and capital commitment of the joint venture and the Qualified Issuer's share therein; and~~
- ~~(e) the amount of Annual Cap remaining after each successful joint venture committed within the valid duration of a General Property Acquisition Mandate.~~

P[Issue A(4)]

P[Issue A(3)]

~~(b) information to demonstrate that the conditions in rule 14A.72 were met.~~

P[Issue A(4)]

~~(3) The announcement, circular and reporting requirements under chapter 14A apply to the acquisition and the joint venture according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.~~

D [Centralise, announcement, circular & reporting requirements under proposed Rule 14A.73(3)]

P[Issue A(5)]

~~14A.78 Each year the independent board committee of the Qualified Issuer must review each and every Qualified Property Acquisition entered into during the financial year together with a Qualified Connected Person in a joint venture under a General Property Acquisition Mandate, and confirm in the annual report and accounts that:~~

- ~~(1) they have considered an opinion letter from an independent financial adviser (see rule 14A.22);~~
- ~~(2) they have reviewed each and every transaction under joint venture arrangements entered into during the year by the Qualified Issuer with Qualified Connected Person(s) under a General Property Acquisition Mandate and confirm that:
 - ~~(a) the successful transaction has been carried out in accordance with the initial purpose of the joint venture;~~
 - ~~(b) the relevant agreement(s) governing the successful transaction are based on terms that are fair and reasonable and in the interests of the shareholders of the Qualified Issuer as a whole; and~~
 - ~~(c) the conditions and requirements set out in rules 14A.72 to 14A.79, where applicable, have been complied with by the Qualified Issuer.~~~~

P[Issue A(4)]

~~*Refreshment of the General Property Acquisition Mandate*~~

~~14A.79 Where a Qualified Issuer has obtained a General Property Acquisition Mandate from its shareholders pursuant to the conditions as set out in rules 14A.74 to 14A.78:~~

- ~~(1) any refreshments of the General Property Acquisition Mandate and the Annual Cap before the next annual general meeting must be approved by shareholders in a general meeting. For this purpose, no written shareholders' approval will be accepted in lieu of holding a general meeting and shareholders' meeting waiver under rules 14.44 or 14A.43 is not applicable; and~~
- ~~(2) the relevant circular to shareholders proposing early refreshment of another General Property Acquisition Mandate must contain the following information:
 - ~~(a) information as set out in rule 14A.75(1), but for the new proposed mandate;~~~~

P[Issue A(3)]

- ~~(b) information relating to the usage of the existing mandate;~~
- ~~(c) the Qualified Issuer's history of refreshments of General Property Acquisition Mandate since the last annual general meeting when the existing mandate was approved; and~~
- ~~(d) details and status of each of the qualified property joint ventures that were formed under the existing General Property Acquisition Mandate.~~

} **P[Issue A(3)]**

Chapter 5

GENERAL

VALUATION OF AND INFORMATION ON PROPERTIES

When Required

...

5.04A These requirements do not apply if the property is acquired under a Qualified Property Acquisition (as defined in rule 14.04(10C)).

} **P[Issue A(5)]**

...

B. Formation of Joint Ventures

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

...

14.04 For the purposes of this Chapter:—

- (1) any reference to a “transaction” by a listed issuer:
- (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;
 - ...
 - (f) includes entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement, other than a joint venture where:
 - (i) the joint venture is engaging in a single purpose project / transaction which is of a revenue nature to the issuer (see rule 14.04(1)(g));
 - (ii) the joint venture arrangement is in the ordinary and usual course of the issuer’s business, on an arm’s length basis and on normal commercial terms; and
 - (iii) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without the its partners’ unanimous consent:
 - (A) change the nature or scope of its business; or
 - (B) enter into any transactions which are not on an arm’s length basis; and

P[Issue B]

...

Clean version:

A. Exemption for Qualified Property Acquisitions

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

...

14.04 For the purposes of this Chapter:—

- (1) any reference to a “transaction” by a listed issuer:
- (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;
- ...
- (g) to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer;

Notes: 1 To the extent not expressly provided in rules 14.04(1)(a) to (f), any transaction of a revenue nature in the ordinary and usual course of business of a listed issuer will be exempt from the requirements of this Chapter. However, listed issuers should note that any such transaction may nevertheless be required to be disclosed under the listed issuer’s general obligation to keep the market informed of all price-sensitive information (see rule 13.09).

2 Any transaction involving the acquisition and disposal of properties will generally not be considered to be of a revenue nature unless such transactions are carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer.

3 Where a listed issuer, for the financial reporting purpose, has transferred an asset from the fixed asset account to the current asset account, a subsequent disposal of the asset by the listed issuer will not be exempt under rule 14.04(1)(g).

4 In considering whether or not a transaction is of a revenue nature, a listed issuer must take into account the following factors:

- (a) *whether previous transactions or recurring transactions that were of the same nature were treated as notifiable transactions;*
- (b) *the historical accounting treatment of its previous transactions that were of the same nature;*
- (c) *whether the accounting treatment is in accordance with generally acceptable accounting standards; and*
- (d) *whether the transaction is a revenue or capital transaction for tax purposes.*

These factors are included for guidance only and are not intended to be exhaustive. The Exchange may take into account other factors relevant to a particular transaction in assessing whether or not it is of a revenue nature. In cases of doubt, the listed issuer must consult the Exchange at an early stage.

...

(10A) [Repealed *[date]*]

(10B) “Qualified Issuer” means an issuer actively engaged in property development as a principal business activity. For determining whether property development is a principal activity of an issuer, consideration will be given to the following factors:

- (a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of its latest published annual financial statements;
- (b) property development activity is reported as a separate and continuing business segment (if not the only segment) in its latest published financial statements; and
- (c) its format for reporting segmental information is in business segments, and its latest published annual financial statements have fully complied with the requirements of relevant accounting standards adopted for the preparation of its annual financial statements on reporting of segment revenue and segment expense.

(10C) “Qualified Property Acquisition” means an acquisition of land or property development project in Hong Kong from Government or Government-controlled entities, or in the Mainland from a PRC Governmental Body (as defined in rule 19A.04), through a public auction or tender;

Note: The Exchange may be prepared to relax this requirement to accept land or property development projects acquired in other jurisdictions from governmental bodies through public auctions or tenders.

(10D) [Repealed *[date]*]

...

...

*Exemptions for Qualified Property Acquisitions
which constitute major transactions or very substantial acquisitions*

- 14.33A A Qualified Property Acquisition which constitutes a major transaction or very substantial acquisition is exempt from shareholders' approval if:
- (1) it is undertaken on a sole basis by a Qualified Issuer in its ordinary and usual course of business; or
 - (2) it is undertaken by a Qualified Issuer and other party or parties on a joint basis and:
 - (a) the project will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document;
 - (b) each joint venture arrangement must be in its ordinary and usual course of business, on an arm's length basis and on normal commercial terms;
 - (c) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners' unanimous consent:
 - (i) change the nature or scope of its business, and if there are changes then they must still be consistent with the scope or purpose specified in the auction or tender document; or
 - (ii) enter into any transactions which are not on an arm's length basis; and
 - (d) the Qualified Issuer's board has confirmed that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.
- 14.33B (1) The Qualified Issuer must publish an announcement upon notification of the success of a bid by it or the joint venture for a Qualified Property Acquisition falling under rule 14.33A and send a circular to its shareholders.
- (2) The announcement and circular must contain:
- (a) details of the acquisition;
 - (b) details of the joint venture, if any, including
 - (i) the joint venture's terms and status;
 - (ii) its dividend and distribution policy; and

- (iii) the joint venture's financial and capital commitment and the Qualified Issuer's share in it; and
 - (c) information to demonstrate that the conditions in rule 14.33A(1) or (2) were met.
- (3) The announcement and circular requirements under chapter 14 apply to the acquisition and the joint venture, if any, according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

...

Chapter 14A

EQUITY SECURITIES

CONNECTED TRANSACTIONS

...

General matters concerning definitions and interpretation

14A.10 In this Chapter:

...

(10A) "Qualified Connected Person" means any person that is a connected person of the Qualified Issuer, solely because it is a substantial shareholder with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;

(10B) "Qualified Issuer" has the meaning in rule 14.04(10B);

(10C) "Qualified Property Acquisition" has the meaning in rule 14.04(10C);

...

(13) a "transaction" by an issuer, whether or not it is of a revenue nature in the ordinary and usual course of business as defined in rule 14.04(1)(g), includes:

(a) the acquisition or disposal of assets including deemed disposals set out in rule 14.29;

...

(f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement;

...

(i) sharing of services; and

(j) providing or acquiring raw materials, intermediate products and finished goods.

...

Exemption for Qualified Property Acquisitions

- 14A.72 A Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is exempt from the independent shareholders' approval requirements if:
- (1) it satisfies the requirements in rule 14.33A(2)(a) to (d); and
 - (2) the independent board committee and the independent financial adviser have confirmed that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.
- 14A.73
- (1) A Qualified Issuer must publish an announcement upon notification of the success of a bid by a joint venture for a Qualified Property Acquisition falling under rule 14A.72 and send a circular to its shareholders.
 - (2) The announcement and circular must contain:
 - (a) information required in rules 14.33B(2)(a) and (b); and
 - (b) information to demonstrate that the conditions in rule 14A.72 were met.
 - (3) The announcement, circular and reporting requirements under chapter 14A apply to the acquisition and the joint venture according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

Chapter 5

GENERAL

VALUATION OF AND INFORMATION ON PROPERTIES

When Required

...

- 5.04A These requirements do not apply if the property is acquired under a Qualified Property Acquisition (as defined in rule 14.04(10C)).

...

B. Formation of Joint Ventures

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

...

14.04 For the purposes of this Chapter:—

- (1) any reference to a “transaction” by a listed issuer:
- (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;

...

- (f) includes entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement, other than a joint venture where:
 - (i) the joint venture is engaging in a single purpose project / transaction which is of a revenue nature to the issuer (see rule 14.04(1)(g));
 - (ii) the joint venture arrangement is in the ordinary and usual course of the issuer's business, on an arm's length basis and on normal commercial terms; and
 - (iii) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners' unanimous consent:
 - (A) change the nature or scope of its business; or
 - (B) enter into any transactions which are not on an arm's length basis; and

...

APPENDIX II PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data” in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
 - administration, processing and publication of the consultation paper and any responses received;
 - performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - research and statistical analysis; and
 - any other purposes permitted or required by law or regulation.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an “as is” basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data unless specifically required to do so under any applicable law or regulation. If you do

not wish your name to be published or your opinion to be published, please state so when responding to this paper.

Access to and Correction of Data

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on Proposed Changes to Requirements
for Qualified Property Acquisitions and Formation of Joint
Ventures**

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

