



**LAW SOCIETY OF HONG KONG'S RESPONSE TO
HKE_x CONSULTATION ON QUALIFIED PROPERTY
ACQUISITIONS AND FORMATION OF JOINT VENTURES**

A. Exemption for Qualified Property Acquisitions

(1) Scope of the QPA exemption

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

Law Society's Response: Yes

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

Law Society's Response: Yes

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

Law Society's Response: Yes

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

See our response in 3 below

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

Law Society's Response: Yes

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

Law Society's Response: Yes

(2) Conditions for QPA exemption

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

Law Society's Response: Yes

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

Law Society's Response: Yes

(3) General Property Acquisition Mandate

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

Law Society's Response: Yes

(4) Disclosure requirements

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

Law Society's Response: Yes

(5) Property valuation

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

Law Society's Response: Yes

(6) Changes to the Rules

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

Law Society's Response: Yes

1. On proposed rule 14.04(10C)

We suggest that reference to “public auction or tender” be extended to cover “listing for sale”.

2. On proposed rule 14.33B(2)(d)

This rule requires that the Qualified Issuers Board must confirm that the relevant joint venture is, among other things, “in the ordinary and usual course of business”. While some property developers regularly carry out property acquisitions through joint ventures, some may only do so occasionally. As mentioned in part B of the Consultation Paper, joint venture is only “a mechanism to carry out its ordinary course of business, it is appropriate to also see through the physical form of the joint venture and look into its substance”. We believe that it is not necessary for the relevant joint venture to be in the ordinary and usual course of business, and that it is sufficient if the terms of the joint venture are fair and reasonable.

We suggest that this part of the rule be amended as follows:-

“The Qualified Issuer’s Board has confirmed that the Qualified Property Acquisition is in the ordinary and usual course of the Qualified Issuer’s business, and the terms of the joint venture through which the acquisition is made, including its financing and profit distribution arrangements, are on normal commercial terms and in the interest of the Qualified Issuer and its shareholders as a whole”.

3. On proposed rule 14A.10(10A)

This definition restricts the application of the QPA exemption to joint ventures with connected person who are connected solely because *it is a substantial shareholder* of other subsidiaries of the Qualified issuer formed to participate in property projects. In reality, people may not use the same corporate vehicle to hold as direct shareholder of all their development joint venture projects.

We suggest that this rule be amended by adding “or an associate of such substantial shareholder” after “substantial shareholder”.

B. Formation of joint ventures

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

Law Society’s Response: Yes

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

Law Society’s Response: Yes

For the same reason set out in item A10 in relation to rule 14.33B(2)(d) above, we suggest that rule 14.04(1)(f)(ii) be amended by deleting “in the ordinary and usual

course of the issuer's business".

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

Law Society's Response: No

**Law Society of Hong Kong
Securities Law Committee
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