

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

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

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EXECUTIVE SUMMARY

1. This paper presents the results of the public consultation on the proposed changes to the requirements for Qualified Property Acquisitions and the formation of joint ventures.
2. Our proposals were well-received by the market. Having considered the responses, we decided to implement the proposals with some amendments identified in Chapter 2.
3. We have finalised the Rule amendments to implement the proposals. They have been made by the Board of The Stock Exchange of Hong Kong Limited and approved by the Securities and Futures Commission, and will become effective on 1 February 2011.

CHAPTER 1 INTRODUCTION

4. On 10 September 2010, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**), published a Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures.
5. The consultation period ended on 12 November 2010. We received a total of 22 submissions from listed issuers, professional and industry associations and market practitioners. A list of respondents is provided in the Appendix.
6. The full text of all submissions is available on the HKEx website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp201009r.htm>.
7. We received overwhelming support from the market for our proposals, with some recommended amendments. Chapter 2 summarises the major comments and our responses. We also received valuable comments on a number of other aspects not covered in the consultation. These comments will be considered separately in our continuous review and improvement of our Listing regime.
8. The Rule amendments are available on the HKEx website at http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/mb_ruleupdate.htm and at http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/gemrule_update.htm. They have been made by the Board of the Exchange and approved by the Securities and Futures Commission, and will become effective on 1 February 2011.
9. We would like to thank all those who shared their views with us during the consultation process.
10. This paper should be read in conjunction with the consultation paper, which is posted on the HKEx website. The Rule references are to the Main Board Rules. Unless otherwise specified, the discussion applies equally to the GEM Rules.

CHAPTER 2 MARKET FEEDBACK AND CONCLUSIONS

11. Our proposals were well-received by the market. We set out below major comments of the respondents and our responses.

A. EXEMPTION FOR QUALIFIED PROPERTY ACQUISITIONS

Expanding the QPA exemption to government land acquisitions in the Mainland through the PRC Government Auction Process

Comments received

12. All respondents supported our proposal to expand the QPA exemption to acquisitions of government land in the Mainland through the PRC Government Auction Process.
13. One respondent took the view that the exemption should be process driven, that is any assignment of land in the Mainland effected via auction, tender, listing-for-sale or other similar regulated assignment processes according to the law should be exempt. It noted that individual cities in the Mainland have promulgated regulations governing land transactions to be subject to auction/tender processes
14. Most of the respondents agreed to exempt land acquisitions from government or government entities falling under the definition of “PRC Governmental Body” in Rule 19A.04. We also received other comments on this issue:
 - A respondent commented that the definition of “PRC Governmental Body” does not include the governmental tier below the PRC local government level, i.e. the township (鄉) and town (鎮) level. While the governmental bodies at this level do not have power to put land out for public auction, they do have the power to put certain property development projects out for public auction. It suggested the definition should be expanded to cover these bodies accordingly.
 - On the other hand, another respondent had some reservations about making reference to this definition as it is quite open-ended and includes, but is “not limited to” the three broad levels of government set out in the rule. It considered that in order to qualify for the exemption for acquisitions of state-owned land through the “PRC Government Auction Process”, the relevant sales should be subject to a structure, rules and procedures that are clear and meet essentially the same or an equivalent standard, at whatever level of government they take place.
15. A few respondents suggested that the definition of QPA in the proposed Rules should refer to the “PRC Government Auction Process” described in the consultation paper which includes “tender”(招標), “auction”(拍賣) and “listing-for-sale”(掛牌), and not only “public auction or tender” in the Mainland.

Our responses

16. Our proposal is intended to exempt acquisitions of state-owned land *only* through governmental grants by way of the PRC Government Auction Process, which are governed by the law and regulations in the Mainland. The level of government at which the land grants can take place is therefore subject to the Mainland requirements. For other acquisitions of land or property projects from governmental bodies in the Mainland, we would consider the circumstances of the cases, including the factors for assessing waiver applications described in paragraph 27 of the consultation paper.
17. Having considered the market responses, we believe that the definition of the PRC Governmental Body would be sufficiently broad to cover the situations that we intend to exempt.
18. We agree with the respondents' comments on the definition of QPA in the Mainland and have revised the proposed Rule to make reference to the "PRC Government Auction Process", i.e. "tender"(招標), "auction"(拍賣) and "listing-for-sale"(掛牌). Further, as our proposal is to exempt governmental grants of state-owned land regulated by the PRC Government Auction Process, we consider the definition of QPA should cover acquisitions of government land only. We have therefore removed the reference to "an acquisition of property development project in the Mainland" from the proposed Rule.

Expanding the QPA exemption to government land acquisitions in other jurisdictions through public auctions

Comments received

19. We sought the market's views on whether there are any other jurisdictions to which the QPA exemption may apply. One respondent suggested some mature and sophisticated jurisdictions like the U.K., the U.S., Canada and Singapore. Another considered that the bidding process in Australia, India, Thailand and Taiwan is not inferior to Hong Kong or the Mainland. However, these respondents did not support their suggestions or provide details of the bidding processes in these jurisdictions.
20. A majority of the respondents considered that the QPA exemption should be available to government land acquisitions in other jurisdictions through public auctions and supported granting individual waivers in these situations. Most respondents agreed with the factors for assessing waiver applications described in paragraph 27 of the consultation paper.
21. There were also comments from a number of the respondents that the QPA exemption should apply as long as the government land acquisitions in other jurisdictions can meet the factors prescribed by the Exchange. It would not be necessary to assess the waivers on a case-by-case basis.
22. One respondent was concerned about granting a general exemption to other jurisdictions and suggested that we take a cautious approach in considering waiver applications for these government land acquisitions. Another respondent

considered granting waivers on an individual basis is a reasonable interim measure, and the longer-term goal should be to extend the exemption to jurisdictions that can meet the relevant factors.

Our responses

23. We note that there are a number of respondents who supported a general exemption to any other jurisdictions that could satisfy the Exchange's prescribed factors. However, we are also mindful of some other respondents' concern about possible abuse if a general exemption is introduced. We do not consider it appropriate to introduce a general exemption for other jurisdictions at this stage.
24. In the light of the market response, we will consider individual waivers taking into account the factors described in the consultation paper. These factors will be included in the proposed Rule as guidelines for assessing waiver applications. However, they are not meant to be mandatory or exhaustive.

Disclosure requirements

Comments received

25. A majority of the respondents agreed with our proposal to accelerate the disclosure of information relating to the formation of joint ventures for QPAs from the annual report to the announcement and circular at the time of the transaction.
26. Some respondents were concerned about the proposed requirement for the issuer to publish a detailed announcement upon notification of the success of the bid by it or the joint venture. This is because some details of the joint venture may not be available until the joint venture agreement is established, which may take place subsequent to the entering into the land use right transfer contract with the government entity in the Mainland. The issuer may not be able to disclose all information relating to the joint venture upon notification of the success of the bid. Some suggested that the issuer should be allowed to first put out a holding statement before a formal announcement with full details to be issued subsequently. There was another suggestion that the announcement requirement would be triggered when the transaction becomes legally binding or the issuer is committed to proceed with it.
27. There was comment that details of the QPAs and the joint ventures should also be disclosed in the issuer's annual report.

Our responses

28. We note the respondents' comments that in practice, some details of the joint venture may not be agreed or finalised at time of the notification of the success of the bid. We decided to maintain the requirement for an announcement as soon as possible after the notification of the successful bid. However, the issuer would be allowed to issue a subsequent announcement to disclose the required details of the QPA and the joint venture as soon as possible after the terms have been agreed or finalised, if the information is not available at the time of the initial announcement.

29. Our proposal would not remove the disclosure obligations for material acquisitions of government land and formation of joint ventures in issuers' financial reports. Under Appendix 16 to the Rules, issuers are required to disclose details of their business developments during the review period. For QPAs with Qualified Connected Persons, the issuer is still required to comply with the annual reporting requirements which are applicable to all non-exempt connected transactions under Chapter 14A.

Other proposals relating to the QPA exemption

Comments received

30. Other proposals relating to the QPA exemption were supported by an overwhelming majority of the respondents. They include the proposed changes to the QPA exemption conditions and the general property acquisition mandate, and the proposed exemption for QPAs from the property valuation requirements. A few respondents commented on the drafting of the proposed Rules.
31. Some respondents considered that the QPA exemption should be extended to joint ventures with other connected persons. Issuers also had similar practical difficulties in seeking prior shareholder approval for QPAs undertaken jointly with these connected persons. They believed that the criteria and conditions for the exemption would provide sufficient safeguard against the connected persons taking advantage of their positions for QPAs.

Our responses

32. We propose to exempt joint ventures for QPAs with Qualified Connected Persons because the risk of potential abuse is remote given their relationship with the issuer, in particular, they are joint venture partners in other property projects with the issuer. Where the connected person is closely related and can exercise significant influence over the issuer, we believe additional safeguards under the Rules governing connected transactions (e.g. independent shareholders' approval) should continue to apply.
33. We have amended the proposed Rules in response to the drafting comments to clarify that (i) the requirement for "ordinary and usual course of business" relates to property acquisitions by the Qualified Issuers, and (ii) the definition of "Qualified Connected Person" would be expanded to include associates.

B. EXEMPTION OF FORMATION OF JOINT VENTURES

34. We proposed to exempt the formation of a joint venture from being treated as a transaction if it engages in a single purpose project which is of a revenue nature in the issuer's ordinary course of business.

Comments received

35. All respondents agreed to the proposal to exempt revenue joint venture projects. A few respondents commented on the drafting of the proposed Rules.

36. Some respondents questioned why the project must be “single purpose”. They considered a dual or multi purpose joint venture set up to conduct two or more types of revenue transactions should also qualify this exemption.

Our response

37. The proposed exemption is to see through the form and exempt a revenue transaction even if it is conducted in joint venture form. A single purpose joint venture arrangement would more likely meet this intention. Given the support from a majority of the respondents, we believe that the condition is not too restrictive.
38. We have amended the proposed Rule in response to the drafting comment to clarify that the requirement for “ordinary and usual course of business” relates to the nature of transaction carried out by the joint venture.

C. OTHER COMMENTS

39. We have also received other valuable comments from the respondents. They are mainly suggestions to further relax the Rules, including extending the proposed exemption to other asset acquisitions in the issuer’s ordinary course of business through public auctions or tenders, or joint venture projects containing a capital element. There were also comments on the general treatment of revenue transactions and capital transactions under the notifiable transaction Rules. These issues will be considered in a separate policy exercise.

CONSULTATION CONCLUSIONS

40. Except for certain changes as discussed above and some minor drafting changes, we have adopted our proposals and the Main Board Rule amendments largely as proposed in the consultation paper.
41. We have also amended the GEM Rules in line with the changes to the Main Board Rules.

- End -

APPENDIX LIST OF RESPONDENTS

Listed issuers

1. Beijing North Star Company Limited
2. Cheung Kong (Holdings) Limited
3. Cathay Pacific Airways Limited
4. CLP Holdings Limited
5. Great Eagle Holdings Limited
6. Hong Kong Aircraft Engineering Company Limited
7. Hutchison Whampoa Limited
8. Swire Pacific Limited
- 9-12. 4 Main Board issuers (name not disclosed at the respondents' request)

Professional and industry associations

1. The Chamber of Hong Kong Listed Companies
2. The Hong Kong Institute of Certified Public Accountants
3. The Hong Kong Institute of Chartered Secretaries
4. The Law Society of Hong Kong
5. The Real Estate Developers Association of Hong Kong

Market practitioners

1. Baker & McKenzie
2. Deloitte Touche Tohmatsu
3. KPMG
4. SBI E2-Capital (HK) Limited
5. Slaughter and May

