
JOINT NEWS RELEASE

14 December 2006

Waiver of general effect in relation to listed issuers engaging in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders

The Stock Exchange of Hong Kong Limited (SEHK) and the Securities and Futures Commission (the Commission or the SFC) jointly announce that the Commission has, pursuant to Rule 2.04 of the Main Board Listing Rules and Rule 2.07 of the GEM Listing Rules, consented to grant a conditional waiver of general effect (the Waiver) to listed issuers actively engaged in property development as a principal business activity (Qualified Issuers) from the shareholders' approval requirement of the Listing Rules in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders (Qualified Property Projects).

The scope of the Waiver is confined to the acquisition of Qualified Property Projects in certain scenarios (the Acquisitions). Such Acquisitions may be undertaken on a sole basis or by way of a joint venture arrangement, by Qualified Issuers on the basis that they are subject to alternative compliance requirements described under the Waiver(s) section of this Joint News Release.

The Waiver exempts Qualified Issuers engaging in the Acquisitions, whether on a sole basis or on a joint venture basis, from the shareholders' approval requirement of the Listing Rules.

Acquisitions undertaken on a sole basis

The Waiver applies to a Qualified Issuer engaging on a sole basis in an Acquisition which is in the ordinary and usual course of business of the Qualified Issuer and is of a capital nature or contains a capital element.

Acquisitions undertaken on a joint venture basis

The Waiver applies to property joint ventures that fall within Type A or Type B category as defined in this Joint News Release.

The applicable rules to be exempted are Rules 14.40 to 14.53 and Rules 14A.18 to 14A.20 of the Main Board Listing Rules and Rules 19.40 to 19.53 and Rules 20.18 to 20.20 of the GEM Listing Rules.

The Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Listing Rules and Chapters 19 and 20 of the GEM Listing Rules.



The Waiver is granted to a Qualified Issuer on the basis that the conditions of the Waiver will be satisfied. SEHK reserves the right to revoke or modify part or all of such Waiver granted in the event of non-fulfilment of any of the conditions of the Waiver or any change in the facts or circumstances of the successful transaction(s) for which the Waiver was granted. For the avoidance of doubt, non-compliance with either or both of the qualification and/or conditional requirements of the Waiver may give rise to disciplinary action on the part of SEHK.

In case of doubt, listed issuers are encouraged to consult with SEHK.

Duration of Waiver

SEHK and SFC believe that issues raised in the course of developing this waiver of general application should be exposed for public comment prior to amending the Listing Rules. It is intended that this Waiver should provide temporary relief whilst the consultation and Listing Rule amendment process is undertaken. Accordingly the Waiver is subject to a sunset provision and shall cease to have effect after 31 December 2008.

Definitions

In this Joint News Release, the following words and expressions shall have the following meanings ascribed to them:

Word/Expression	Meaning
“Acquisitions”	means acquisitions of Qualified Property Projects in certain scenarios set out in the Joint News Release;
“General Property Acquisition Mandate”	means an authority granted to a Qualified Issuer in advance by its shareholders in general meeting to engage in the Acquisitions;
“Qualified connected person”	means, for the purpose of the Waiver, any person that is a connected person, (defined in Rule 14A.11 of the Main Board Listing Rules and Rule 20.11 of the GEM Listing Rules), 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;
“Qualified Issuers”	means listed issuers actively engaged in property development as a principal business activity;
“Qualified Property Projects”	means land or property development projects acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders;
“Type A property joint venture”	means property joint venture formed with non-connected person;
“Type B property joint venture”	means property joint venture formed with Qualified connected person;



Word/Expression	Meaning
“Type C property joint venture”	means property joint venture formed with connected person other than Qualified connected person;
“Waiver”	means conditional waiver of general effect that exempts Qualified Issuers from the shareholders’ approval requirement of the Listing Rules in acquisitions of Qualified Property Projects in certain scenarios set out in the Joint News Release.

Background

A Qualified Issuer may from time to time engage in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders (Qualified Property Projects). Government-controlled entities, for this purpose, include Kowloon Canton Railway Corporation, Mass Transit Railway and Urban Renewal Authority. The acquisition of Qualified Property Projects (the Acquisition) may be undertaken on a sole basis or by way of joint venture arrangement.

Under the Listing Rules, an Acquisition by a Qualified Issuer on a sole basis (by itself or through its subsidiaries), will not constitute a notifiable transaction if the transaction is of revenue nature in the ordinary and usual course of business of the listed issuer (see Rule 14.04(1)(g) of the Main Board Listing Rules and Rule 19.04(1)(g) of the GEM Listing Rules). Transactions which are in the ordinary and usual course of business of the listed issuer but contain a capital element are therefore not exempt.

An Acquisition by a Qualified Issuer by way of a joint venture arrangement is subject to notifiable transaction rules described in Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules. Where the joint venture partner is a connected person, the transaction will also be subject to connected transaction rules set out in Chapter 14A of the Main Board Listing Rules and Chapter 20 of the GEM Listing Rules.

The Listing Rules are administered by the Stock Exchange of Hong Kong Limited (SEHK). SEHK has received a number of separate enquiries and submissions in relation to the potential impact of the Rule requirements on undertaking the Acquisitions. The common theme evolving from the submissions relate to the difficulty in terms of timing and confidentiality in disclosure of details and obtaining shareholders’ approval, where applicable, prior to submitting a bid. The submissions of bids conditional on shareholders’ approval are usually not acceptable to either the Government or Government-controlled entities or joint venture partners.

Both the SEHK and the SFC have concluded that the constraints on the Acquisitions warrant a conditional waiver of general effect (the Waiver), to be granted to Qualified Issuers engaging in such Acquisitions, from strict compliance with the shareholders’ approval requirement of the Listing Rules.

Description of the Waiver

The Waiver is applicable to certain scenarios where the Acquisitions are to be undertaken by a Qualified Issuer on the basis that they are subject to alternative compliance requirements described under the Waiver(s) section below.

**Acquisitions undertaken on a sole basis**

The Waiver exempts any Acquisition undertaken on a sole basis, which is in the ordinary and usual course of business of the Qualified Issuer and is of a capital nature or contains a capital element, from the shareholders' approval requirement of the Listing Rules.

Impact on Qualified Issuers

Acquisitions undertaken by a Qualified Issuer on a sole basis, which are in the ordinary and usual course of business of the Qualified Issuer and are of a capital nature or contain a capital element will, under the Waiver, not be subject to any otherwise applicable shareholders' approval requirement of Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules.

The Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Listing Rules and Chapters 19 and 20 of the GEM Listing Rules.

Acquisitions undertaken on a joint venture basis

The types of property joint ventures can be categorised as follows:

Type A	Joint venture with non-connected person
Type B	Joint venture with "qualified connected person"
Type C	Joint venture with connected person other than "qualified connected person"

Qualified connected person is defined, for the purpose of the Waiver, as any person that is a connected person, (defined in Rule 14A.11 of the Main Board Listing Rules and Rule 20.11 of the GEM Listing Rules), 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.

Implications of the Waiver on Acquisitions undertaken through the three types of property joint ventures

Type A	<u>Joint venture with non-connected person</u>
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The Waiver exempts any Acquisition undertaken on a joint venture basis that falls within Type A category (Type A property joint venture) from the shareholders' approval requirement of the Listing Rules.

Impact on Qualified Issuers

Under the Waiver, an Acquisition made by a Type A property joint venture will not be subject to any otherwise applicable shareholders' approval requirement of Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules.



The Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Listing Rules and Chapters 19 and 20 of the GEM Listing Rules.

Type B Joint venture with qualified connected person

The Waiver exempts any Acquisition undertaken on a joint venture basis that falls within Type B category (Type B property joint venture) from the shareholders' approval requirement of the Listing Rules.

Impact on Qualified Issuers

Under the Waiver, an Acquisition made by a Type B property joint venture will not, under the Waiver, need to be subject to the shareholders' approval requirement each time prior to submitting a bid. Instead, a Qualified Issuer can rely on an authority granted to it in advance by shareholders in the form of an annual general property acquisition mandate (General Property Acquisition Mandate) to engage in such an Acquisition.

Under the Waiver, the adoption of a general property acquisition mandate approach is subject to the set of conditions set out in the Waiver(s) section of this Joint News Release. Any refreshments of the General Property Acquisition Mandate before the next Annual General Meeting (AGM) must be approved by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting for the original grant of the General Property Acquisition Mandate or its subsequent refreshments before the next AGM.

The Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Listing Rules and Chapters 19 and 20 of the GEM Listing Rules.

Type C Joint venture with connected person other than qualified connected person

Property joint ventures that fall within Type C category are not covered by the Waiver and are subject to the normal connected transaction rules prescribed in Chapter 14A and Chapter 20 of the respective Main Board and GEM Listing Rules.

Waiver(s)

Acquisitions undertaken on a sole basis

Conditions

- i) The exemption from the shareholders' approval requirement of the Listing Rules is only applicable to a Qualified Issuer engaging in an Acquisition that is in the ordinary and usual course of business of the Qualified Issuer and is of a capital nature or contains a capital element;



- ii) The Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules; and
- iii) The Qualified Issuer will include appropriate details of each successful transaction in its subsequent annual reports.

Acquisitions undertaken on a joint venture basis

(A) Type A Property Joint Ventures

The exemption from the shareholders' approval requirement of the Listing Rules is applicable to a Type A property joint venture engaging in the Acquisition only where all of the following conditions are met:

Conditions

- i) **Purpose** — 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;
- ii) **Basis of arrangement** — each joint venture arrangement will be in the ordinary and usual course of business of the Qualified Issuer, on an arm's length basis and on normal commercial terms;
- iii) **Matters that require unanimous consent from all joint venture partners** — without prejudice to any other necessary consents, the joint venture entity may not, without the partners' consent, amongst others,
 - a) change the nature or scope of its business; or
 - b) enter into any transactions which are not on an arm's length basis, whether with a connected person or not;

Any changes must be consistent with the scope or purpose specified in the auction or tender;

- iv) **Financing** — the Qualified Issuer and its joint venture partner(s) will provide 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;
- v) **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;



- vi) **Disclosure requirements** — the Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules;
- vii) **Reporting requirements** — the Qualified Issuer will include appropriate details of each successful transaction, the terms of the joint venture and its dividend policy in its subsequent annual reports;

(B) Type B Property Joint Ventures (General Property Acquisition Mandate):

The exemption from the shareholders' approval requirement of the Listing Rules is applicable to a Type B property joint venture engaging in the Acquisition only where the Qualified Issuer has previously obtained a general property acquisition mandate (General Property Acquisition Mandate) from its shareholders for such purpose.

Conditions

Seeking approval for General Property Acquisition Mandate

To be eligible for prior approval by way of a General Property Acquisition Mandate, the following conditions are required to be met:

- i) **Purpose** — 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;
- ii) **Basis of arrangement** — each joint venture arrangement will be in the ordinary and usual course of business of the Qualified Issuer, on an arm's length basis and on normal commercial terms;
- iii) **Matters that require unanimous consent from all joint venture partners** — without prejudice to any other necessary consents, the joint venture entity may not, without the partners' consent, amongst others,
 - a) change the nature or scope of its business; or
 - b) enter into any transactions which are not on an arm's length basis, whether with a connected person or not.

Any changes must be consistent with the scope or purpose specified in the auction or tender;

- iv) **Financing** — the Qualified Issuer and its joint venture partner(s) will provide 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;



- v) **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;
- vi) **Shareholders' approval** — the General Property Acquisition Mandate, including the maximum monetary value to be attached to an annual cap, must be approved by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting;
- vii) **Cap** — a cap (the Annual Cap) is set on a maximum aggregate annual basis in relation to the attributable portion of capital commitment in respect of the formation of one or more property joint ventures for the Acquisitions. Capital commitment, for the purpose of the Annual Cap, includes the cost of Acquisitions, the arranging of financing and other costs the issuer has committed to incur in relation to the development of the project(s). Each property joint venture must satisfy the conditions set out in i) to v) above. The basis for setting the Annual Cap shall be disclosed in the circular to shareholders of the Qualified Issuer;
- viii) **Opinion from independent non-executive directors (INEDs) and an independent financial adviser (IFA)** — both the INEDs and the IFA would need to opine affirmatively that the proposed Annual Cap and the underlying assumptions are reasonable;
- ix) **Mandate period** — The mandate continues in force only until:
 - a) the conclusion of the first annual general meeting (AGM) 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
 - b) revoked or varied by ordinary resolution of the shareholders in general meeting, whichever occurs first;

Contents of the circular to shareholders in relation to the General Property Acquisition Mandate

The circular must contain at least:

- x) **The purpose and intended use of the General Property Acquisition Mandate** — the circular should state that the General Property Acquisition Mandate is only applicable to a Qualified Issuer proposing to enter into one or more Type B property joint ventures engaging in any acquisition of Qualified Property Projects;
- xi) **The conditions that are required to be fulfilled** — to be eligible for the use of the General Property Acquisition Mandate, each Type B Property joint venture will be required to fulfill the conditions set out in i) to v) above;



xii) **Description of the Annual Cap —**

- a) The circular must contain details of the Annual Cap for the purpose of the General Property Acquisition Mandate and an explanation of how and the basis upon which it was calculated;
- b) The Annual Cap is set on a maximum aggregate annual basis in relation to the attributable portion of capital commitment in respect of the formation of one or more property joint ventures for the Acquisitions;
- c) The 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;
- d) The Annual Cap must be made based on reasonable assumptions, details of which must be disclosed;

xiii) **Effective period of the Annual Cap —** the Annual Cap shall be co-terminous with the expiry of the General Property Acquisition Mandate;

xiv) **Positive opinion from INEDs and IFA and the basis of the opinion —** the circular must contain an affirmative opinion from both the INEDs and the IFA that the proposed Annual Cap and the underlying assumptions are reasonable;

xv) **Voting requirement —**

- a) Any vote of shareholders taken at a general meeting to approve the General Property Acquisition Mandate must be taken on a poll;
- b) The issuer shall announce the results of the poll in accordance with Rule 13.39(5) of the Main Board Listing Rules and Rule 17.47(5) of the GEM Listing Rules;

Requirements following approval of General Property Acquisition Mandate

xvi) **Confirmation from Qualified Issuer —** written confirmation, upon the successful transaction being legally binding, that the controlling shareholder(s) of the Qualified Issuer and the associates (as defined in Rule 14A.11(4) of the Main Board Listing Rules and Rule 20.11(4) of the GEM Listing Rules) 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 the purpose of the Waiver, 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 partner(s) or its controlling shareholder(s) or its/their associates that would meet the conditions of the Waiver;



- xvii) **Disclosure requirements** — the Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapter 14 of the Main Board Listing Rules and Chapter 19 of the GEM Listing Rules;
- (xviii) **Reporting requirements** — the Qualified Issuer will include appropriate information on the basis of the Annual Cap, together with details of each successful transaction, the terms of the joint venture and its dividend policy in its subsequent annual reports;
- (xix) **Review by INEDs based on IFA opinion** — the INEDs shall review all successful transactions under joint venture arrangements annually. The review is to be based on an opinion from an IFA, and to be confirmed by the INEDs in the annual report, that the successful transaction has been carried out in accordance with:
- a) the initial purpose of the joint venture; and
 - b) the relevant agreement governing the transaction on terms that are fair and reasonable and in the interests of the shareholders of the Qualified Issuer as a whole;
- xx) **Refreshment of the General Property Acquisition Mandate** — where the Qualified Issuer has obtained a General Property Acquisition Mandate from its shareholders pursuant to the conditions as set out in this section:
- a) any refreshments of the General Property Acquisition Mandate before the next AGM must be approved by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting; and
 - b) the relevant circular to shareholders must contain information relating to the use of the General Property Acquisition Mandate, the Qualified Issuer's history of refreshments of the mandate since the last AGM and the status of each of the property joint ventures that were formed under the mandate.

The Waiver is granted to a Qualified Issuer on the basis that the conditions of the Waiver will be satisfied. SEHK reserves the right to revoke or modify part or all of such Waiver granted in the event of non-fulfilment of any of the conditions of the Waiver or any change in the facts or circumstances of the successful transaction(s) for which the Waiver was granted. For the avoidance of doubt, non-compliance with either or both of the qualification and/or conditional requirements of the Waiver may give rise to disciplinary action on the part of SEHK.

Duration of Waiver

SEHK and SFC believe that issues raised in the course of developing this waiver of general application should be exposed for public comment prior to amending the Listing Rules. It is intended that this Waiver should provide temporary relief whilst the consultation and Listing Rule amendment process is undertaken. Accordingly the Waiver is subject to a sunset provision and shall cease to have effect after 31 December 2008.