

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp201009.pdf>

Where there is insufficient space, please attach additional pages as necessary.

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?

Yes

No

Please provide reasons.

We agree with the reasons provided in the consultative paper

- 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?

Yes

No

Please provide reasons.

We agree with the reasons provided in the consultative paper.

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

Yes

No

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.

In general, if it is evidenced that the government auctions of any jurisdictions are structured and established and the process is carried out in a fair and transparent fashion, demonstrating high integrity, they should be qualified for QPA exemption.

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

Yes

No

Please provide reasons.

We agree to the granting of waivers on an individual case basis. This would give the Exchange more flexibility to satisfy themselves with the circumstances of each case.

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

Yes

No

Please provide reasons.

The factors are comprehensive and all rounded.

(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?

Yes

No

Please provide reasons.

We agree with the reasoning as stated in the consultation paper.

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?

Yes

No

Please provide reasons.

We agree with the reasoning as stated in the consultation paper.

(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?

Yes

No

Please provide reasons.

We agree with the reasoning as stated in the consultation paper.

(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?

Yes

No

Please provide reasons.

We agree and at the same time would like to make a comment. The new proposed rule here states that the successful bidding for a piece of land should be disclosed as it is available. We are fine with this. In any event, under the statutory-backed Price Sensitive Information disclosure regime, this information is considered price sensitive and warrants a disclosure. However we feel that it is necessary to give the company concerned a reasonable period of time for the preparation of the announcement. The phrase "as it is available" is vague in practice. Companies should be allowed to first put out a holding statement before a formal announcement with full details can be issued subsequently. Guidance and clarification from the Exchange on the timeline is necessary.

(5) Property valuation

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

Yes

No

Please provide reasons.

The fact that the QPA exemption can be expanded to government land acquisitions through auctions or tenders in the mainland and other jurisdictions is on the basis that there is a satisfactory level of integrity of the system in those jurisdictions and that the auctioned price is a true reflection of the market price. Hence, it is redundant to require a property valuation report after the successful bid.

(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?

Yes

No

If you answer is “Yes”, please state.

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?

Yes

No

Please provide reasons.

We agree with the reasoning as stated in the consultative paper.

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

Yes

No

If your answer is “No”, please provide reasons and alternative views.

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

Yes

No

If your answer is “Yes”, please state.

In reviewing this consultation paper, we noted an issue concerning the definition of Revenue nature vs. Capital nature of a transaction and in deciding if such transaction would be eligible for Revenue Exemption under the notifiable transaction requirements.

The simple delineation used in judging a land acquisition based on whether it is acquired for construction and sale or for investment holding and/or leasing may not work amidst the increasingly fast changing market conditions. There are cases where a property that is originally intended for sales would be held for long term due to poor market and sales conditions; or the other way round where a property that is intended for long term holding might be sold to a bullish third party investor as a whole lot. It is not uncommon that developers would change their business strategies based on the prevailing market conditions.

Moreover, there are increasingly more development projects that are of a mixed nature, partly sale and partly investment holding and rental. This makes the definition of whether a project is of a revenue or capital nature more blur than ever.

Determining whether a transaction is eligible for Revenue Exemption solely by looking at its original intention may not be good enough. We hope the Exchange would study this aspect to ensure that consideration for notifiable transaction exemption can accommodate the need of developers to adjust their business strategies from time to time.

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