



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

19 November 2010

By email < response@hkex.com.hk > and by post

Our Ref.: C/CFC, M73782

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

Re: [Consultation paper on proposed changes to requirements for qualified property acquisitions and formation of joint ventures](#)

The Hong Kong Institute of Certified Public Accountants has considered the above consultation paper and our comments on the proposals are set out in the questionnaire attached to this letter.

If you have any questions on our submission, please feel free to contact me at the Institute, on 2287 7084.

Yours faithfully,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, flowing style.

Peter Tisman
Director, Specialist Practices

PMT/ML/ay
Encl.

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

We invite interested parties to respond to the Consultation Paper on Proposed Changes to Requirements for Qualified Property Acquisitions and Formation of Joint Ventures, which can be downloaded from the HKEx website at:

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

This Questionnaire contains the Personal Information Collection and Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEx both Part A and Part B of this Questionnaire no later than **12 November 2010** by one of the following methods:

By mail or hand delivery to	Corporate Communications Department Hong Kong Exchanges and Clearing Limited 12 th Floor, One International Finance Centre 1 Harbour View Street Central Hong Kong
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**Re: Consultation Paper on Proposed Changes to
Requirements for Qualified Property Acquisitions
and Formation of Joint Ventures**

By fax to	(852) 2524-0149
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By e-mail to	response@hkex.com.hk
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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.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

Part A General Information of the Respondent

All fields are mandatory, except the fields with an asterisk (*) if you are an individual respondent.

Name/ Company Name*	:	Hong Kong Institute of Certified Public Accountants
Contact Person*	:	Peter Tisman
Title*	:	Director, Specialist Practices
Phone Number	:	2287 7084
E-mail Address	:	peter@hkipa.org.hk

If you **do not wish** to disclose the above information to the public, please check the box here:

I do not wish to disclose the information above.

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.

While we do not necessarily consider that all the practical problems relating to the current shareholder approval requirements are insurmountable, and we note that property developers have been able to acquire land in the Mainland through auctions or tenders, in principle we do not object to the proposal.
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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 (subject to the condition mentioned below).

No

Please provide reasons.

We have some reservations about making reference to the definition of "PRC Governmental Body" in Rule 19A.04. This definition is quite open-ended, as it includes but, explicitly, is "not limited to" the three broad levels of government referred to in footnote 5 on page 7 of the consultation paper, i.e., (a) central government, (b) provincial-level governments and (c) local governments.

We have some doubt about the argument in paragraph 25 of the consultation paper to justify taking a different view from that taken by the Stock Exchange in a 2008 consultation paper on a related subject. This had suggested that where investors are required to give up the right to vote on an acquisition, there must be a high degree of confidence in the transparency and integrity of the auction process in order to compensate for the dispensation from shareholders' approval. It is now suggested that, while transparency is desirable, it is not a necessary criterion for granting exemption where land acquisition is part of the issuers' normal course of business, on the basis that there is no distinction between dealing with other third parties, where there may be no transparency in the negotiation process, and dealing with the government. However, this may not be comparing like with like, as no similar exemptions are given when conducting transactions that are subject to the notifiable transaction rules with other third parties.

In our view, therefore, in order to qualify for exemption of 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.

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 order for Hong Kong to maintain its status as a major international finance centre and capital market, there should be a level-playing field for all jurisdictions. Accordingly, we are of the view that acquisition of land or property development projects by property developers in any other jurisdictions that meet the requisite criteria (paragraphs 23 and 27 of the consultation paper and our comments in response to question 1(b) above refer) should qualify for the 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 consider that granting similar waivers to government land acquisitions in other jurisdictions on an individual case basis would be a reasonable interim measure. The longer-term goal should be to extend the QPA exemption to jurisdictions that can meet the relevant criteria (see our comments in response to Q2 above).

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

Yes

No

Please provide reasons.

(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.

This would place the responsibility on the shoulders of the board, where it rightly belongs, for making a business decision on the most appropriate structure and terms of a joint venture arrangement. Such arrangements should be fair and reasonable and in the interests of the shareholders as a whole.

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 believe that the additional confirmation by the independent board committee and independent financial adviser 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, should be a sufficient safeguard for property joint ventures with Qualified Connected Persons.

(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 proposal. There may be practical difficulties for issuers to produce meaningful terms of possible transactions, and monetary caps on the size of possible investments, in the coming year, for shareholders to vote on whether to give a general mandate to the issuer to form joint ventures with Qualified Connected Persons, within the agreed parameters.

(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.

This proposal would result in more timely disclosure of information by listed issuers, which will help to create a better informed and more efficient stock market. We believe that it is good practice for issuers also to list the announcements made during the year in their annual report, although we are not proposing that this be made a listing-rule requirement.

(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.

As the price arrived at through a competitive bidding or tendering process should already reflect the market value of the property, we would accept that there is no need to prepare a property valuation report after a successful bid or a tender.

(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 reasons for the proposal, as set out in paragraphs 56 to 59 of the consultation paper.

However, the reason for requiring that, in order to qualify for the "revenue joint venture (JV) projects" exemption, a JV must be restricted to a single purpose project is not entirely clear to us. It may be that if a reliable JV partner has been identified, an issuer may wish to undertake multiple projects with that partner, without the inconvenience of having to set up a separate JV in each instance. We note that, in any case, the other condition for the exemption is that the JV agreement should contain clause(s) to require unanimous consent from the JV partners on any change of business nature or scope of the JV.

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.

- End -