Listing Rules Amendments Update

On 21 January 2011, The Stock Exchange of Hong Kong Limited (the “Exchange”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, published Consultation Conclusions on proposed changes to the rules relating to listed issuers’ property acquisitions and formation of joint ventures. The changes, which will come into effect on 1 February 2011, further expand the flexibility given to listed property developers to increase their land banks and enter into joint ventures to develop properties without the need to seek shareholder approval.

The amendments to the listing rules:

- expand the scope of property acquisitions exempt from shareholder approval requirements (“Qualified Property Acquisitions”) to cover government land acquisitions in mainland China through public auctions or tenders (the current exemption only applies to land acquisitions from the Hong Kong government). For government land acquisitions in other jurisdictions, individual waiver applications will be considered if they meet certain prescribed criteria;
- remove certain conditions imposed on Qualified Property Acquisitions relating to (a) financing and profit distribution arrangements when they are undertaken on a joint basis and (b) the need to obtain an annual general mandate from shareholders before engaging in any Qualified Property Acquisition on a joint basis with a joint venture party that is a connected person solely as a result of it being a substantial shareholder in an existing project with the listed issuer;
- require disclosure of the details of Qualified Property Acquisitions by way of announcement and circular to shareholders as soon as possible after land has been successfully tendered for;
- dispense with the need to conduct a valuation for Qualified Property Acquisitions; and
- exempt the formation of joint ventures established to engage in a single-purpose development project from the requirement to gain shareholder approval.

We set out below details of the Listing Rules amendments for your ease of reference.

I. Chapter 5 Valuation and Information on Properties

If a property is acquired under a Qualified Property Acquisition, the requirements of Chapter 5 with respect to performing a valuation of the property do not apply.
Under Listing Rules 14.04(10C), a Qualified Property Acquisition means an acquisition of land or property development project in Hong Kong from Government or Government-controlled entities through a public auction or tender; or an acquisition of governmental land in the Mainland from a PRC Governmental Body through a tender (招標), auction (拍賣), or listing-for-sale (掛牌) governed by the PRC law;

The Exchange may relax this requirement to accept land acquired in other jurisdictions from governmental bodies through public auctions or tenders.

Factors which the Exchange will consider include:

(i) whether the government land is acquired through a competitive bidding process regulated by legislation and/or requirements in the relevant jurisdiction;

(ii) whether the bidding process is fairly structured and established, and bidders have no discretion to change pre-established terms;

(iii) whether acquiring government land through a bidding process is a common practice in that jurisdiction; and

(iv) the problems faced by the issuer in complying with the notifiable transaction Rules for the land acquisition.

The definition of "Qualified Property Projects" (which covers only property projects acquired in Hong Kong through publicly auctions) is repealed.

II. Chapter 14 Notifiable Transactions

1. Exclusion from the definition of “transaction” the formation of a joint venture where:

(i) the joint venture is engaging in a single purpose project/transaction which is of a revenue nature in the ordinary and usual course of business of the issuer;

(ii) the joint venture arrangement is on an arm’s length basis and on normal commercial terms; and

(iii) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners’ unanimous consent:

   (A) change the nature or scope of its business; or

   (B) enter into any transactions which are not on an arm’s length basis.

2. Clarifications on what factors are to be considered when determining whether property development is a principal activity of a listed company (in other words, whether a listed company is a Qualified Issuer). These factors are:

(a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of its latest published annual financial statements;

(b) property development activity is reported as a separate and continuing segment (if not the only segment) in its latest published financial statements; and

(c) its format for reporting segmental information and its latest published annual financial statements have fully complied with the requirements of relevant accounting standards adopted for the preparation of its annual financial statements on reporting of segment revenue and segment expense.
3. Revised conditions for exemptions for Qualified Property Acquisitions which constitute major transactions or very substantial acquisitions:

14.33A A Qualified Property Acquisition which constitutes a major transaction or very substantial acquisition is exempt from shareholders’ approval if:

1. it is undertaken on a sole basis by a Qualified Issuer (please see II 2 above) in its ordinary and usual course of business; or

2. it is undertaken by a Qualified Issuer and other party or parties on a joint basis and:
   
   (a) the project 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 document;
   
   (b) each joint venture arrangement must be on an arm’s length basis and on normal commercial terms;
   
   (c) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners’ unanimous consent:
      
      (i) change the nature or scope of its business, and if there are changes then they must still be consistent with the scope or purpose specified in the auction or tender document; or
      
      (ii) enter into any transactions which are not on an arm’s length basis; and
   
   (d) the Qualified Issuer’s board has confirmed that the Qualified Property Acquisition is in the Qualified Issuer’s ordinary and usual course of business; and that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.

4. New and less burdensome disclosure requirements for Qualified Property Acquisitions:

14.33B (1) The Qualified Issuer must publish an announcement as soon as possible after notification of the success of a bid by it or the joint venture for a Qualified Property Acquisition falling under Rule 14.33A and send a circular to its shareholders.

(2) The announcement and circular must contain:

   (a) details of the acquisition;
   
   (b) details of the joint venture, if any, including
      
      (i) the joint venture’s terms and status;
      
      (ii) its dividend and distribution policy; and
(iii) the joint venture’s financial and capital commitment and the Qualified Issuer’s share in it; and

(c) information to demonstrate that the conditions in Rule 14.33A(1) or (2) (please see II 3 above) were met.

(3) The announcement and circular requirements under Chapter 14 apply to the acquisition and the joint venture, if any, according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

III. Chapter 14A Connected Transactions

1. Revised exemption conditions for Qualified Property Acquisitions

14A.72 A Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is exempt from independent shareholders’ approval requirements if:

(1) it satisfies the requirements in Rule 14.33A(2)(a) to (d) (please see II 3 above); and

(2) the independent board committee and the independent financial adviser have confirmed that the Qualified Property Acquisition is in the Qualified Issuer’s ordinary and usual course of business; and that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.

All other conditions such as the annual cap and other content requirements of the joint venture agreement are repealed.

2. New and less burdensome disclosure requirements for Qualified Property Acquisitions:

14A.73 (1) A Qualified Issuer must publish an announcement as soon as possible after notification of the success of a bid by a joint venture for a Qualified Property Acquisition falling under Rule 14A.72 and send a circular to its shareholders.

(2) The announcement and circular must contain:

(a) information required in Rules 14.33B(2)(a) and (b) (please see II 4 above); and

(b) information to demonstrate that the conditions in Rule 14A.72 (please see III 1 above) were met.

(3) The announcement, circular and reporting requirements under Chapter 14A apply to the acquisition and the joint venture according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.
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