

Less Onerous Property Valuation Requirements

Quick Read

The Stock Exchange of Hong Kong Limited (“SEHK”) and Securities and Futures Commission (“SFC”) jointly published their “*Joint Consultation Conclusions on Proposed Changes to Property Valuation Requirements*” (“**Consultation Conclusions**”) on 20 October 2011. This was in response to the “*Joint Consultation Paper on Proposed Changes to Property Valuation Requirements*” published on 3 December 2010.

The major purpose of the consultation was to eliminate unnecessary burdens on both listed issuers and listing applicants by streamlining property valuation requirements so that the disclosure regime for circulars and prospectuses could be more focused and relevant.

The corresponding class exemption notice under the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap 32L of the Laws of Hong Kong) (“**Class Exemption Notice**”), subject to negative vetting by the Legislative Council, comes into effect on **1 January 2012**. The amendments to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“**Listing Rules**”) take effect when the Class Exemption Notice becomes effective.

Proposals Adopted for Listed Issuers

For listed issuers, the major proposals adopted are briefly summarised as follows:

- a. **For a major transaction or above in relation to acquisition or disposal of a property** - Generally, the listed issuer is subject to the property valuation requirements and a full text of the valuation report should be included in the circular unless an exemption applies.
Exemptions: For a property which is acquired from the Hong Kong Government at a public auction or by sealed tender or under a Qualified Property Acquisition (as defined in the Listing Rules), the property valuation requirements are not applicable.
- b. **For acquisition or disposal of an interest in a company listed on SEHK** - The listed issuer is not subject to the property valuation requirements and only an overview containing relevant information such as geographical location, number, approximate size range, intention of use and how the property interests are held etc. (“**Overview**”) must be included in the circular. However, the listed issuer is subject to the property valuation requirements and full text of the valuation reports is required to be included in the circular if the subject transaction is a connected transaction.

c. For a major transaction or above in relation to acquisition or disposal of an unlisted company whose assets consist solely or mainly of property

- Generally, the listed issuer is subject to the property valuation requirements unless an exemption applies.

Exemption: If a property interest has a carrying amount which is below 1% of the listed issuer's total assets, it is not subject to the property valuation requirements. The exemption is subject to a cap: the total carrying amount of exempted property interests must not exceed 10% of the listed issuer's total assets. An Overview should be included in the circular describing the exempted property interests.

Practical step: The listed issuer should identify the carrying amount of each property interest (which is below 1%) and sum up from the lowest values until the 10% limit is reached. Property interests comprising the lowest 10% are exempted and the remaining property interests are subject to the property valuation requirements.

Summary disclosure: Summary disclosure of the relevant valuation report in the prescribed form (as explained in the Consultation Conclusions) is allowed if the market value of a property interest is below 5% of the listed issuer's total valued property interests. In this regard, the valuation report should be made available for public inspection.

Mining activities: For property interests ancillary to mining activities, separate valuation of property interests is not required if the mining activities and ancillary property interests have been valued as a business or an operating entity.

Please note that if the subject transaction is a connected transaction, the above exemptions

do not apply. In this circumstance, the listed issuer is subject to the property valuation requirements and a full text of the valuation reports must be included in the circular.

d. For a very substantial acquisition

- Valuations of the existing property interests of the listed issuer making the acquisition are not required.

Proposals Adopted for Listing Applicants

For listing applicants, different requirements apply to property activities and non-property activities respectively. Accordingly, a listing applicant should classify its property interests into property activities and non-property activities for the purpose of determining the applicable requirements. The major proposals adopted for listing applicants are briefly summarised as follows:

REQUIREMENTS FOR PROPERTY ACTIVITIES

"Property activities" are defined as "holding (directly or indirectly) and/or development of properties for letting or retention as investments, or the purchase or development of properties for subsequent sale, or for subsequent letting or retention as investments. It does not include holding of properties for own use".

Any property interests not falling within the definition of "property activities" are classified as "non-property activities". Also, the timing reference point for classifying a property interest into property activity or non-property activity is the listing document date.

If property interests are classified as property activities, the following requirements apply:

a. For all property interests generally

- Generally, the listing applicant is subject to the property valuation requirements unless an exemption applies.

Exemption: If a property interest has a carrying amount which is below 1% of the

listing applicant's total assets, that interest is exempted from the property valuation requirements. The exemption is subject to a cap: the total carrying amount of exempted property interests must not exceed 10% of the listing applicant's total assets.

Practical step: The listing applicant should identify the carrying amount of each property interest (which is below 1%) and sum up from the lowest values until the 10% limit is reached. Property interests comprising the lowest 10% are exempted and the remaining property interests are subject to the property valuation requirements.

Subject to the exemption mentioned above, full text of the valuation reports should be disclosed in the listing document for all property interests which are required to be valued under property activities except where summary disclosure is allowed (please see below).

- b. For a property interest valued at less than 5% of the listing applicant's total valued property interests** - Summary disclosure of the relevant valuation report in the prescribed form (as explained in the Consultation Conclusions) is allowed if the market value of a property interest is less than 5% of the listing applicant's total property interests which are required to be valued under property activities. In this circumstance, a full text of the valuation report should be made available for public inspection.
- c. For all property interests that have been exempted from the property valuation requirements** - An Overview should be included in the listing document describing the exempted property interests.

REQUIREMENTS FOR NON-PROPERTY ACTIVITIES

As explained above, any property interests not falling within the definition of "property activities" are classified as "non-property activities" and they

normally refer to properties owned and occupied for own use.

If property interests are classified as non-property activities, the following requirements apply:

- a. For a property interest with a carrying amount of 15% or above of the total assets** - If the carrying amount of a property interest is or is above 15% of the listing applicant's total assets, the listing applicant is subject to the property valuation requirements and a full text of the valuation report should be included in the listing document. The listing applicant should also include a statement stating that no other single property interest of its non-property activities has a carrying amount of 15% or above of its total assets.
- b. For all property interests which have been exempted from the property valuation requirements** - An Overview should be included in the listing document describing the exempted property interests.

MINING ACTIVITIES

Separate valuation of property interests ancillary to mining activities are not required if the mining activities and ancillary property interests have been valued as a business or an operating entity.

GENERAL DISCLOSURE OBLIGATIONS

Listing applicants should note that the above provisions are only minimum requirements and there are also general disclosure obligations in relation to property valuations under the Companies Ordinance¹ ("CO") (Cap 32 of the Laws of Hong Kong) and the Listing Rules². Basically, a prospectus is required to contain sufficient particulars and information which are necessary to enable an investor to make an informed judgement of a listing applicant. The general obligations may require the inclusion of more information than is specified in the Class Exemption Notice and the Listing Rules.

Class Exemption Notice and Listing Rule Amendments

SFC has issued the Class Exemption Notice for the purpose of giving effect to the proposals adopted relating to property valuation requirements for listing applicants. SEHK has also amended the Listing Rules to incorporate the proposed changes adopted.

As mentioned above, the Class Exemption Notice, subject to negative vetting by the Legislative Council, comes into effect on **1 January 2012**. The Listing Rule amendments take effect when the Class Exemption Notice becomes effective.

Before the Class Exemption Notice and the Listing Rule amendments become effective, a listing applicant may apply for a waiver from strict compliance of the property valuation requirements under the CO and the Listing Rules. SFC and SEHK will consider waiver applications on a case-by-case basis.

You can download copies of the Consultation Conclusions via the link below:

<http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/PVConclusionsEng20102011.pdf>

1 Please refer to Paragraph 3 of the Third Schedule to the Companies Ordinance, "Matters to be specified in prospectus and reports to be set out therein".

2 Please refer to Listing Rule 11.07.

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris
TAUIL& CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro
ALLIANCE LAW FIRM: Spain (Ramón & Cajal)

Please visit www.mayerbrownjism.com for comprehensive contact information for all Mayer Brown offices.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications Disclaimer.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe - Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2011. The Mayer Brown Practices. All rights reserved.

Contact Us

For inquiries related to this Legal Update, please contact the following persons or your usual contacts with our firm.

Jeckle Chiu

Partner

T: +852 2843 2245

E: jeckle.chiu@mayerbrownjism.com

Juliana Lee

Associate

T: +852 2843 2455

E: juliana.lee@mayerbrownjism.com