



2011 FEB 11 PM 5:16

11 February 2011

BY HAND



Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Dear 

Re: Joint Consultation Paper on Proposed Changes to Property Valuation Requirements (the “Consultation Paper”)

We refer to the captioned.

We have reviewed the Consultation Paper suggested by the Securities and Futures Commission and the Stock Exchange of Hong Kong jointly (the “Regulators”) on the property valuation requirements to be imposed by the Listing Rules and would like to tender our comments and observations. We attach herewith our feedback to some of the questions in Part A and Part B of the Questionnaire in Appendix I hereto. Our views are summarized below for your kind attention.

Materialism

We are happy to see the Consultation Paper suggesting a clear basis to determine materialism which we agree is very important. Due to the complexity of the property portfolio to the going concern business of the applicants or issuers we have encountered in previous listings, we would suggest to have the valuer work together with the sponsor and the applicant or issuer to take serious consideration of the facts and circumstances of the applicant or issuer prior to determining materialism, especially when the applicant or issuer has a significant number of properties which will affect its going concern business. We considered that it is important to report in the prospectus or circular the details of leased properties, where the purpose of the leases is obviously to enable the applicant or issuer to carry out its normal business operations.

Single Property Interest

We are happy to see the additional details of the term “single property interest” and its guidance compared to the previous version on 19 March 2010. We would like to stress the importance of a valuer to provide his professional view to the sponsor and the applicant or issuer on the rationale and the ways to group the various property interests into a “single property interest”.



Carrying Amount

We noted from the Consultation Paper the importance of the carrying amount of a single property interest in calculating the different percentage rules in determining either a valuation report or summary disclosure or overview of property disclosure is required. We would like to restate our last proposal dated 7 April 2010 that basing a property's value on its carrying amount is incorrect. As said in the Consultation Paper Para 95. "A property interest may be recorded in the accounts at historical value and so may not reflect the current market value". Knowing that there may have potential risk in underestimating the value of a property which may lead to untrue financial information, the appropriate way is to conduct a calculation on the market value of the property interest by reference to available market sales comparable without the requirement of a valuation report. This is in line with the existing accounting practice. We consider that this not only eliminated the potential risk in underestimating the value of a property, and also eliminated the potential legal risk to sponsor, accountant and the applicant or issuer in producing a false prospectus or circular.

Leasehold Properties

We have reservations regarding the suggestion to remove all the leased property interests from the property valuation requirements in the Consultation Paper due to "unnecessary burden" of time and cost. We consider high transparency is a key to the success of the Hong Kong Stock Exchange compared to other stock exchanges. A going concern business of a company depends very much on its employment of production properties, and such properties may or may not be owned by the company but essential to the going concern business. In some cases, the leasehold property interests are allowed to be sub-let of which the sub-let right may have value.

Removing leasehold properties due to unnecessary burden to the applicant or issuer (the below 1% rule) from the reporting requirement and without giving the valuer a chance to read the details of the lease is incorrect. We would propose leasehold properties having 3 years or less unexpired term should be removed from the valuation report provided they are not material to the going business operation of the company.

We understand the need to review the Listing Rules of Hong Kong Stock Exchange to enable Hong Kong's competitive advantage over other markets. However, various financial incidents such as Lehman minibonds incident suggest that investors have to be well protected and well informed beforehand.

Qualified Valuers List

In our previous discussion, we emphasized the importance to the public the quality of property valuations, and we are ready to take up this responsibility as a professional institute in Hong Kong. We suggest property valuations under the Listing Rules must be performed by valuers on the List of Property Valuers for Undertaking Valuation for Incorporation or Reference in Listing Particulars and Circulars and Valuation in Connection with Takeover and Mergers published from time to time by the HKIS. The HKIS has prepared the list in 2005 in response to the request from the Regulators for a list of valuers suitably qualified for undertaking property valuations incorporated in prospectus and circulars.

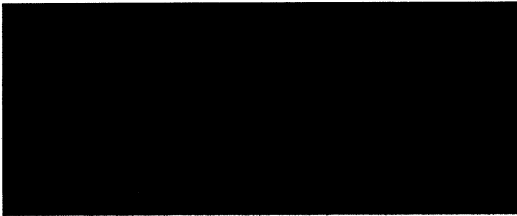


Last but not least, it is our opinion that a valuation process provides an additional due diligence check on the properties portfolio and as such offers greater protection and security to the general public and the investors. Our experiences have shown that in some cases it was the valuer who discovered irregularities in the production facilities, such as misrepresentation and misstatements, and have asked the sponsors and applicants to rectify those defects prior to listing. The general environs in Hong Kong is asking tighter regulations and more cross-checks on listing applications and transactions, rather than simplify the due diligence process. We consider more thorough valuation reports and greater transparency are the ways to go.

To facilitate the continuity of the co-operation between the HKIS GP Division and the Regulators in protecting public interests relating to property valuation issues in the Listing Rules, we are prepared to discuss and share our views with the Regulators from time to time.

Should you have any query, please feel free to contact our Council Member,

Yours sincerely,



The Hong Kong Institute of Surveyors

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Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed changes discussed in the Consultation Paper downloadable from the SFC website at: <https://www.sfc.hk/sfcConsultation/EN/sfcConsultFileServlet?name=PropertyValuation&type=1&docno=1> or HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp201012.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

Part I: Proposals To Amend Property Valuation Requirements For Applicants

Proposals for all Applicants

1. Do you agree with the proposed disclosure guidance for material property interests in paragraph 61 of the Consultation Paper?

Yes

No

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

2. Do you agree that the proposed definition of property activities is appropriate?

Yes

No

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

Unless it is a vacant property, a property can be used for various activities, occupied for own use is an activity to a property. The HKIS has reservation for the classification of “property activities” and “non-property activities” for valuation sake. Extra burden to the applicants or issuers and the professional parties are expected, and this is not in line with the aim of the Consultation Paper to remove unnecessary burden on applicants for listing and issuers.

3. Do you agree with the proposed definition of a property interest in paragraph 67 of the Consultation Paper?

Yes

No

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

4. Do you agree with the proposed guidance on what should be treated as a single property interest in paragraph 69 of the Consultation Paper?

Yes

No

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

5. In addition to the information mentioned in paragraph 74 of the Consultation Paper, is there any other information that should be disclosed in a valuation report that is not required at present by the Listing Rules? Also, is there any information that is no longer required to be disclosed in a valuation report?

Yes

No

If your answer is “Yes”, please state.

The existing disclosure requirement by the Listing Rules is insufficient to reflect the true picture of a property being valued nowadays. Under the general disclosure obligations to the applicants or issuers, we opined that more detailed information of the property being valued should be disclosed to let the public to have a thorough understanding of the property being valued. We consider the report disclosure requirement as required in the HKIS Property Valuation Standards should be followed and is a good practice to the applicants or issuers. In fact, the valuation report disclosure requirement in the HKIS Property Valuation Standards is mandatory for our members to follow.

6. Do you agree with the proposal to maintain the effective date at which the property was valued under Rule 5.07 at not more than 3 months before the date of the listing document?

Yes

No

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

7. Do you think that the prospectus law should retain requirements for property valuations in line with the proposals in this paper? Alternatively is it sufficient for the prospectus law to rely on the general disclosure obligation under the Companies Ordinance?

Yes

No

Please give reasons.

We understand the need to review the Listing Rules of Hong Kong Stock Exchange to enable Hong Kong's competitive advantage over other markets. However, various financial incidents such as the Lehman minibonds incident suggest that investors have to be well protected and well informed beforehand. We are of the opinion that the existing requirement for property valuation under the prospectus law should be retained.

Proposals for Property Activities

8. Do you agree not to require property valuations and disclosing valuation information if the carrying amount of a property interest of an applicant's property activities is below a percentage of its total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Basing a property's value on its carrying amount is incorrect. As said in the Consultation Paper Para 95. "A property interest may be recorded in the accounts at historical value and so may not reflect current market value". Knowing that there may be potential risk in underestimating the value of a property which may lead to an untrue financial information, the appropriate way is to conduct a calculation on the market value of the property interest by reference to available market sales comparable without the requirement of a valuation report. This is in line with the existing accounting practice. We consider that this not only eliminates the potential risk in underestimating the value of a property, and also eliminates the potential legal risk to sponsor, accountant and the applicant or issuer in producing a false prospectus or circular.

9. Do you agree not to require valuation of a property interest with carrying amount below 1% of total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Our response is same as Q 8.

10. Do you agree that the total carrying amount of property interests that do not require valuation cannot exceed 10% of the applicant's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Our response is same as Q 8.

11. Do you agree that a listing document should include full text of valuation reports for all property interests that are required to be valued under property activities except where summary disclosure is allowed?

Yes

No

If your answer is "No", please give reasons and alternate views.

12. Do you agree to allow summary disclosure if the market value of a property interest as appraised by the valuer is less than 5% of the property interests that are required to be valued under property activities?

Yes

No

If your answer is "No", please give reasons and alternative views.

13. Do you agree with the form for summary disclosure of property interests in Appendix II of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

The format of summary disclosure should be designed by the valuer on case-basis and subject to the characteristics of each single property.

14. Do you agree that an applicant should be required to include an overview in the listing document describing all property interests not covered by a valuation report?

Yes

No

If your answer is "No", please give reasons and alternative views.

15. Do you agree that the proposed class exemption notice should apply to prospectus for unlisted companies as well as applicants?

Yes

No

If your answer is "No", please give reasons and alternate views.

The Consultation Paper stated that it is its intention to remove unnecessary burden to the applicants or issuers in preparing their prospectus/circulars, no where in the Consultation Paper mentioned about "unlisted company". Further justification is required.

16. Do you agree that the proposed class exemption notice in Appendix III of the Consultation Paper will implement the proposals for property activities?

Yes

No

If your answer is "No", please give reasons and alternate views.

To our understanding, the proposed class exemption notice is an indicative draft which is still subject to comments from Department of Justice.

17. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for property activities?

Yes

No

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

To our understanding, the proposed class exemption notice is an indicative draft which is still subject to comments from Department of Justice.

Proposals for Non-Property Activities

18. Do you agree that a full text of valuation report is required if the carrying amount of a property interest is or is above 15% of an applicant’s total assets?

Yes

No

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

The HKIS has reservation in the classification of “property activities” and “non-property activities” for valuation sake, and extra burden to the applicants or issuers and the professional parties are expected. This is not in line with the aim of the Consultation Paper to remove unnecessary burden on applicants for listing and issuers. We would suggest to use a single rule to all properties, ie. if the interests shown in the company’s last accounts exceed 10% of its total asset, valuation report is required.

19. Do you agree that the 15% threshold should be calculated using:

(a) the carrying amount of a property interest; and

(b) total assets

reflected in the accountants’ report of the applicant?

Yes

No

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

Our response is same as Q 8.

20. Do you agree with the proposed disclosure requirement for property interests in paragraph 98 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

The statement is required in all cases because under the Consultation Paper it is the sponsors and the applicants or issuers who are responsible for providing the correct property list for the valuer to value and they need to take the sole responsibility to the public.

21. Do you agree that an applicant should be required to include an overview in the listing document describing all property interests not covered by a valuation report?

Yes

No

If your answer is "No", please give reasons and alternative views.

22. Do you agree that property interests ancillary to mining activities will not be required to be valued if the prospectus includes a valuation by an independent professionally qualified valuer of the associated mineral or petroleum assets or resources?

Yes

No

If your answer is "No", please give reasons and alternative views.

Should the valuer adopt either the market approach or the income approach to arrive at the value of the business with the associated mineral or petroleum assets or resources as part of its going concern business, this may be right because the valuation has taken into account the income generating capacity of the associated mineral or petroleum assets or resources as part of a going concern business. However, if the valuation only focused on the mining rights or on the associated mineral or petroleum assets or resources, the value of the assets such as the production facilities of oil-well or mine adits may be ignored, and this proposal is incorrect.

23. Do you agree that the proposed class exemption notice should apply to prospectus for unlisted companies as well as applicants?

Yes

No

If you answer is "No", please give reasons and alternate views.

The Consultation Paper stated that it is its intention to remove unnecessary burden to the applicants or issuers in preparing their prospectus/circulars, no where in the Consultation Paper mentioned about "unlisted company". Further justification is required.

24. Do you agree that that proposed class exemption notice in Appendix III of the Consultation Paper will implement the proposals for non-property activities?

Yes

No

If you answer is "No", please give reasons and alternate views.

To our understanding, the proposed class exemption notice is an indicative draft which is still subject to comments from Department of Justice.

25. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for non-property activities?

Yes

No

If your answer is "No", please give reasons and alternative views.

To our understanding, the proposed class exemption notice is an indicative draft which is still subject to comments from Department of Justice.

Part II: Proposals To Amend Property Valuation Requirements For Issuers

26. Do you agree with the proposed disclosure guidance for material property interests in paragraph 61 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

27. Do you agree that it is unnecessary to introduce different valuation requirements for acquisition or disposal of non-property activities and property activities for issuers?

Yes

No

If your answer is "No", please give reasons and alternative views.

28. Do you agree with the proposal to remove valuation requirements if the company being acquired or disposed of is listed on the Exchange, except for a connected transaction (see paragraph 123 of the Consultation Paper)?

Yes

No

If your answer is "No", please give reasons and alternative views.

29. Do you agree that an overview of property interests not covered by a valuation report be disclosed in the circular?

Yes

No

If your answer is "No", please give reasons and alternative views.

30. Do you agree not to require property valuations and disclosing valuation information for acquisition or disposal of an unlisted company if the carrying amount of a property interest is below a percentage of the issuer's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Our response is same as Q 8.

31. Do you agree not to require valuation of property interest with carrying amount below 1% of the issuer's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Our response is same as Q 8.

32. Do you agree that the total carrying amount of property interests that do not require valuation cannot exceed 10% of the issuer's total assets?

Yes

No

If your answer is "No", please give reasons and alternative views.

Our response is same as Q 8.

33. Do you agree with the proposed definition of property interest in paragraph 67 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternate views.

34. Do you agree with the proposed guidance on what should be treated as a single property interest in paragraph 69 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternate views.

35. Do you agree that a circular should include full text of valuation reports for all property interests that are required to be valued except where summary disclosure is allowed?

Yes

No

If your answer is "No", please give reasons and alternate views.

36. Do you agree to allow summary disclosure if the market value of a property interest as appraised by the valuer is less than 5% of the property interests that are required to be valued?

Yes

No

If your answer is "No", please give reasons and alternative views.

37. Do you agree with the form for summary disclosure of property interests in Appendix II of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

The format of summary disclosure should be designed by the valuer on case-basis and subject to the characteristics of each single property.

38. Do you agree that an overview of property interests not covered by a valuation report be disclosed in the circular?

Yes

No

If your answer is "No", please give reasons and alternative views.

39. Do you agree that for an acquisition or disposal of an unlisted company, valuations will not be required for property interests ancillary to mining activities if the circular includes a valuation by an independent professionally qualified valuer of the associated mineral or petroleum assets or resources?

Yes

No

If your answer is "No", please give reasons and alternative views.

Should the valuer adopt either the market approach or the income approach to arrive at the value of the business with the associated mineral or petroleum assets or resources as part of its going concern business, this may be right because the valuation has taken into account the income generating capacity of the associated mineral or petroleum assets or resources as part of a going concern business. However, if the valuation only focused on the mining rights or on the associated mineral or petroleum assets or resources, the value of the assets such as the production facilities of oil-well or mine adits may be ignored, and this proposal is incorrect

40. Do you agree with the proposal relating to a very substantial acquisition in paragraph 121 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

41. Do you agree with the proposal to retain the existing valuation requirements for connected transactions?

Yes

No

If your answer is "No", please give reasons and alternative views.

42. Do you agree that valuation will continue to be required if the connected transaction involves an acquisition or disposal of a company listed on the Exchange?

Yes

No

If your answer is "No", please give reasons and alternative views.

43. Do you agree with the proposals relating to connected transactions in paragraph 125 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons and alternative views.

44. In addition to the information mentioned in paragraph 74 of the Consultation Paper, is there any other information that should be disclosed in a valuation report that is not required at present by the Listing Rules? Also, is there any information that is no longer required to be disclosed in a valuation report?

Yes

No

If your answer is "Yes", please state.

The existing disclosure requirement by the Listing Rules is insufficient to reflect the true picture of a property being valued nowadays. Under the general disclosure obligations to the applicants or issuers, we opined that more detailed information of the property being valued should be disclosed to let the public to have a thorough understanding of the property being valued. We consider the report disclosure requirement as required in the HKIS Property Valuation Standards should be followed and is a good practice to the applicants or issuers. In fact, the valuation report disclosure requirement in the HKIS Property Valuation Standards is mandatory for our members to follow.

45. Do you agree with the proposal to maintain the effective date at which the property was valued under Rule 5.07? (Please note that the same question has been raised for applicants in question 6).

Yes

No

If your answer is "No", please give reasons and alternative views.

46. Do you agree that the proposed Listing Rule amendments in Appendices IV.A and IV.B of the Consultation Paper will implement the proposals for issuers?

Yes

No

If your answer is "No", please give reasons and alternative views.

To our understanding, the proposed class exemption notice is an indicative draft which is still subject to comments from Department of Justice.

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