

Chapter 8

GENERAL

VALUATION OF AND INFORMATION ON PROPERTIES

When required

- 8.01 Valuations of and information on all the interests of the issuer and its group (referred to in this Chapter as the interests of the issuer) in land or buildings (“properties”) are required to be included in a listing document issued by a new applicant.
- 8.02 In the case of an acquisition or disposal of any property, or a company whose assets consist solely or mainly of property, where the consideration payable exceeds 50 per cent of the net tangible assets of the acquiring or disposing group, then a valuation of and information on such property must be included in the circular issued to shareholders in connection with the acquisition or disposal (see rule 19.54(3)), unless, in the case of an acquisition, the interest in the property is acquired from the Hong Kong Government (or, at the discretion of the Exchange, a body related to the Hong Kong Government), in any such case, at a public auction or by sealed tender.

Notes: 1 “Net tangible assets” of the acquiring or disposing group means the aggregate of the share capital and reserves, excluding minority interests and intangibles, as shown in the listed issuer’s latest published audited accounts or consolidated accounts, subject to any adjustments or modifications arising by virtue of the provisions of rules 19.09 or 19.10.

2 For the purposes of this rule and rule 8.03, a circular issued “in connection with an acquisition” includes a listing document issued on a rights issue, the proceeds of which are to be used to retire a debt with which the property or company had previously been acquired provided that such a listing document need not contain such a valuation report if a circular containing such a valuation report was issued to shareholders at the time of the acquisition of the property or company.

- 8.03 In the case of an acquisition or a disposal of any property from or to a connected person, a valuation of and information on such property must be included in any circular issued to shareholders in connection with the acquisition or disposal (see rule 20.47(6)).

Basic contents

- 8.04 All valuation reports must contain all material details of the basis of valuation which, in the case of properties situated in Hong Kong, must follow the “Hong Kong Guidance Notes on the Valuation of Property Assets” published by The Hong Kong Institute of Surveyors and The Royal Institution of Chartered Surveyors (Hong Kong Branch) or any equivalent or replacement guidelines published from time to time by The Hong Kong Institute of Surveyors.
- 8.05 Subject to rule 8.06, all valuation reports should normally contain the following information:—

- (1) a description of each property including:—
- (a) an address sufficient to identify the property, which should generally include postal address, lot number and such further designation as is registered with the appropriate government authorities in the jurisdiction in which the property is located;

- (b) a brief description (e.g. whether land or building, approximate area, etc.);
 - (c) the existing use (e.g. shops, offices, factories, residential, etc.);
 - (d) the Ground/Government Rent;
 - (e) a summary of the terms of tenancies, leases or underleases (including repairing obligations, where material):—
 - (i) pursuant to which the issuer holds properties from the government or superior landlords; and/or
 - (ii) pursuant to which the issuer rents or leases properties to tenants or lessees;
 - (f) the approximate age of buildings;
 - (g) the terms of tenure;
 - (h) the terms of any intra-group lease granted by a parent company to a subsidiary on property occupied by the group (identifying the properties) (if any);
 - (i) the capital value in existing state at the effective date as at which the property was valued;
 - (j) the current planning or zoning use;
 - (k) the options or rights of pre-emption concerning or affecting the property (if any); and
 - (l) any other matters which may materially affect the value;
- (2) without prejudice to the generality of sub-clause 1(e) above, where the property is rented or leased by the issuer to tenants or lessees, details of the rentals, including:—
- (a) the existing monthly rental before tax if the property is wholly or partly let together with the amount and a description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtainable, on the basis that the property was available to let on the effective date as at which the property was valued;
 - (b) a summary of any rent review provisions, where material; and
 - (c) the amount of vacant space, where material;
- (3) where the property is in the process of being developed, the following details in addition to those specified in sub-paragraph 1 above, where available:—
- (a) details of development potential and whether building plans have been approved or planning consent has been obtained and any conditions imposed in respect of such approval;
 - (b) any material restrictions on development including building covenants and time limits for completion of the development;
 - (c) existing stage of development;

- (d) estimated completion date;
 - (e) estimated cost of carrying out the development or (where part of the development has already been carried out) the estimated cost of completing the development;
 - (f) estimated capital value after completion;
 - (g) any material special or general conditions affecting the development of the property;
 - (h) any conditions imposed as to construction of roadways, pathways, drainage, sewage and other facilities or services for public use, if material;
 - (i) any sales arrangements and/or letting arrangements existing at the effective date as at which the property was valued; and
 - (j) any construction costs incurred up to the effective date as at which the property was valued;
- (4) where property is held for future development purposes, the following details in addition to those specified in sub-paragraph 1 above, where available:—
- (a) details of development potential and whether building plans have been approved or planning consent has been obtained and any conditions imposed in respect of such approval;
 - (b) any material special or general conditions affecting the development of the property including building covenants and time limits for completion of the development; and
 - (c) any conditions imposed as to construction of roadways, pathways, drainage, sewage and other facilities or services for public use, if material;
- (5) a classification of the property according to the purpose for which it is held. The acceptable categories are:—
- (a) property held for development;
 - (b) property held for investment;
 - (c) property held for owner occupation; and
 - (d) property held for sale;
- (6) details of any agreement or proposals as to any proposed transaction regarding the property between the issuer and any other member of the group;
- (7) the name of the valuer, his address and professional qualification;
- (8) the effective date as at which the property was valued and the date of the valuation; and
- (9) such other information as the Exchange may require.

Property under operating leases

- 8.06 New applicants or listed issuers are not required to include the full text of a valuation report in respect of any interest in land or buildings under an operating lease (as defined in rule 8.07) in listing documents or circulars to shareholders (as the case may be) provided that:—
- (1) the value of the said interest in land or buildings has been determined by an independent qualified valuer as required by the GEM Listing Rules;
 - (2) valuation of the interest as determined by the valuer is zero;
 - (3) the report of the independent valuer setting-out the information required by paragraph 34(2) of the Third Schedule of the Companies Ordinance and/or the GEM Listing Rules is made available to the Exchange before the issue of the listing document or circular and is referred to in the listing document or circular and made available for public inspection; and
 - (4) a summary of all the interests in land and buildings covered by this rule is included in the listing document or circular.
- 8.07 For the purpose of rule 8.06, an “operating lease” is a lease:—
- (1) whereby an interest in the land or buildings is leased to the issuer and such lease or tenancy confers on the lessee no unilateral right to transfer, sublet, mortgage or otherwise dispose of the interest in the said property without the consent of the lessor;
 - (2) whose leasehold term is for a period substantially less than the estimated useful economic life of the said property; and
 - (3) where the substantive risks and rewards of ownership of the said property have not been or are not proposed to be transferred from the lessor to the lessee.
- 8.08 For properties referred to in rule 8.06, new applicants or listed issuers are required in accordance with the GEM Listing Rules to submit full valuation reports to the Exchange for the purpose of vetting and listing; and such valuation reports will form part of those documents which will be made available for inspection by the public.

Disclosure of legal opinion to valuer

- 8.09 In all cases where a legal opinion is required under the GEM Listing Rules (or is otherwise obtained by the issuer) in connection with the title to a property, such opinion together, so far as practicable, with copies of any document referred to therein should be made available to the valuer carrying out any valuation in respect of the property, prior to the completion of the valuation report, and the valuer shall explain whether and if so how he has taken account of the content of such opinion in the valuation of the property.

Valuations of properties situated outside Hong Kong

Additional provisions

- 8.10 In the case of valuation reports in respect of properties situated outside Hong Kong, the Exchange reserves the right to impose additional or different conditions to those specified in rules 8.04 to 8.09.

- 8.11 Without prejudice to the generality of rule 8.10, rules 8.12 to 8.19 apply to properties situated in the PRC and rules 8.20 to 8.29 apply to properties situated outside Hong Kong (including those situated in the PRC).

Specific provisions with respect to PRC properties

- 8.12 The valuation report of property located in the PRC must clearly state the nature of the interest being valued. The report must also specify any material conditions or information regarding title and other relevant matters contained in the legal opinion relating to the property.

Note: In particular, the valuation report must clearly state whether the valuation is of a vested legal title or of a right to acquire a vested legal title to the relevant property or, for example, only right to occupy the property for a fixed period or to enjoy rent or other income arising from the property.

- 8.13 With respect to PRC properties:—

- (1) a long-term title certificate will be treated as the operative equivalent to the Hong Kong legal concept of vested title to the relevant property. The new applicant or listed issuer should confirm, with the benefit of a PRC legal opinion from a firm authorised by an appropriate authority in the PRC to advise in relation to listed companies, whether a long-term title certificate has been obtained by the relevant party in respect of the relevant property. The Exchange may require production of the title certificate and may require that it be made available for inspection; or

Note: For the purposes of this rule and the other relevant provisions of this Chapter, the Exchange has a discretion to decide on whether or not any title certificate constitutes a “long term” title certificate under this rule.

- (2) in respect of a grant of land by a government land administration bureau in the PRC or with respect to a transfer of land use rights where the issue of a title certificate is pending, a properly approved land grant or land transfer contract in writing accompanied by a PRC legal opinion (as described in sub-paragraph (1) above) as to the validity of the approval may, in the case only of a listed issuer, be acceptable as evidence of a transferee’s pending title to the land to be granted or transferred. The Exchange may require production of the approved contract and may require that it be made available for inspection.

- 8.14 Where property located in the PRC is held or being acquired for development and where the residual method is used as the primary basis for the valuation (see rule 8.24), the relevant party should obtain an acceptable PRC legal opinion (as described in rule 8.13(1)) which describes all consents, permits and regulations which need to be obtained or satisfied in respect of the development, or proposed development upon which any valuation is based. Such opinion should confirm whether and to what extent consent has been obtained for the proposed development and all such information should be included in the valuation report and in the relevant document.

- 8.15 In respect of PRC properties where long-term title certificates are not obtained by a new applicant or a listed issuer, any property revaluation surplus arising from those PRC properties must be excluded from all annual reports, accounts and other financial statements of the issuer and from the net tangible asset statement in any listing document or circular of the issuer.

- 8.16 Where the consideration for the grant of any long-term title certificate involves any obligation on the issuer to resettle or pay compensation to any occupier or former occupier of property forming the subject of the certificate or to any other persons or any obligation to construct or pay the costs of construction of public facilities, the valuation report must disclose details of any such obligation, to the extent that the same remains outstanding, and indicate, where relevant, its effect on the value of and title to the property.

Note: If there is an outstanding obligation on the part of the issuer to transfer part of any property under development to the original occupier or other persons free of any payment, this matter must be disclosed and the valuer should confirm whether, in arriving at the value of the property, he has taken the same into account.

- 8.17 Except for companies with infrastructure projects accepted by the Exchange under rule 11.14(1) or otherwise, where the new applicant has interests in a joint venture company whose income stream is derived from a PRC property but the long-term title certificate for such property is not obtained by the joint venture company, no business valuation on the applicant's interests in the joint venture company may be included in the listing document.

Joint venture interests in PRC properties

- 8.18 In the case of PRC property held by any joint venture entity or pursuant to some other form of joint arrangement, the legal opinions referred to in rules 8.13 and 8.14 should include a description of the significant terms of the joint venture, including a description of the equity and profit sharing arrangements of the parties. In addition, the opinion should state whether the joint venture entity has obtained all necessary licences to operate in the location where the property is situated. A summary of the content of such opinion should also be disclosed in any valuation report and in the relevant document.

- 8.19 Where a new applicant or listed issuer has or is proposing to acquire an interest in a joint venture entity, which, in turn, has or is proposing to acquire an interest in a property situated in the PRC, and where the property is beneficially owned or retained by one of the parties to the joint venture and does not vest in the joint venture entity itself, and where the new applicant or listed issuer has or is intending to acquire some right to occupy the property from the relevant party to the joint venture or to enjoy income or profit therefrom, then the legal opinions referred to in rules 8.13 and 8.14 should also confirm:—

- (1) the exact nature of the interest in the joint venture entity which the new applicant or the listed issuer has or is proposing to acquire;
- (2) whether the terms of any joint venture agreement provide for the transfer of the legal title to the property to the joint venture entity and the status of such transfer;
- (3) whether the right which the new applicant or the listed issuer has or is intending to acquire is capable, as a matter of PRC law, of being granted by the party in whom legal title to the property is vested;
- (4) whether and to what extent the right acquired or to be acquired is enforceable in the PRC and whether it will be freely transferable by the new applicant or the listed issuer to any third party; and
- (5) whether all relevant regulatory approvals have been obtained.

Contents of valuation report

- 8.20 Where the relevant property has been valued on an open market basis, but such valuation is not by reference to comparable market transactions, the valuer may be required to discuss and disclose in the valuation report the assumptions underlying the open market valuation method in the context of the market in which the property is situated. Valuers may be asked to justify the assumptions they have made in the valuation report particularly where local market conditions or legal circumstances may differ greatly from those in Hong Kong.

8.21 Where the property the subject of the valuation report has been valued on an open market basis and by reference to the residual method, the valuation report should:

- (1) state this fact;
- (2) describe the valuation method used together with a brief description of that method in simple language;
- (3) provide a statement showing:—
 - (a) gross development value of the various components in the proposed development with an explanation of any comparables used and the adjustments made to arrive at the figure for gross development value;
 - (b) construction costs based on the report of a properly qualified quantity surveyor as referred to in rule 8.23;
 - (c) all fees charged or to be charged;
 - (d) interest charges;
 - (e) developer's profit; and
 - (f) any other component or comparable figure used in the residual method; and
- (4) describe the assumed development potential for the relevant property, including relevant plot ratios. Any approval or any indication from any competent authority which differs from the development potential or plot ratios assumed by the valuer should be set out in the valuation report. If no relevant approval has been obtained from a competent authority the valuer should state the source of and the basis of the assumptions used.

Income or profit method of valuation

8.22 Where relevant property (or part thereof) has been valued through use of the profit or income method of valuation, the valuation report should in addition state the assumptions upon which this method is based and whether there is any comparable market evidence, for example, in the case of a hotel, of room rates and occupancy levels in the same or similar location to the relevant property.

Valuation by residual method

8.23 Where the valuation figure is derived through use of the residual method, the new applicant and/or listed issuer should, in addition to obtaining the valuation report, instruct a professionally qualified quantity surveyor acceptable to the Exchange to verify the estimated costs of carrying out the development. The report of the quantity surveyor should be included together with the valuation report.

8.24 Where valuations are required pursuant to rules 8.01, 8.02, 8.03 or 8.27 of the GEM Listing Rules and where the primary method for valuing the relevant property is the residual method, the Exchange may require the directors of the issuer or, in the case of a connected transaction, the independent board of directors, to include a statement in a prominent position in the relevant document with respect to the valuation of any property held for investment, development, future development and sale. In such statement the directors/ the independent board of directors, shall:—

- (1) critically discuss and assess the assumptions made by the valuer as disclosed in the valuation report for the aforesaid categories of property and the material effect that any variation of those assumptions may have on the valuation figure;

- (2) critically discuss the effect of any material conditions affecting the status of the legal title to any such property as disclosed in any legal opinion obtained in respect of such property;
- (3) describe in the case of property in the process of being developed or held for future development, and where the valuation is based on the expected sale value of the completed development, the exact stage at which any proposed development has reached; and
- (4) describe all known relevant local taxes which may be charged in respect of any proposed property development project and explain how such taxes could affect the calculation of developer's profit contained in any calculation pursuant to the residual method, and the consequent effect on any valuation figure.

8.25 Where the residual method is used, the valuation report should include a general warning statement in substantially the following form:

"Warning statement

The valuation arrived at has not been determined by reference to comparable market transactions which is the most reliable method for valuing property assets and the most common method used for valuing properties in Hong Kong. In contrast, because of the lack of comparable market transactions in the locality in which the subject property is situated, this valuation has used the residual method which is generally acknowledged as being a less reliable valuation method. The residual method is essentially a means of valuing land by reference to its development potential by deducting costs and developer's profit from its estimated completed development value. It relies upon a series of assumptions made by the valuer which produce an arithmetical calculation of the expected current sale value as at [date] of a property being developed or held for development or redevelopment. Where the property is located in a relatively under-developed market such as [place] those assumptions are often based on imperfect market evidence. A range of values may be attributable to the property depending upon the assumptions made. While the valuer has exercised its professional judgement in arriving at the value, investors are urged to consider carefully the nature of such assumptions which are disclosed in the valuation report and should exercise caution in interpreting the valuation report."

Note: Where property assets represent or will represent substantially the whole or a majority of the assets of the new applicant or listed issuer and certain or all of those assets have been valued through use of the residual method, the warning statement set out in this rule must also appear or be referred to in the "Risk Factors" section of the relevant document.

Accountancy treatment

8.26 In all cases where a valuation report is required, the Exchange may also require the directors to describe the accounting treatment to be adopted in respect of any property assets situated outside Hong Kong.

Notifiable transactions

8.27 Where in any transaction which falls within rule 19.06, the relevant party intends to contribute capital or to contribute to or become liable for all or part of the cost of development of any property project or development, or to any company or venture involved in any development project, then the Exchange:

- (1) may require further disclosure of how such capital contribution or development costs have been derived;

- (2) may require an independent valuation report, even if such report is not expressly required pursuant to rule 8.02; and
- (3) may consider taking account of such capital or cost contributions when considering whether the transaction falls within any of the categories of notifiable transactions referred to in rule 19.06.

Connected transactions

8.28 In the case of connected transactions, where the valuer has relied upon information supplied by a connected person this should be clearly stated in the valuation report and the extent to which the valuer has independently verified this information should be set out prominently in the relevant document.

Date and cost of original acquisition

8.29 Where the property the subject of the valuation has been acquired within 5 years of the date of valuation, the new applicant or the listed issuer should supply to the valuer for inclusion in his report the relevant date and cost of acquisition and the total costs expended on the property, which should be included alongside the current valuation figure.

Effective date

8.30 The effective date as at which the property was valued must not be more than three months before the date on which the relative listing document or circular is issued and if such effective date is not the same as the end of the last period reported on by the reporting accountants (see Chapter 7), it will be necessary for the listing document or circular to include a statement reconciling the valuation figure with the figure included in the balance sheet as at the end of that period.

Independence of valuer

8.31 Unless dispensation is obtained from the Exchange, all valuations of properties must be prepared by an independent qualified valuer. (See rule 8.32 concerning qualifications). For this purpose, a valuer is not independent if:—

- (1) he is an officer or servant or proposed director of the issuer or the issuer's subsidiary or holding company or of a subsidiary of the issuer's holding company or any affiliated company; or
- (2) in the case of a firm or company of valuers, it is the issuer's subsidiary or holding company or a subsidiary of the issuer's holding company or any of its partners, directors or officers is an officer or servant or proposed director of the issuer or the issuer's subsidiary or holding company or of a subsidiary of the issuer's holding company or any affiliated company.

Qualifications of valuer

8.32 A valuer is a qualified valuer only if:—

- (1) for the purpose of valuing properties situated in Hong Kong, the valuer is a fellow or associate member of The Hong Kong Institute of Surveyors and carries on the business in Hong Kong of valuing properties and is authorised to do so by the rules of that body; and

(2) for the purpose of valuing properties situated outside Hong Kong, the valuer has the appropriate professional qualifications and experience. This, he will normally be regarded as having if he is subject to the discipline of The Hong Kong Institute of Surveyors or The Royal Institution of Chartered Surveyors or a professional body of similar standing to such bodies and has a minimum of 2 years' experience in valuing properties in the relevant location or has relevant experience to the satisfaction of the Exchange.

8.33 The professional qualifications of the valuer and, where properties situated outside Hong Kong have been valued, his experience in valuing properties within the relevant location (and, where the valuation is made on behalf of a valuation company, his experience with the company) should be disclosed in the valuation report.

Other valuation reports

8.34 If the issuer has obtained more than one valuation report regarding any of the issuer's properties referred to in the listing document or circular within three months before the issue of the listing document or circular, then all other such reports must be included.

Exchange rates

8.35 Where any figures or calculations included in the valuation report rely on exchange rates, the rate used and relevant date should be stated. Where there has been a fluctuation in exchange rates between the date of the valuation and the date of the listing document or circular to shareholders, this fact together with the effect of the fluctuation on the valuation in the valuation report should be set out.