

Frequently Asked Questions Series 20 (Released on 28 February 2013/ Last updated on 1 July 2014)

**Rule Requirements relating to Notifiable Transactions, Connected Transactions,
Mineral Companies, Issues of Securities and Corporate Governance Code**

Status of “Frequently Asked Questions”

The following frequently asked questions (FAQs) are designed to help issuers to understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

Part 1 – Notifiable and/or Connected Transactions

No.	Main Board Rules	GEM Rules	Query	Response
<u>Definition of transaction</u>				
1.	14.04(1)(a), 14A.10(13)(a) <u>14A.25</u>	19.04(1)(a), 20.10(13)(a) <u>20.23</u>	<p>Company A is an associated company of Listco. Company A proposes to issue new shares to Mr. X (the Proposed Issue).</p> <p>The Proposed Issue would dilute Listco’s interest in Company A. Is it a transaction for Listco under Chapter 14? Is it a connected transaction for Listco under Chapter 14A if Mr. X is a connected person of Listco?</p>	<p>The Proposed Issue is not a transaction for Listco under both Chapters 14 and 14A as Company A is not a subsidiary of Listco.</p> <p><i><u>Note: Rule reference updated in July 2014.</u></i></p>
2.	14.04(1)(e), 14A.10(13)(e) <u>14A.24(4)</u>	19.04(1)(e), 20.10(13)(e) <u>20.22(4)</u>	<p>Listco is a property developer and from time to time maintains term deposits and balances with various banks. It now proposes to place cash deposits with Company A on normal commercial terms.</p> <p>Company A is a finance company approved by regulatory authorities in the Mainland. It only provides financial services to its group companies including Listco.</p> <p>As Company A is a connected person, the proposed placing of cash deposits would be a connected transaction for Listco under Chapter 14A. Would it also constitute a transaction under Chapter 14?</p>	<p>Yes. The proposed placing of cash deposits would be regarded as Listco providing financial assistance to Company A which falls within the definition of “transaction” under both Rules 14.04(1)(e) and 14A. 24(4)10(13)(e).</p> <p><i><u>Note: Rule reference updated in July 2014.</u></i></p>

No.	Main Board Rules	GEM Rules	Query	Response
3.	14.04(1)(e), 14A.10(13)(e) <u>14A.24(4)</u>	19.04(1)(e), 20.10(13)(e) <u>20.22(4)</u>	<p>Mr. X is Listco’s executive director. He has been providing financial assistance to support Listco’s business.</p> <p>Listco proposes to provide Mr. X with a corporate credit card for payment of his travelling expenses related to Listco’s business. If he also uses the corporate credit card for payment of his personal purchases, Listco would set off the payment against the amount due from Listco to Mr. X.</p> <p>Would the use of the corporate credit card for payment of Mr. X’s personal expenses constitute a transaction for Listco under Chapters 14 and 14A?</p>	<p>Yes. Listco is liable for settling any payment made through the corporate credit card. Allowing Mr. X to use the card for payment of his personal expenses is a means to provide financial assistance to Mr. X. It falls within the definition of “transaction” under both Rules 14.04(1)(e) and 14A.24(4)10(13)(e).</p> <p><i><u>Note: Rule reference updated in July 2014.</u></i></p>
4.	14.74, 14.77, 14A.6961	19.74, 19.77 20.6959	<p>Listco has granted an option to Mr. X to acquire an asset from Listco. Mr. X is an independent third party and the option is exercisable at his discretion. Listco has complied with the notifiable transaction Rules as if the option had been exercised.</p> <p>If Mr. X subsequently becomes a connected person of Listco, would Listco be required to comply with the connected transaction Rules for the grant of the option as if it had been exercised?</p>	<p>No. Listco would need to comply with the announcement requirements when the option is exercised, transferred or expired, or when Mr. X notifies Listco that he will not exercise the option.</p> <p><i><u>Note: Rule reference updated in July 2014.</u></i></p>

No.	Main Board Rules	GEM Rules	Query	Response
5.	14A.10(13) 14A.24(6) , 14A.25	20.10(13) 20.22(6) , 20.23	<p>Listco has issued some convertible bonds (or warrants).</p> <p>If the bondholder (or warrant holder) is a connected person of Listco, would the issue of new shares by Listco to the connected person upon the exercise of the conversion rights (or subscription rights) according to the terms of the bonds (or warrants) constitute a connected transaction for Listco?</p>	<p>No because Listco has no discretion over the conversion (or subscription), however, the issue of the convertible bonds (or warrants) to the connected person would have been a connected transaction.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
6.	14A.13(1)(b)(i) , 14A.13(2) 14A.26, 14A.28	20.13(1)(b)(i) , 20.13(2) 20.24, 20.26	<p>Company A is owned as to:</p> <ul style="list-style-type: none"> - 10% by Listco; - 10% by Mr. X who is a director of Listco; and - 80% by certain independent third parties. <p>Listco providing financial assistance to Company A is a connected transaction for Listco as Company A is a commonly held entity.</p> <p>If Listco proposes to subscribe new shares in Company A for cash, is it a connected transaction for Listco?</p>	<p>Yes. Although Company A is not a connected person of Listco, the proposed subscription is a connected transaction for Listco under Rule 14A.2813(1)(b)(i) because it involves Listco acquiring an interest in Company A, and Mr. X (a controller of Listco) is a substantial shareholder of Company A.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>

No.	Main Board Rules	GEM Rules	Query	Response
<u>Definition of connected person</u>				
7.	14A.11(1), (5)14A.07(1), 14A.07(5), 14A.09, 14A.16(1)	20.11(1), (5)20.07(1), 20.07(5), 20.08, 20.14(1)	<p>Subsidiary A is a non wholly-owned subsidiary of Listco. It is owned as to 90% by Listco and 10% by Entity X.</p> <p>Are Entity X and Subsidiary A connected persons of Listco?</p>	<p>Entity X is a connected person of Listco because he/it is a substantial shareholder of Subsidiary A, <u>unless Entity X falls under any exemption under Chapter 14A (e.g. the insignificant subsidiary exemption under Rule 14A.09).</u></p> <p>If Entity X is also a “connected person at the issuer level” (e.g. Listco’s director, chief executive or substantial shareholder, or an associate of any of them), Subsidiary A is a <u>connected subsidiary and therefore a</u> connected person of Listco.</p> <p>If Entity X is a connected person only because of its relationship with Subsidiary A (and any other subsidiaries of Listco), Subsidiary A is not a connected person of Listco.</p> <p><i><u>Note: Updated in July 2014.</u></i></p>
8.	14A.11(5) 14A.16(1)	20.11(5) 20.14(1)	<p>Company A is a subsidiary of Listco.</p> <p>Mr. X is a director of Listco. Is Company A a connected person of Listco if Mr. X is also</p> <p>(a) a director of Company A?</p> <p>(b) a shareholder of Company A?</p>	<p>(a) Company A is not a connected person of Listco simply because Mr. X is a director of Company A.</p> <p>(b) It would depend on Mr. X’s shareholding in Company A. If Mr. X can control the exercise of 10% or more of the voting power at general meetings of Company A,</p>

No.	Main Board Rules	GEM Rules	Query	Response
				<p>Company A is a connected subsidiary and therefore a connected person of Listco.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
9.	<p><u>14A.11,</u> <u>14A.13(1)(b)(i),</u> <u>14A.13(2)</u> <u>14A.07</u> <u>14A.26, 14A.28</u></p>	<p><u>20.11,</u> <u>20.13(1)(b)(i),</u> <u>20.13(2)20.07,</u> <u>20.24,</u> <u>20.26</u></p>	<p>Company A is an associated company of Listco.</p> <p>Mr. X is a director of Listco. Is Company A a connected person of Listco if Mr. X is also</p> <p>(a) a director of Company A?</p> <p>(b) a shareholder of Company A?</p>	<p>(a) Company A is not a connected person of Listco simply because Mr. X is a director of Company A.</p> <p>(b) It would depend on Mr. X's shareholding in Company A.</p> <p>(i) If Mr. X can control the exercise of 10% or more of the voting power at general meetings of Company A:</p> <ul style="list-style-type: none"> - Company A is a "commonly held entity" and any financial assistance to / from Company A is a connected transaction for Listco under Rule 14A.2613(2). - Listco acquiring or selling an interest in Company A is a connected transaction for Listco under Rule 14A.2813(1)(b)(i). <p>(ii) If Mr. X can control the exercise of 30% or more of the voting power at general meetings of Company A or can control the composition of a majority of the board of Company A, Company</p>

No.	Main Board Rules	GEM Rules	Query	Response
				<p>A is an associate of Mr. X and therefore a connected person of Listco. Any transaction (including financial assistance) with Company A is a connected transaction for Listco.</p> <p><i>Note: Updated in July 2014.</i></p>
10.	<p>14A.11(4)(b) 14A.12(2)(b)</p>	<p>20.11(4)(b) 20.10(2)(b)</p>	<p>Mr. X is a director of Listco. Mr. Y is Mr. X's brother.</p> <p>Company A is held by Mr. Y who can exercise more than 50% of the voting power at its general meetings. As Company A is a "majority-controlled company" held by Mr. Y, it is an associate of Mr. X and therefore a connected person of Listco.</p> <p>Company B is 51% owned by Company A and is its subsidiary. Is Company B a connected person of Listco?</p>	<p>Yes. Company B is also a "majority-controlled entity" held by Mr. Y because Mr. Y can, through its interest in Company A, control more than 50% of the voting power at general meetings of Company B.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
<u>Continuing connected transactions</u>				
11.	<p>14A.25, 14A.26, 14A.27, 14A.81, 14A.82, 14A.83</p>	<p>20.25, 20.26, 20.27, 20.79, 20.80, 20.81</p>	<p>In Year 1, Listco signed an agreement for selling certain types of goods to its parent group (the First Transactions) in Years 1 to 3.</p> <p>In Year 2, Listco proposes to sell a new type of goods to its parent group (the Second</p>	<p>The Exchange considers that the Second Transactions and the First Transactions are related as they are entered into by Listco with the same connected person and are of similar nature.</p> <p>(a) Listco would need to aggregate the</p>

No.	Main Board Rules	GEM Rules	Query	Response
			<p>Transactions) over Years 2 to 3. Based on the annual caps, these continuing connected transactions would be exempt from the independent shareholder approval requirement under the de minimis exemption. Would the Exchange require Listco to aggregate the Second Transactions with the First Transactions in Years 2 and 3 in the following circumstances?</p> <p>(a) The First Transactions were exempt from the independent shareholder approval requirement under the de minimis exemption.</p> <p>(b) The First Transactions were non-exempt continuing connected transactions, and Listco had complied with the connected transaction requirements for these transactions, including the independent shareholder approval requirement.</p>	<p>transactions. If the percentage ratio(s) calculated on an aggregate basis exceed the de minimis threshold, the Second Transactions would require independent shareholder approval.</p> <p>(b) As Listco had already complied with all the connected transactions requirements for the First Transactions, the Exchange would not require Listco to aggregate the Second Transactions with the First Transactions.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
12.	14A.27 <u>14A.81</u>	20.27 <u>20.79</u>	Is it correct that the Exchange would not aggregate a continuing connected transaction of an income nature with a continuing connected transaction of an expense nature?	<p>No. The Exchange may aggregate income and expense items if it considers the transactions are related. See also Listing Decisions LD64-4 and LD14-2011.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
13.	14A.34, 14A.36 <u>14A.54,</u> <u>14A.76</u>	20.34, 20.36 <u>20.52, 20.74</u>	Listco and a connected person have entered into an agreement for certain continuing connected transactions in the next 3 years.	No, if Listco has already complied with the applicable requirements for the transactions at the time it entered into the agreement and the

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			<p>Based on the percentage ratios calculated at that time, the transactions were exempt from the independent shareholder approval requirement under the de minimis exemption.</p> <p>When Listco publishes its next audited accounts, will it be required to calculate the percentage ratios again to determine whether the transactions under the remaining term of the agreement still qualify for the de minimis exemption?</p>	<p>aggregate value of the transactions were within the annual cap.</p> <p>However, if the cap is exceeded or Listco proposes to renew the agreement or negotiate a material change to its terms, Listco would need to calculate the percentage ratios based on its latest published accounts and re-comply with the applicable connected transaction requirements.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
14.	14A.35(1) 14A.51, 14A.52	20.35(1) 20.49, 20.50	<p>Listco proposes to sell certain products to a connected person on normal commercial terms.</p> <p>The proposed continuing connected transactions in the current financial year would be fully exempt under the de minimis exemption. Would Listco be required to enter into a framework agreement for these transactions?</p>	<p>A framework agreement is not required if the proposed transactions are fully exempt.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>
15.	14A.35(1) 14A.52, 14A.60	20.35(1) 20.50, 20.58	<p>Some time ago, Listco and Mr. X (an independent third party at that time) entered into an agreement with fixed terms for leasing a factory building for 10 years.</p> <p>Listco now proposes to appoint Mr. X as a director, and the lease of the factory building will be a continuing connected transaction for</p>	<p>Under Rule 14A.6041, Listco should comply with all applicable reporting, annual review and disclosure requirements for the lease agreement.</p> <p>The requirement for an independent financial adviser's opinion on the duration of the agreement under Rule 14A.5235 would not</p>

No.	Main Board Rules	GEM Rules	Query	Response
			Listco. Would Listco be required to provide an independent financial adviser's opinion on the duration of the lease agreement given that its duration is longer than 3 years?	apply. <i>Note: Rule reference updated in July 2014.</i>
16.	14A.35(1) 14A.5 <u>2</u>	20.35(1) 20.50	Listco is principally engaged in mining and production of certain mineral resources. It proposes to enter into an off-take agreement with a connected person to sell part of its future mineral production to that person. Is it acceptable if the off-take agreement covers a period of more than 3 years?	Yes, if Listco can provide an independent financial adviser's opinion to explain why a longer period for the agreement is required and confirm that it is normal business practice for this type of agreements to be of that duration. <i>Note: Rule reference updated in July 2014.</i>
17.	14A.35(2) 14A.5 <u>3, 14A.68(4)</u>	20.35(2) 20.51, <u>20.66(4)</u>	For continuing connected transactions involving purchases or sales of commodity products in an issuer's ordinary and usual course of business, can the issuer propose annual caps of a fixed quantum as monetary caps may not be meaningful due to volatility in the commodity prices?	The connected transaction Rules require annual caps for continuing connected transactions be expressed in monetary terms. However, as described in the 2007 Listing Committee Annual Report, the Exchange may consider waiving the monetary cap requirement provided that the issuer discloses alternative caps of a fixed quantum, and a sensitivity analysis to illustrate how changes to the commodity prices will affect the value of the continuing connected transactions. When setting the alternative caps, the issuer would need to estimate the volume of the transactions and not the future commodity prices. An issuer should consult the Exchange if it wishes to apply for the waiver.

No.	Main Board Rules	GEM Rules	Query	Response
				<i>Note: Rule reference updated in July 2014.</i>
18.	<u>(FAQ withdrawn on 1 July 2014)</u>			
18.	14A.38	20.38	For the annual review of continuing connected transactions by auditors, is it acceptable if the auditors provide a confirmation according to Practice Note 740 issued by the Hong Kong Institute of Certified Public Accountants?	Yes.
<u>Exemption for connected transactions</u>				
19.	14A.31(7); 14A.33(1) 14A.9 7	20.31(7); 20.33(1) 20.95	Listco's businesses include constructing and operating toll roads. It proposes to employ a connected person to develop a computer system for toll fee collection and provide technical support for the system. Is the proposed transaction eligible for the consumer goods or services exemption?	No. The service to be provided to Listco is not of a type ordinarily supplied for private use or consumption, and does not fall within the scope of Rule 14A. 9731(7) . <i>Note: Rule reference updated in July 2014.</i>
20.	14A.31(9) 14A.0 9	20.31(9) 20.08	If a person is a connected person of an issuer only because of his/its relationship with the issuer's insignificant subsidiaries, would the insignificant subsidiary exemption apply to a	Yes, but the issuer must ensure that it has a specific or general mandate for the issue of new securities under Rule 13.36.

No.	Main Board Rules	GEM Rules	Query	Response
			placing of new securities by the issuer to such person?	<i>Note: Rule reference updated in July 2014.</i>
21.	14A. 65(3) 89	20. 65(3) 87	<p>Company A is owned as to:</p> <ul style="list-style-type: none"> - 20% by Listco; - 70% by Mr. X who is a director of Listco and - 10% by certain independent third parties. <p>(a) Company A is a “commonly held entity” under Rule 14A.2743(2). It proposes to borrow money from its shareholders on normal commercial terms to finance a new project. Is Listco’s financial assistance to Company A exempt under Rule 14A.8965(3) in the following circumstances?</p> <p>(i) Listco provides a loan of HK\$20 million while Mr. X and/or the other shareholders provide loans of HK\$80 million.</p> <p>(ii) Listco and Mr. X provide loans of HK\$20 million and HK\$70 million to Company A respectively.</p> <p>(b) If Company A proposes to raise funds by issuing new shares, would Listco’s subscription of new shares in Company A be a connected transaction? If yes, would</p>	<p>(a)(i) Yes. The loan made by Listco is in proportion to its interest in Company A.</p> <p>(a)(ii) No. The loan made by Listco represented about 22% of the total amount of loans, which is not in proportion to its interest in Company A.</p> <p>(b) The proposed subscription is a connected transaction for Listco as Company A is an associate of Mr. X and therefore a connected person of Listco.</p> <p>Rule 14A.8965(3) applies to provision of financial assistance only. The proposed subscription would not be exempt simply because it is made by Listco in proportion to its interest in Company A.</p> <p><i>Note: Rule reference updated in July 2014.</i></p>

No.	Main Board Rules	GEM Rules	Query	Response
			the proposed subscription be exempt on the basis that it is made in proportion to Listco's interest in Company A?	
<u>22.</u>	<u>(FAQ withdrawn on 1 July 2014)</u>			
<u>22.</u>	14A.72, 14A.73	20.72, 20.73	<p>Listco (being a Qualified Issuer) proposed to undertake a Qualified Property Acquisition through a joint venture with a Qualified Connected Person.</p> <p>Under the Rules, the announcement and the circular for the proposed transaction must contain information to demonstrate that the exemption conditions were met, including the confirmation from each of the independent board committee and the independent financial adviser that the proposed transaction is on normal commercial terms, fair and reasonable and in the interests of the issuer and its shareholders as a whole.</p> <p>Is it necessary for the announcement to disclose the letters from the independent board committee and the independent financial adviser?</p>	<p>It would be acceptable if the announcement states that the independent board committee and the independent financial adviser have provided the confirmation as required, and their letters are included in the circular.</p>
	<u>Disclosure requirements</u>			
23.	<u>14A.49</u> , App 16 – Para 8(<u>23</u>)	<u>20.47</u> , 18.09(<u>23</u>)	Listco discloses in its annual report information of a related party transaction	Yes. Listco should specify that the related party transaction is a connected transaction

No.	Main Board Rules	GEM Rules	Query	Response
			<p>according to the accounting standards. If such transaction is a fully exempt connected transaction under Chapter 14A, does Listco need to comply with the disclosure requirement under Paragraph 8(23) of Appendix 16?</p>	<p>under Chapter 14A and describe the exemption applicable to the transaction.</p> <p><i><u>Note: Rule reference updated in July 2014.</u></i></p>

Part 2 – Mineral Companies

No.	Main Board Rules	GEM Rules	Query	Response
<u>Eligibility of Competent Person</u>				
24.	18.21(1)	18A.21(1)	What information does the Exchange require when assessing whether a person has the relevant experience to act as the Competent Person for a Relevant Notifiable Transaction involving acquisition or disposal of mineral or petroleum assets?	<p>When the person submits his historical experience to the Exchange, he should ensure there are sufficient details to demonstrate that the experience is relevant to the mineral or petroleum assets being acquired or disposed of. In general the person is expected to provide a list of engagements showing his relevant experience with the following information:</p> <ul style="list-style-type: none"> • the period of each engagement; • a description of each project undertaken, including the location and the type of resources involved, and the relevance to the resources being acquired or disposed of; • details of any technical reports on the resources of the project, including the reporting standards and the use of the reports; • details of his role and responsibilities in the project and the preparation of any technical reports.

No.	Main Board Rules	GEM Rules	Query	Response
<u>Management experience requirement</u>				
25.	18.04, 8.05	18A.04, 11.12A	What relevant experience must management demonstrate to be considered eligible for listing under Listing Rule 18.04?	<p>To obtain the benefit of the waiver in rule 18.04, directors and senior managers taken together must have sufficient experience relevant to the exploration for and/or extraction activity that the Mineral Company is pursuing. Individuals relied on must have a minimum of five years relevant industry experience. Details of that experience must be disclosed in the listing documents.</p> <p>It is expected that a Mineral Company should have a spread of experience in various aspects amongst the board members and the senior management relevant to the mining business, including exploration, construction, mining, processing and marketing.</p>
<u>Continuing obligations</u>				
26.	18.15, 18.17, 18.18	18A.15, 18A.17, 18A.18	Rule 18.15 requires a listed issuer that publicly discloses details of Resources and/or Reserves to give an annual update of those Resources and/or Reserves once a year in its annual report. Does the annual update need to comply with Rule 18.18?	<p>Yes.</p> <p>Rule 18.17 states that annual updates of Resources and/or Reserves must comply with Rule 18.18. This applies to listed issuers that publicly disclose details of Resources and/or Reserves (Rule 18.15) and Mineral Companies (Rule 18.16).</p>

Part 3 – Others

No.	Main Board Rules	GEM Rules	Query	Response
<u>Issue of securities</u>				
27.	7.19(6), 7.23(5)	10.29, 10.39	<p>Six months ago, Listco conducted a rights issue of one rights share for every existing share (the “Previous Rights Issue”). It now proposes another rights issue of one rights share for every two existing shares.</p> <p>Listco had obtained independent shareholders’ approval for the Previous Rights Issue according to Rule 7.19(6). Does it need to seek independent shareholders’ approval for the proposed rights issue?</p>	Yes. This is because the proposed rights issue would increase Listco’s issued share capital by more than 50% when aggregated with the Previous Rights Issue.
28.	10.07(1), Notes 2 and 3 to 10.07	13.16A 13.18, 13.19	If the controlling shareholder of a newly listed issuer pledges his shares in the issuer as security for a bank loan in the manner described in Note 2 to the Rule, can the bank dispose of the pledged shares during the first 6 months after listing of the issuer?	Yes. Under Note 3 to Rule 10.07, the controlling shareholder must undertake to the issuer and the Exchange that he would notify the issuer immediately upon receipt of any indications from the bank about disposal of the pledged shares. The issuer must publish an announcement to disclose the matter as soon as possible after it has been notified by the controlling shareholder.

No.	Main Board Rules	GEM Rules	Query	Response
	<u>Corporate Governance Code</u>			
29.	Appendix 14 Code Provision A.2.7	Appendix 15 Code Provision A.2.7	<p>Under Code Provision A.2.7, the chairman should at least annually hold meetings with the non-executive directors (including independent non-executive directors) without the executive directors present.</p> <p>Is the Code Provision applicable to an issuer if its chairman is an executive director?</p>	Yes. The chairman should hold these meetings even if he is an executive director.