

## Exemptions from the connected transaction requirements

### De minimis transactions

1. **A listed issuer proposes to obtain a loan from its controlling shareholder on normal commercial terms, secured by certain assets of the listed issuer. Can the listed issuer apply the de minimis exemption? If yes, how should the percentage ratios be calculated?**

Yes. It should calculate the assets and consideration ratios for the loan based on the principal amount of the loan and the revenue ratio based on the annual interests payable to its controlling shareholder.

Given the loan is to be secured by the listed issuer's assets, it should also calculate the percentage ratios for the security as if a disposal of the pledged assets. It should calculate the assets and consideration ratios based on the value of the pledged assets and the revenue ratio based on any identifiable revenue stream generated from the pledged assets. The loan should be classified based on the highest percentage ratios of the loan and the security.

*MB Rules 14A.76, 14A.76(2) and 14A.90  
GEM Rules 20.74(1), 20.74(2) and 20.88  
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2. **A listed issuer entered into an agreement for certain continuing connected transactions in the next 3 years which were exempt from the independent shareholders' approval requirement under the de minimis exemption based on the percentage ratios calculated at that time.**

**When the listed issuer 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?**

No, if the listed issuer has already complied with the applicable requirements for the transactions at the time it entered into the agreement.

*MB Rules 14A.54 and 14A.76  
GEM Rules 20.52 and 20.74  
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## Financial assistance

3. **A listed issuer proposes to fully guarantee a bank loan obtained by a 60% owned connected subsidiary. The controlling shareholder of the listed issuer holds the remaining 40% in the connected subsidiary and will provide a counter-guarantee to the listed issuer for 40% of the loan amount. Does the financial assistance exemption apply to the proposed guarantee?**

No. The exemption only applies if the guarantee provided by the listed issuer is in proportion to its interest in the subsidiary and on a several basis.

*MB Rule 14A.89*

*GEM Rule 20.87*

*First released: March 2014; last updated: May 2024*

4. **A substantial shareholder of a listed issuer will guarantee a bank loan obtained by the listed issuer. The listed issuer has agreed to indemnify the substantial shareholder for the loan guaranteed by it. Is the provision of indemnity by the listed issuer a connected transaction?**

No, given the indemnity is provided in relation to the guarantee provided by the substantial shareholder.

*MB Rules 14A.24(4) and 14A.25*

*GEM Rules 20.22(4) and 20.23*

*First released: March 2014; last updated: May 2024*

## Directors' indemnity, service contracts and insurance

5. **Does the exemption for provision of directors' indemnity apply if:**
- (i) **the indemnity relates to the director's liabilities to third parties in connection with negligence, default and breach of duty by directors?**
- (ii) **the indemnity covers directors' liabilities which are not limited to those arising from his proper discharge of duties?**

No, because provision of indemnity that relates to such director's liabilities is not allowed under the Hong Kong Companies Ordinance.

No, the indemnity would not meet all the conditions set out in MB Rule 14A.91 / GEM Rule 20.89.

*MB Rule 14A.91*

*GEM Rule 20.89*

*First released: March 2014; last updated: May 2024*

**6. Can a listed issuer apply the de minimis exemption to a provision of an indemnity for its director that is not exempt under MB Rule 14A.91 / GEM Rule 20.89?**

The listed issuer may apply the de minimis exemption only if it can ascertain the maximum exposure that may arise from the director's indemnity arrangement. In this case, it should compute the assets and consideration ratios based on the estimated maximum exposure amount.

*MB Rules 14A.76 and 14A.91  
GEM Rules 20.74 and 20.89*

*First released: March 2014; last updated: May 2024*

**7. How should a listed issuer compute the percentage ratios for a purchase of insurance for its director which is not exempt under MB Rule 14A.96 / GEM Rule 20.94?**

The listed issuer should compute the assets, revenue and consideration ratios based on the maximum annual amount of premium payable under the director's insurance.

*MB Rules 14A.76 and 14A.96  
GEM Rules 20.74 and 20.94*

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**8. Does the director's service contract exemption apply if the contract covers the provision of indemnity or purchase of insurance for the director?**

No.

*MB Rules 14A.91, 14A.95 and 14A.96  
GEM Rules 20.89, 20.93 and 20.94*

*First released: March 2014; last updated: May 2024*

**Transactions with persons connected with insignificant subsidiaries**

**9. Can a listed issuer apply alternative size tests to determine if a newly established joint venture (a non-wholly owned subsidiary) meets the insignificant subsidiary exemption?**

Yes. The alternative assets ratio would normally be based on the listed issuer's total capital commitment in the joint venture. The profits and revenue ratios are not applicable as the joint venture is newly set up. The listed issuer should consult the Exchange.

*MB Rule 14A.09  
GEM Rule 20.08*

*First released: May 2010; last updated: May 2024*

10. Is an issuance of securities or a resale of treasury shares to a director of an insignificant subsidiary of the listed issuer a connected transaction?

No. As the insignificant subsidiary exemption applies to the director, the director is not a connected person of the listed issuer.

*MB Rules 14A.09 and Note 1 to 13.36(2)(b)  
GEM Rules 20.08 and Note 1 to 17.41(2)  
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11. When assessing whether a subsidiary is “insignificant” under MB Rule 14A.09 / GEM Rule 20.08, is a listed issuer required to make adjustments to the financial figures shown in the financial statements in the manner set out in MB Rules 14.16 to 14.19 / GEM Rules 19.16 to 19.19 (e.g. adjust the total assets by the amount of any dividend proposed by the listed issuer)?

No. The listed issuer should use the figures shown in its financial statements without adjustments.

*MB Rule 14A.09  
GEM Rule 20.08  
First released: February 2013; last updated: May 2024*

12. When assessing whether a subsidiary is “insignificant” under MB Rule 14A.09 / GEM Rule 20.08, can a listed issuer change from the three-year test to the one year test (or vice versa) from time to time?

Yes.

*MB Rule 14A.09  
GEM Rule 20.08  
First released: May 2010; last updated: May 2024*

### Buying or selling of consumer goods or services

13. Rule 14A.97(2)(b) / GEM Rule 20.95(2)(b) allows a listed issuer to acquire consumer goods or services in connection with its business provided that there is an open market and transparency in the pricing of the goods or services. How does the listed issuer determine whether there is a “transparency in the pricing of the goods or services”?

Generally, the pricing should not be negotiable. For example, the price labels/price lists are on display at retail stores or the prices are published or publicly quoted.

*MB Rule 14A.97(2)(b)  
GEM Rule 20.95(2)(b)  
First released: May 2010; last updated: May 2024*

14. A listed issuer is principally engaged in the provision of financial services including sale of wealth management products to retail customers. Does the consumer goods or service exemption apply to sales of wealth management products to its directors for their personal investments?

Yes, if the same products are made available for sale to other independent customers and the transaction with the director is conducted on normal commercial terms.

MB Rule 14A.97

GEM Rule 20.95

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### Transactions with associates of passive investors

15. To qualify for the passive investor exemption, the passive investor must not have any representatives on the board of directors of the listed issuer or its subsidiaries. Can the passive investor have any board seat(s) at an insignificant subsidiary of the listed issuer?

No.

MB Rule 14A.99

GEM Rule 20.97

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### Transactions with connected persons at the subsidiary level

16. MB Rule 14A.101 / GEM Rule 20.99 exempts transactions between a listed issuer and a connected person at the subsidiary level from the independent shareholder approval requirements. Does this exemption apply to an issue of new shares or a resale of treasury shares by a listed issuer to a connected person at the subsidiary level?

No. Transactions or arrangements involving an issuance of new shares or a resale of treasury shares by a listed issuer to its connected persons are exempt from the connected transaction rules only if they fall under the circumstances described in MB Rules 14A.92 and 14A.92B / GEM Rules 20.90 and 20.90B.

MB Rules 14A.92, 14A.92B, 14A.101 and Note 1 to 13.36(2)(b)

GEM Rules 20.90, 20.90B, 20.99 and Note 1 to 17.41(2)

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