

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink: http://www.hkex.com.hk/consul/paper/cp200910ct_e.pdf.

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

A. Transactions with persons connected with an issuer only by virtue of their relationship with the issuer's subsidiaries

1. Do you think that the definition of connected person should exclude persons connected by virtue of their relationship with an issuer's subsidiaries?

Yes

No

Please provide reasons for your views.

- Influence of connected persons at subsidiaries level to the group's decision is insignificant as the issuer has majority control over the subsidiaries.
- Too onerous to monitor such transactions. As for issuer with joint ventures ("JV") and overseas subsidiaries, there will be difficulties to obtain information from the overseas directors and JV directors for monitoring and compliance purposes.
- If a subsidiary just became a member of the group, there is no reason to treat its ex-directors of past 12 months and their respective associates as the issuer's connected persons.

2. If your answer to question 1 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

3. On the basis that the definition of connected person will continue to include person connected at the subsidiary level, do you agree with the proposal to introduce an “insignificant subsidiary exemption” for connected transactions?

Yes

No

Please provide reasons for your views.

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| <ul style="list-style-type: none">- Only if the exclusion of all persons connected at the subsidiaries level from the definition of connected person as suggested under paragraph 22 of the consultation paper is not adopted.- Although not as preferable as the proposal under paragraph 22 of the consultation paper, it is still better as compared to the present rules. |
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4. Based on your experience, do you think that the “insignificant subsidiary exemption” would be used by you (or for market practitioners, your clients)?

Yes

No

Please describe the circumstances and refer to Option 1 or 2.

5. If your answer to question 3 is “Yes”, do you agree with

(a) the proposed materiality threshold under (i) Option 1 or (ii) Option 2?

Yes (*please choose one of the following options*)

Option 1

Option 2

No

Please provide reasons for your views.

- We propose to adopt a 10% threshold based on the total assets and revenue of the issuer in the latest financial year, subject to Item 5(b) below.
- The significance of the subsidiary to the issuer's group should be measured by reference to the more recent information, i.e. the latest financial year.
- We also suggest adopting UK's approach that the related party transaction rules only apply to transactions other than those of a revenue nature in the ordinary and usual course of business.

(b) the proposed bases for assessing the significance of a subsidiary, i.e. the asset ratio, revenue ratio and the profits ratio?

Yes

No. The significance of a subsidiary should be determined by (*please specify*): Only the asset ratio and the revenue ratio

Please provide reasons for your views.

- The scale of the subsidiary within the group is better represented by reference to the assets and revenue.
- Profits are subject to yearly fluctuation and subject to various factors while asset and revenue tend to be less vulnerable.
- Negative profits will cause the profits test result to be anomalous.
- This is also consistent with the current rules that profits tests is not required for the purpose of percentage ratio calculations in respect of connected transactions.
- There should be provision to allow adjustments to the subsidiary's figures regarding inter-group transactions which have been eliminated in the issuers' consolidated figures.

(c) the proposed additional safeguard to require the consideration ratio be less than 10% if an "insignificant" subsidiary concerned is itself a party to the transaction or its securities/assets are the subject of the transaction?

Yes

No

Please provide reasons for your views.

- Transactions which are material to the issuer are already subject to the notifiable transaction requirements under Chapter 14 so no need to adopt additional consideration test.
- Influence of connected persons at subsidiaries level to the group's decision is insignificant as the issuer has majority control over the subsidiaries. The issuer would safeguard its interest in the subsidiary which is not different from its minority shareholders.

(d) the proposed mechanism for applying the exemption to continuing connected transactions described in paragraph 27 of the Consultation Paper?

Yes

No

Please provide reasons for your views.

- Suggest to remove the three-year maximum term requirement for an agreement under Rule 14A.35(1) because it is considered unnecessary given the requirement for annual re-assessment. The term and other conditions of the agreement would be determined, and subject to the oversight of the INEDs, by reference to commercial considerations.

6. If your answers to question 5 are "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If you answer is "No", please provide reasons and alternative views.

- See answer under Item 5(d) above.

7. If you agree with Option 2, do you think that the definition of "major subsidiary" under Rule 13.25 should be amended to align with that in the "insignificant subsidiary exemption" if adopted?

Yes (despite that we do not totally agree with Option 2 – see 5(a) above)

No

Please provide reasons for your views.

- For consistency and easy administration.

B. De minimis thresholds that trigger disclosure or shareholders' approval requirement for connected transactions

8. (a) For the exemption from independent shareholders' approval requirement, do you support the proposal to revise the percentage threshold to 5%? If your answer is "No", please specify the percentage threshold that you consider appropriate.

Yes (subject to comments below)

No. The percentage threshold should be (*please specify*): _____

Please provide reasons for your views.

- In line with international standard.
- Less costly and cumbersome in administration.
- The rules should not apply to transactions of a revenue nature in the ordinary course of business as in UK, Australia and Singapore.

- (b) For the exemption from all reporting, announcement and independent shareholders' requirements, do you support the proposal to revise the percentage threshold to 1%? If your answer is "No", please specify the percentage threshold that you consider appropriate.

Yes (subject to comments below)

No. The percentage threshold should be (*please specify*): _____

Please provide reasons for your views.

- Agree with the proposal in principal.
- Nevertheless, as the ultimate aim is to provide relief from compliance burden, therefore transactions of a revenue nature should be excluded as in the case of UK and Australia.

9. If your answer to question 8 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

- Refer to Item 8(b) above.

10. Do you agree that a percentage threshold is sufficient to assess whether a connected transaction is eligible for the de minimis exemptions?

Yes

No

Please provide reasons for your views.

- In line with international standard.

11. Do you believe that an absolute monetary cap should also be imposed, irrespective of the percentage threshold test for de minimis exemptions? If your answer is yes, please specify the monetary cap that you consider appropriate for fully exempt connected transactions (the monetary cap for connected transactions exempt from independent shareholders’ approval would be adjusted proportionately).

Yes. The monetary cap for fully exempt connected transactions should be:

HK\$100 million

HK\$200 million

HK\$500 million

HK\$1,000 million

Other monetary cap (*please specify*): HK\$_____

No

C. Transactions that are revenue in nature and in the ordinary and usual course of business

12. Do you agree that the connected transaction Rules should govern revenue transactions with connected persons?

Yes

No

Please provide reasons for your views.

- In other jurisdictions such as UK and Australia, their connected transaction rules do not govern revenue transactions.
- The provision/receipt of financial assistance or services by/from a financial institution that is licensed or approved by the Monetary Authority or other financial regulatory body (e.g. Securities and Futures Commission in Hong Kong), on normal commercial terms and in the ordinary course of business, should also be exempted from disclosure (as in Singapore).
- Thus, Hong Kong should be in line with the international standard in this aspect.

Proposed exemption for revenue transactions with associates of a passive investor

13. Do you agree with the proposed exemption for revenue transactions with associates of a substantial shareholder who is a passive investor in the issuer group?

Yes

No

Please provide reasons for your views.

- Associates of a substantial shareholder (who is a passive investor) are unlikely to pose influence to the issuer's business. It is particularly the case when the passive investor has no board representative in the issuer.
- The passive investor may not have control over its associates or they are in fact independent from each other in respect of business and financial decision. That will make compliance to the connected transaction requirements difficult.
- It is impractical for the issuer to monitor and identify transactions with such remote parties.

14. Do you think that the proposed exemption should also require the substantial shareholder be a passive investor in the relevant associate, for example, it is not involved in the management of the relevant associate?

Yes

No

Please provide reasons for your views.

- We should look at the influence of the substantial investor on the issuer. So long as he is a passive investor, its influence to its associate is irrelevant from the issuer's perspective.

15. If your answer to question 13 is "Yes",

- (a) do you agree that the passive investor must be a sovereign fund or an authorised unit trust or mutual fund?

Yes

No

Please provide reasons for your views.

- The exemption should be extended to all passive investors who meet the criteria set out under paragraph 59 of the consultation paper (except the first and second ones).

- (b) do you think that the exemption should be made available to other passive investors? If so, which?

Yes. The exemption should be made available to *(please specify)*:
all passive investors (see Item 15(a) above

No

Please provide reasons for your views.

- See Item 15(a) above.

(c) do you agree that the passive investor must not have representative on the board of directors of the issuer and its subsidiaries?

Yes

No

Please provide reasons for your views.

- Placing representatives on the board of directors will cause him to be no longer passive.

(d) do you agree with other proposed conditions set out in paragraph 59 of the Consultation Paper?

Yes

No

Please provide reasons for your views.

Disagree with the criteria 1 and 2 under paragraph 59 as explained above.

16. If your answer to question 13 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

- See Item 15(a), (b) and (d) above.

Proposed modification of the exemption for provision of consumer goods or consumer services

17. Do you agree with the proposed changes to expand the exemption for acquisition of consumer goods or services described in paragraph 66 of the Consultation Paper?

Yes (but subject to comments below)

No

Please provide reasons for your views.

- But should extend to cover goods and services provided to or by the connected persons which are ordinarily provided to general customers on terms no more favourable than those available to independent third parties.

18. If your answer to question 17 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

- Suggest to delete the entire phrase “*or otherwise for the purpose of or in connection with any business or contemplated business of the acquirer (whether for consideration or otherwise), except that the listed issuer may acquire consumer goods or services for the purpose of or in connection with its business if there is an open market and transparency in pricing of these goods or services*” from the proposed draft amendments from Rule 14A.31(7)(b)(ii) and the Note thereunder as Clause (e) therein has already ensured that the connected persons will not benefit from such transaction as compared to an independent third party.

19. Can you think of any other suggestions to improve the regulation of revenue transactions with connected persons?

Yes

No

If your answer is “Yes”, please elaborate your views.

- Condition (d) which requires the total consideration/value of the relevant goods/services must be of less than 1% of the total revenue /total purchases of the issuer should be removed because it is administratively difficult to monitor every transaction dealing with the connected persons or their relatives or associates for consumer goods and services at retail level. As the provision of goods and services is based on conditions no more favourable than those given to independent parties, there is no need to set a limit.
- Should include financial services provided by/from a financial institutions or financial services intermediaries licensed or approved by the Monetary Authority or Securities and Futures Commission or other equivalent regulatory authorities overseas provided the terms and conditions offered to / from the connected persons are not more / less favourable than those offered to independent customers.

D. Definition of associate

(1) Definition of associate in Rule 1.01 (for non-PRC issuer) and Rule 19A.04 (for PRC issuer)

20. Do you support the proposal to carve out from the definition of associate the following entities?

(i) The holding company of the investee company or a fellow subsidiary of this holding company described in paragraph 68(e) of the Consultation Paper.

Yes

No

(ii) A company controlled by the investee company (not being a subsidiary of the investee company) described in paragraph 68(f) of the Consultation Paper and this company's subsidiary, holding company and fellow subsidiary.

Yes

No

Please provide reasons for your views.

21. If your answer to question 20 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

(2) Extended definition of associate in Rule 14A.11(4)

22. Do you agree with the proposed extension of the definition of associate to a company in which a connected person’s relative has a majority control as described in paragraph 74 of the Consultation Paper?

Yes

No

Please provide reasons for your views.

- It is already very burdensome for the issuers to monitor transactions with such extensive group of associates, in particular, people as referred to under Rule 14A.11(4)(c) whose relationship with the connected persons may sometimes be very remote. Therefore, object to such extension and suggest that the Exchange to remove Rule 14A.11(4)(c) as it is not in line with rules of other jurisdictions.

23. If your answer to question 22 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

- See Item 22 above.

E. Definition of connected person

(1) Non wholly-owned subsidiary

24. Do you agree with the proposed exemption for (i) transactions between a connected subsidiary and any of its own subsidiaries; and (ii) transactions between any subsidiaries of the connected subsidiary?

Yes

No

Please provide reasons for your views.

- Since such transactions are conducted within the issuer group, there should be no concern about possible abuse by the connected person to the detriment of the issuer's minority shareholders.

25. If your answer to question 24 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes (but with additional amendment as mentioned below)

No

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

- Should clarify whether the proposed exemption also applies to transactions between two connected subsidiaries of the issuer.

26. Do you agree that a non wholly-owned subsidiary should not be regarded as a connected person in the circumstances described in paragraphs 81(a) and (b) of the Consultation Paper?

Yes

No

Please provide reasons for your views.

- Since such transactions are conducted within the issuer group, there should be no concern about possible abuse by the connected person to the detriment of the issuer's minority shareholders.

27. If your answer to question 26 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

- See Item 25 above

(2) Promoter of a PRC issuer

28. Do you support the proposal to delete “promoter” of a PRC issuer from the definition of connected person?

Yes

No

Please provide reasons for your views.

No comment

29. If your answer to question 28 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

No comment

(3) PRC Governmental Body

30. Do you support the proposal to apply those provisions for PRC Governmental Body in Chapter 19A to connected persons of non-PRC issuers?

Yes

No

Please provide reasons for your views.

No comment

31. If your answer to question 30 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

No comment

(4) Management shareholder of a GEM issuer

32. Do you support the proposal to delete “management shareholder” from the definition of connected person in the GEM Rules?

Yes

No

Please provide reasons for your views.

No comment

33. If your answer to question 32 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

No comment

F. Other changes to the connected transaction Rules

(1) Exemption for small transaction involving issue of new securities by subsidiary

34. Do you agree with the proposal to remove the restriction on applying the de minimis exemptions to an issue of securities by the issuer's subsidiary?

Yes

No

Please provide reasons for your views.

- Removing the restriction would reduce the burden on the issuer.
- Already governed under deemed disposal under Chapter 14.

35. If your answer to question 34 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

(2) Exemption for financial assistance provided on a pro-rata basis

36. Do you agree with the proposal to clarify that the exemption under Rule 14A.65(3)(b)(i) will apply where the commonly held entity is also a connected person?

Yes

No

Please provide reasons for your views.

37. If your answer to question 36 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

(3) Transactions with third parties involving joint investments with connected persons

38. Do you agree with the proposal to extend the exemption under Note 3 to Rule 14A.13(1)(b)(i) to disposal transactions mentioned in paragraph 108 of the Consultation Paper?

Yes

No

Please provide reasons for your views.

- Similar exemption should apply to both acquisition and disposal transactions.

39. If your answer to question 38 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

(4) Annual review of continuing connected transactions

40. Do you agree with the proposed Rule amendments to clarify that the annual review requirements apply to continuing connected transactions that are subject to reporting and disclosure requirements in Chapter 14A?

Yes

No

Please provide reasons for your views.

41. If your answer to question 40 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

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

42. Are there any other comments you would like to make?

Yes

No

If your answer is “Yes”, please elaborate your views.

- We would also like the HKEx to consider removing provisions under 14A.13(1)(b)(i) and (ii) as there are no similar rules in other jurisdictions and one cannot see how the substantial shareholder is to have benefit if it is not a party to the transactions.

- End -