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.

The arguments set out in paragraph 18 of the Consultation Paper are quite valid, and we agree with those arguments.

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.

This proposal is agreed solely on the basis mentioned in your question. Such proposal is not agreed based on the reasons stated in paragraph 18 of the Consultation Paper.

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.

A larger threshold is more practicable. Also as stated in paragraph 18 of the Consultation Paper, it is unlikely the "connected person" will be able to influence the listed issuer's action.

(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*): the asset ratio only

Please provide reasons for your views.

This is in line with the de minimis requirement applicable to connected transactions prior to the change of listing rules in 2004.

(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.

No additional safeguard is necessary for the reason stated in paragraph 18 of the Consultation Paper.

(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.

It is reasonable that the applicable rules requirements be complied with when the "connected person" no longer qualifies for the exemption.

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.

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

☐ No

Please provide reasons for your views.

Definitions of similar concepts should be consistent in the rules.

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

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

Please provide reasons for your views.

The reasons set out in paragraph 35 of the Consultation Paper are quite valid, and we agree with the reasons. In fact we shall support a change in the rules so that independent shareholders' approval is required only when two ratios (and not one) hit the 5% threshold, in order to ensure transactions that require independent shareholders' approval are indeed significant transactions which deserve the costs and administrative burden in convening a shareholders meeting.

(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

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

Please provide reasons for your views.

We agree with the reasons set out in the Consultation Paper. In fact, we shall support an even higher percentage (of 2%) as that would reduce the number of immaterial connected transactions requiring disclosure.

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.

Subject to the comments made in the answers to Q8(a) and (b).

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.

Materiality is different for different companies depending on the size and the impact of the transaction on the revenue, profits, assets etc of the company entering into the transaction.

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.

We agree that such rules are out of line with international norms. Revenue transactions with connected persons which are in the ordinary course of business of the listed issuer and entered into on arm's length basis on normal or better commercial terms should be exempted.

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.

Please see answer to Q12. Also there are practical difficulties in identifying the associates of such investor.

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.

Please see answer to Q13 – all such transactions should be exempted.

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.

Please see answers to Q12 and Q13.

(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)*: [redacted]

☒ No

Please provide reasons for your views.

Please see answers to Q12 and Q13.

(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.

This will prevent the passive investor from influencing the listed issuer's management. But instead of no representative at all, this should be modified by restricting the number of representatives of the passive investor to a percentage (say one-fourths) of the number of the members of the board.

(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.

All the conditions (except the following) are agreed. The exceptions are :- (i)Please see answer to Q15(c); and (ii) there are practical difficulties in assessing whether or not a passive investor has widespread investments.

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.

Please see answers to the above questions on exemption of connected revenue transactions.

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

☒ No

Please provide reasons for your views.

Without limiting our view set out in our answer to Q12, we agree with the reason stated in paragraph 65 of the Consultation Paper.

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.

The note to Rule 14A.31(7) (b) should set out more examples of goods and services ordinarily supplied for private use or consumption.

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.

Please see answer to Q12.

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.

We agree with the reasons set out in paragraphs 69 and 70 of the Consultation Paper.

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.

This proposal puts an onerous burden on the listed issuer – there are practical difficulties in identifying companies controlled by these relatives. Further the definition of "associates" in terms of relatives is already very wide.

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.

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.

We agree with the reason set out in paragraph 79 of the Consultation Paper.

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

■ No

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

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.

We agree with the reasons set out in paragraph 81 of the Consultation Paper.

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.

(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.

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.

(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.

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.

(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.

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.

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.

We agree with the reason set out in paragraph 98 of the Consultation Paper.

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.

We agree that the risk of potential abuse is remote in such cases.

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.

We agree with the reason set out in paragraph 108 of the Consultation Paper.

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.

The annual review requirements should apply only to those CCTs that are subject to reporting and disclosure requirements.

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.

- End -