

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 issuer normally has no incentive to benefit a minority shareholder of a subsidiary, since the issuer is disadvantaged by such benefit. The potential abuses referred to in the Consultation Paper can be dealt with as also referred to in the Consultation Paper.
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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.

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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.

Neither option is supported since, for the reasons given in the answer to Question 1 above, it is not thought necessary to include substantial shareholders of subsidiaries within the definition of connected persons. See also our response under 4 below.

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.

The administrative burden of monitoring the size of relevant subsidiaries would outweigh the benefit of transactions with insignificant subsidiaries not having to comply with the connected transaction rules. Particular problems would arise when an “insignificant subsidiary” subsequently grows into a “significant subsidiary”, as is illustrated by the example of AHK Air Hong Kong Limited (“AHK”).

AHK is owned 60% by Cathay Pacific Airways Limited (“CX”) and 40% by DHL. AHK would have been an “insignificant subsidiary” of CX in 2002 but would have ceased to be an “insignificant subsidiary” in May 2003 and in November 2008 (based on the highest annual cap and prevailing share prices). On 17th October 2002, AHK entered into a services agreement with DHL for carriage of express materials for a term until 31st December 2018. The annual transaction amount under the services agreement grew rapidly from HK\$43 million in 2002 (Oct-Dec) to HK\$322 million in 2003 and HK\$2,122 million in 2008, with an annual cap of HK\$5,070 million set for 2018.

For reference, the weblinks of the relevant CX announcements and circulars regarding the services agreement between AHK Air Hong Kong Limited and DHL are set out below:

17 Oct 2002

<http://www.hkexnews.hk/listedco/listconews/sehk/20021018/LTN20021018089.doc>

27 Jun 2005

<http://www.hkexnews.hk/listedco/listconews/sehk/20050627/LTN20050627100.DOC>

12 Jul 2005

<http://www.hkexnews.hk/listedco/listconews/sehk/20050713/LTN20050713071.pdf>

12 Mar 2007

<http://www.hkexnews.hk/listedco/listconews/sehk/20070312/LTN20070312126.PDF>

21 Mar 2007

<http://www.hkexnews.hk/listedco/listconews/sehk/20070321/LTN20070321076.PDF>

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.

Neither option is supported.

- (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*): _____

Please provide reasons for your views.

Neither option is supported.

- (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.

Neither option is supported.

- (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.

Neither option is supported.

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.

Neither option is supported.

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.

Neither option is supported.

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.

We agree with the reasons set out in the Consultation Paper.

- (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.

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.

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.

The purpose of the size tests is to assess the materiality of a particular transaction and its impact on the revenue, profits, asset base, and as appropriate, capital base of the issuer. Accordingly, materiality should be assessed with reference to the size of the issuer and not to an arbitrarily determined monetary cap. A particular monetary cap could be material to some but not all issuers. It should be recognized that the total market capitalisation of Main Board issuers has increased substantially over the years due to the organic growth of the issuers as well as the addition of large-cap Chinese stocks. Large-cap Chinese stocks now account for about 38% of the Hang Sang Index. The retention of a monetary cap would derogate from the objective of the proposal to raise the de minimis cap in the first place. The idea is thus unnecessary and impracticable, and does not recognize the commercial reality of the Hong Kong financial market.

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.

Revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

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.

We agree because (for the reasons set out in our response to 12 above) we think that all revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements. In addition, we do not disagree with the reasons set out in the Consultation Paper.

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 think (see our response to 12 above) that all revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

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.

We think (see our response to 12 above) that all revenue transactions conducted at arm’s length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

(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)*:

No

Please provide reasons for your views.

We think (see our response to 12 above) that all revenue transactions conducted at arm’s length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

(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.

We think (see our response to 12 above) that all revenue transactions conducted at arm’s length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

(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.

We think (see our response to 12 above) that all revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

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.

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 that no revenue transactions should be subject to the connected transaction rules, we agree with the reasons set out in 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.

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.

Revenue transactions conducted at arm’s length in the ordinary and usual course of business of the issuer should be exempt from connected transaction requirements.

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 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.

It is an onerous burden and not practicable for the issuer to maintain and update a full list of all companies controlled by all relatives of every connected person. Also, the issuer does not have the statutory power or right to require all relatives of every connected person to provide such information.

As the Exchange already has the power under Rule 14A.06 to deem a person to be connected, the proposed extension of the definition of associate is not necessary.

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 reasons set out in 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 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.

We agree with the reasons set out in the Consultation Paper.

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.

We agree with the reasons set out in the Consultation Paper.

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.

We agree with the reasons set out in the Consultation Paper.

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 reasons set out in 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 with the reasons set out in the Consultation Paper.

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 reasons set out in 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.

We agree with the reasons set out in the Consultation Paper.

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 -