

## 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](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.

We consider that there is a need to regulate transactions with persons connected at subsidiary level for the following reasons :-

- (i) the interest of minority shareholders of listed issuer should be protected;
- (ii) if the exclusion is implemented, revenue transactions with person connected at subsidiary level will not be required to be disclosed or approved by independent shareholders, despite the possible material size of the transactions; and
- (iii) a large number of listed issuers carry out their principal activities by major operating subsidiaries, it is considered that persons connected at subsidiary level (in particular shareholders of major operating subsidiaries) may exert influence over the listed issuers.

However, we also noted the compliance burden of listed issuer for transactions with persons connected at subsidiary level. To balance, we agree to the introduction of exemption of "insignificant subsidiary" below.

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.

We support this proposal and are of the view that the introduction of "insignificant subsidiary exemption" provides a relief from the compliance burden of listed issuer.

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.

We believe that the "insignificant subsidiary exemption" would be used by our clients.

We have experienced certain transactions which were regarded as connected transactions by virtue of the fact that directors and/or substantial shareholders of minor subsidiaries were parties to the transactions. The subsidiaries which linked up the connected relationship were of no significant value to our listed clients.

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 consider that Option 2 which provides a 10% threshold is more practicable and will effectively ease the compliance burden of listed issuers.

However, we have reservations on the comparison of financial figures for each of three financial years immediately preceding the transaction. To compare the revenue and profit of a subsidiary to that of listed issuer for each of three financial year may not be fair as revenue and profit of some businesses of a listed issuer may fluctuate as a result of economic cycle. Alternatively, we suggest to compare the financial figures for the average of three financial years immediately preceding the transaction.

- (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.

We agree with the proposed bases for assessing the significance of a subsidiary. These three figures, together with the market capitalisation, are effective means to assess the size and scale of operation of a listed issuer.

- (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.

We agree with the proposal and consider that the additional safeguard is reasonable.

- (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.

We generally agree with the proposal.

We consider that the timing for conducting the annual assessment should be clearly stated. As paragraph 27 suggests that the listed issuer must reassess the situation annually based on the latest published audited financial information of the listed issuer group, the listed issuer may only realise the non-compliance some time (with a maximum of three months) after the year end date.

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 (subject to comments below)

No

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

Please refer to our comments set out in responses to questions No. 5(a) and 5(d) above which will affect the drafting of the proposed Rule 14A.31(9)(b) and Rule 14A.33(4)(b).

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.

The nature of the event triggering disclosure obligations under each of Rule 13.25 and Chapter 14A is substantially different. As we are talking about winding-up and liquidation in Rule 13.25, which will affect the operation, financial condition and even reputation of a listed issuer, we consider that 5% threshold should be maintained.

We also consider that disclosure of winding up or liquidation should also serve as a reminder to shareholders to pay additional attention to the operation and financial conditions of a listed issuer, therefore, the 5% threshold should be kept for Rule 13.25.

**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 proposal.

The relaxation of the requirement will provide relief from compliance burden where the size of transaction is immaterial. We also agree with the reasons given 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.

The revision of the percentage threshold to 1% will provide relief from compliance burden where the size of transaction is immaterial. We also agree with the reasons given 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.

We agree that materiality of a transaction should be assessed with reference to percentage of listed issuer's financial figures.

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.

Although the connected transaction Rules governing revenue transactions impose burden to the listed issuer for regulatory compliance, the Rules also provide valid protection to shareholders.

We agree that the revision of the threshold to 5% for exempting shareholders' approval requirement and 1% for exempting disclosure requirement has provided relief from compliance burdens to listed issuers for revenue transactions.

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 that if a substantial shareholder is a passive investor in the listed issuer group, the revenue transactions with its associates should be exempt. We consider that the possibility of exerting influence by the substantial shareholder over the listed issuer is relatively low as it is only a passive 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.

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.



- (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.

We have reservations about the extension of the exemption to other investors, in particular, private equity funds. We agree with the view stated in paragraph 61 of the Consultation Paper that private equity funds generally have influence over the actions of the listed issuer's board of directors by imposing restrictive covenants or negative pledge on the listed issuers.

- (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 agree that it is too onerous to require the passive investor not to have representative on the board of directors of the listed issuers in view of the size of investment.

However, safeguard should be imposed by listed issuers. For example, the auditors and the independent non-executive directors of the listed issuer may conduct annual review on the terms of the transactions and confirm whether the exempt connected transactions are conducted in the ordinary and usual course of the listed issuer's business and on normal commercial terms.

- (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.

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 (subject to comments set out below)

No

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

Please refer to our comments set out in the response to question No. 15(c) 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

No

Please provide reasons for your views.

We support the proposal and agree with the reasons given 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.

**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 proposal. We consider that the existing definition of "associates" is too wide and agree with the reasons given 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.

We support the proposal and agree that the definition of associate should also extend to companies controlled by relatives.

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 (subject to comments set out below)

No

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

We consider that clarification should be made on the proposed rule amendments as they do not require aggregation of interest of more than one relative in a company. For example, if the voting right of a company is controlled as to 30% by the spouse of a connected person and another 30% by the aunt of the same connected person, will this company be an associate of the connected person in question? We invite the Stock Exchange to revisit the purpose of these rule amendments and clarify.

**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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given in the Consultation Paper.

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 that the chance of promoter to exert influence over PRC listed issuer is low. We support the proposal.

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?

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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given 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 support the proposal and agree with the reasons given 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 -