

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.

We fully support the general principle that the connected transaction rules are intended to safeguard against directors, chief executives and substantial shareholders taking advantage of their positions to the detriment of the minority shareholders of an issuer. As set out in paragraph 18 of the Consultation Paper, we support the argument that it is unlikely that a person can unduly influence the issuer's actions by virtue of his relationship with the issuer's subsidiary.

In addition, we would highlight that certain issuers (eg banking institutions) often form strategic partnerships and joint ventures or create other types of legal entity structures as part of normal commercial arrangements. Given the nature of these arrangements, it is often difficult to obtain agreement from the partner to comply with the connected transaction requirements.

We believe that the stringent definition of a connected person leaves Hong Kong at a competitive disadvantage vis-à-vis other exchanges.

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.

Compliance with the rules for such insignificant subsidiaries is often unworkable and unduly burdensome to the issuer given the subsidiary’s size and materiality with the Group.

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.

Yes, we believe that we would benefit from the “insignificant subsidiary exemption” in the event that such an insignificant subsidiary was to be formed. At present, it is necessary for us to have in place robust processes and procedures concerning the formation and acquisition of new non-wholly owned subsidiaries to ensure that the creation of a new connected person can be justified given the administrative burden of complying with the rules on connected transactions.

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 favour Option 2 to adopt a 10% threshold calculated based on three years' financial figures which is aligned with the existing provisions under the UK Listing Rules (with the exception that we do not consider that it is necessary for the subsidiary to have been in the listed issuers group for one year or more for the reasons stated under Answer 1 and 4 above). We also consider that the exemption should be aligned to the UKLR (Annex 1R9(4)) whereby "relevant periods" are considered available if the parties have been connected for part of the three-year period as long as they satisfy the tests for each of those years.

- (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.

The proposed bases are consistent with the UK Listing Rules.

- (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 support the proposal that this exception will offer an additional safeguard and is consistent with the UKLR.

- (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 consider that the proposed exemption for “insignificant subsidiary undertakings” should be applied so that connected transactions and continuing connected transactions are exempt from all the requirements of Chapter 14A.

We do not understand the rationale for exempting “insignificant subsidiary undertakings” from only certain rules and requiring Rule 14A.35 (agreements not exceeding three years) to be applied. This would create an unnecessary administrative burden on the issuer and its subsidiaries.

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.

Please refer to 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

No

Please provide reasons for your views.

The alignment of the definition is sensible and will avoid subsequent confusion.

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 support the proposed change in percentage threshold from the existing 2.5% to 5% on the basis the current threshold is too low and captures too many transactions that the listed issuer and its independent shareholders would consider immaterial.

Furthermore, we consider that the rules should be amended to allow the de minimis exemption to be applied to the issue of new securities by the Company on a non pre-emptive basis (eg vendor placing). This exemption would apply where such authority has previously been conferred on the listed issuer by its independent shareholders and would be required to be on the same terms and conditions as the participation by other placees (and in compliance with all relevant laws and regulations).

- (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 support the proposed change in percentage threshold from the existing 0.1% to 1% for exemption from all reporting, announcement and independent shareholders' approval requirements.

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.

The wording "and the total consideration is less than HK\$1,000,000" under Rule 14A.31(2)(b) as well as under Rule 14A.33(3)(b) should be deleted or adjusted as it contradicts with the increased percentage threshold.

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 support the proposal for the reasons set out in paragraph 43 of the Consultation Paper in that the de minimis exemptions are meant to provide relief from the compliance burden where the size of the subject transaction is immaterial from the perspective of the issuer concerned.

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 believe that revenue transactions with connected persons should not be governed by the rules (unless such transactions are not in the listed issuer's ordinary course of business or on non-commercial terms).

We consider that certain listed issuers face major challenges in applying connected transaction rules to revenue transactions and that there is a much lower likelihood that any favourable treatment would be given or influence brought by a connected person in respect of such 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.

For reasons stated in response to Q12 above, we believe that revenue transactions should not be governed by the connected person rules.

We further consider that the passive nature of the substantial shareholder should not be a condition of the proposed exemption given the low likelihood that any non-passive investor would be able to exert influence over revenue transactions that are entered into in the issuer's ordinary and usual course of business on normal commercial terms.

However, where such an exemption is proposed, we consider that should also be applied to the substantial shareholder itself as well as to its associates.

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 do not believe that it should matter whether the substantial shareholder is a passive investor in the relevant associate. The real question is whether they are in a position to exert influence over the issuer.

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)*:

No

Please provide reasons for your views.

(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.

Not necessarily. The general principle should be whether the passive investor is in a position to exercise influence over the issuer. It would seem highly unlikely that the passive investor would be in a position to influence the Board over revenue transactions in the issuer's ordinary course of business by having a representative on the Board.

We would also argue that the rules should restrict the requirement not to have a representative on the board of directors of the "listed issuer" under the Rule 1.01 definition of "listed issuer") and not the Rule 14.04(6) definition of "listed issuer" which includes its subsidiaries unless the context otherwise requires.

(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.

Please refer to our answer to question 13.

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 refer to our answer to question 13.

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 proposed changes for the reasons set out in paragraphs 65 and 66 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.

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.

We consider those transactions of a revenue nature in the ordinary course of business of the listed issuer and at arm's length should be excluded from the connected transaction rules.

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 paragraph 69 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.

We agree with the reasons set out in paragraphs 73 and 74 of the Consultation Paper.

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 support the proposed exemption for the situation as illustrated 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 that a non wholly-owned subsidiary should not be regarded as a connected person in the circumstances described in paragraph 81(a) and (b) and it is unlikely that the spirit and intent of the connected transaction rules would be breached.

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 paragraphs 85 and 86 of 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 reason set out in paragraph 90 of 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 paragraphs 94 and 95 of 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 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 consider that such exemption should be expanded to connected person and jointly controlled entity, irrespective of whether they are connected person at issuer or subsidiary level.

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 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.

We firmly support that proposal set out in paragraphs 109 and 110 of 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.

Please refer to our response to Question 8 suggesting that connected persons be permitted to participate in non pre-emptive placing of shares where the Company's independent shareholders have provided prior approval.

- End -