

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.

In principle we support a relaxation of the current Listing Rules requirements on transactions with persons connected only at the subsidiary level (each a "Subsidiary Connected Person") but we do not agree with the proposed introduction of a general exemption of transactions with all Subsidiary Connected Persons from compliance with the Listing Rules requirements.

We note the arguments set out in paragraphs 18 to 20 of the Consultation Paper and that the rules governing transactions with Subsidiary Connected Persons in Hong Kong are more stringent compared to those in other international markets. On balance, due to the unique characteristics of the securities market in Hong Kong and the PRC where a large proportion of listed issuers are majority or centrally owned or controlled, the controlling shareholders of which may have an extended and complicated network of personal interests in the companies, and the business community is more closely knit compared to other markets, we believe there is a genuine need to regulate transactions with Subsidiary Connected Persons and provide better protection to investors' rights. Since the potential influence of a substantial shareholder, director or chief executive of a "major subsidiary" on a listed group can be substantial, it is important to avoid or flush-out potentially abusive transactions where a Subsidiary Connected Person may derive substantial benefits.

We suggest introducing new exemptions to operate with existing rules with a view to achieving the desired result of balancing the need to regulate transactions with Subsidiary Connected Persons against the potential burden on issuers to comply with rigid requirements where the costs of compliance may outweigh its benefits.

First, we believe not all transactions with Subsidiary Connected Persons should be subject to the requirements contained in Chapter 14A. The potential influence of an insignificant subsidiary's Subsidiary Connected Person on the listed group is lower compared with a significant subsidiary's Subsidiary Connected Person. We agree with the proposal to introduce the concept of major subsidiary as contained in paragraph 23 of the consultation paper.

Secondly, we believe the current de minimis thresholds contained in Rule 14A.31(2) and Rule 14A.32(2) are too low. We welcome the proposal to revise (upward) the threshold percentages in Questions 8 to 11. Please refer to our response to those questions. One point we wish to highlight regarding our comments on the de minimis thresholds is that we strongly recommend the Exchange to review the monetary thresholds of HK\$1 million and HK\$10 million. These figures have been in use since 1989 and have not been revised since then. We propose to raise the thresholds of HK\$1 million to HK\$5 million and HK\$10 million to HK\$30 million.

Thirdly, the relaxation or exemption mechanisms offered in Rule 14A.43 (independent shareholders' written approval in lieu of the holding of a general meeting) and Rule 14A.31 and Rule 14A.32, to a certain extent, have alleviated or will ease the burden on an issuer to seek shareholders' approval by general meeting and/or to report or disclose the transaction to its shareholders and the investing public.

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.

Not applicable

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 the proposal to introduce an "insignificant subsidiary exemption" for connected transactions and the rationale put forward by the Exchange.

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.

Clients who we have consulted have indicated that they will use this exemption if available.

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 believe that Option 1 is better because it is easier to operate.

The formula contained in either Option 1 and Option 2 requires an issuer to calculate the total assets, profits and revenue of a subsidiary or a group of subsidiaries attributable to the listed group. Option 2 would potentially be problematic if the relevant subsidiary or one of the relevant subsidiaries has not been, or ceases to be, a subsidiary of the issuer during the relevant three year period. All the size tests in Chapters 14 and 14A are measured using on the latest published audited financial information of an issuer. The introduction of the concept of three years financial figures may unduly increase the regulatory burden on listed issuers.

We invite the Exchange to consider increasing the percentage threshold from 5 per cent. to a higher percentage in Option 1. The potential influence of a Subsidiary Connected Person of a 5 per cent. subsidiary within a listed group may not be significant. We note Rule 4.28 and Rule 13.25 both have references to what constitutes a major subsidiary of an issuer. Under Rule 4.28, a new listing applicant has to include in its prospectus the pro forma financial information of the enlarged group if it has acquired or proposed to acquire companies or businesses amounting to more than 5 per cent. of its total assets, profits or revenue of the applicant since the date to which the latest audited accounts in the accountants' report of the applicant have been made up. Rule 13.25 relates to the winding up and liquidation of a subsidiary. We appreciate the importance of setting a lower percentage for these two scenarios as public investors should be informed of the financial development of an issuer. Other than these exceptions, we believe it is more appropriate to set a higher figure of, say 10 per cent. when measuring the impact of a Subsidiary Connected Person on the listed group.

- (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 by reference to the total assets, profits and revenue tests.

- (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.

If it is believed that the potential for a Subsidiary Connected Person of an insignificant subsidiary to abuse his/its position in the listed group is relatively small, it is unnecessary to introduce an additional safeguard. The Listing Rules already contain requirements in Chapter 14 to regulate transactions which are considered significant to a listed group.

- (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 support the proposed mechanism for applying the exemption to continuing connected transactions.

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, but please see our further suggestion below.

No

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

Drafting comments:

If either Option 1 or Option 2 in Question 5(a) is adopted, the Listing Rules should clarify the criteria of determining whether the relevant subsidiary is an insignificant subsidiary if it (or one of the relevant subsidiaries) has not been part of the listed group, or ceases to be part of the listed group, during the relevant period.

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.

Not applicable.

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 imposition of standards which is in line with international requirements for Hong Kong issuers, as it will, at least, not reduce the attractiveness of Hong Kong as a listing destination.

Coincidental with a review of the de minimus percentages, we strongly recommend the Exchange to review the monetary floor of the de minimus thresholds contained in Rule 14A.31(2) and Rule 14A.32. While we continue to support putting a monetary floor to exempt or relax the connected party transaction requirements for insignificant transactions, the value of HK\$1 million and HK\$10 million which have been in use since 1989 are, in our opinion, outdated, far too low and ignore the effects of economic growth and inflation in Hong Kong, China and internationally for the past 20 years. The 1999 and 2002 public consultations on proposed changes to connected party transaction requirements did not review these figures.

We propose HK\$5 million to replace HK\$1 million and HK\$30 million to replace HK\$10 million. Assuming a listed issuer has a market capital of HK\$200 million (the minimum market capitalisation required for a new listing applicant under Rule 8.09(2)), the suggested figures of HK\$5 million and HK\$30 million represent 2.5 per cent. and 15 per cent. of the market capitalisation of a new listing applicant.

- (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.

Please see our response in Question 8(a).

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 with the view of the Exchange that all issuers should be treated equally. The connected party transaction rules in Hong Kong is probably one of the most complicated and stringent in developed international markets. We believe, unless there are over-riding reasons to introduce cumbersome concepts to protect minority investors’ interest, the rules should be kept simple.

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 with the view of the Exchange that it is inappropriate to introduce a general exemption for revenue transactions with connected persons and the reasons put forward by the Exchange.

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 support the proposed exemption for revenue transactions with an associate of a substantial shareholder who is a passive investor and the rationale put forward by the Exchange.

We invite the Exchange to consider extending this exemption to all transactions, rather than limiting only to revenue transactions. The rationale is that if it is believed that the potential for a passive investor to abuse its position in the issuer is relatively small, it seems logical not to restrict the exemption only to revenue transactions.

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.

If it is believed that the potential for a passive investor to abuse its position in the listed group is relatively small, it is unnecessary to introduce an additional safeguard.

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 disagree that a passive investor must be a sovereign fund or an authorised unit trust or mutual fund. We believe a passive investor should be determined based on the level of its/his participation and involvement in the management of, and potential influence on, the listed group.

(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 do not agree with categorising an investor according to its legal structure or its type, that is, whether it is a sovereign fund, an authorised unit trust or mutual fund, a partnership, a joint venture or otherwise. As set out above, we believe a passive investor should be determined based on the level of its participation and involvement in the management of, and potential influence on, the listed group.

(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 believe board representation, as well as a right to nominate individuals to senior management positions (in the issuer or its major subsidiaries), or a right to veto such appointments is one of the more important factors to determine the ability of an investor to influence or be involved, or its intention to influence or be involved, in the management of a listed group.

- (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 see below our comments on the other proposed conditions contained in paragraph 59 of the Consultation Paper.

1. “...it has a wide spread of investments other than securities of the issuer (or any of its subsidiaries) and the relevant associate”. An investor’s influence on or involvement in the management of a listed group or its decision making process does not correlate with the number of investments the investor has. It is difficult to find an objective standard to measure whether an investor has a wide spread of investments.

2. “... it ... is not involved in the management of the issuer group”. We suggest the Exchange should provide guidance on how to interpret “involve in” and “management of the issuer group”. For example, investors often enter into shareholders’ agreements for their investments and often such shareholders’ agreements will contain provisions granting veto rights to investors on substantive issues. Would this be considered involvement in the management of the issuer group?

We agree with the other conditions contained in paragraph 59 of the consultation paper.

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.

We support the proposed changes to expand the exemption for acquisition of consumer goods or services described in paragraph 66 of the consultation paper and the rationale put forward by the Exchange.

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 support the proposed changes to carve out from the definition of associate the entities referred to in paragraph 68(e) and 68(f) of the consultation paper and the rationale put forward by the Exchange.

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.

Subject to our suggestion on Rule 14A.11(4)(c) in Question 42, we agree with the proposal to extend the definition of associate to a company in which a connected person's relative ("Connected Relative") has a majority control as described in paragraph 74 of the consultation paper and the views put forward by the Exchange.

We encourage the Exchange to consider extending the definition to include not only a company in which a Connected Relative has a majority control, but also a trust or other forms of legal entity over which a Connected Relative has control.

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 proposed exemption contained in paragraph 79 of the consultation paper and the views put forward by the Exchange.

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 proposed exemption contained in paragraphs 81(a) and 81(b) of the consultation paper and the views put forward by the Exchange.

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 proposal to delete promoter of a PRC issuer from the definition of connected person and the views put forward by the Exchange.

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 proposal to apply those provisions for PRC Governmental Body contained in Chapter 19A to connected persons of a non-PRC issuer and the views put forward by the Exchange on this issue.

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 proposal to delete management shareholder from the definition of connected person in the GEM Rules and the views put forward by the Exchange.

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 proposal and the views put forward by the Exchange.

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, but please see our further suggestion below.

No

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

Our answer is Yes. However, for the avoidance of doubt, we suggest adding wording with the following effect either immediately after the revised Note to each of Rule 14A.31(2) and Rule 14A.32 or elsewhere: "For the purpose of determining the percentage ratios in the case of an issue of new securities by a subsidiary of a listed issuer, the only "size tests" that are required to be run are those that relate to the disposal of the listed issuer's interest in that subsidiary."

(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 proposal and the views put forward by the Exchange.

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 proposal and the views put forward by the Exchange.

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 proposed exemption contained in paragraph 109 of the consultation paper and the views put forward by the Exchange.

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.

Other comments:

I. Controller

We invite the Exchange to consider introducing the “insignificant subsidiary exemption” contained in Question 3 to transactions referred to in Rule 14A.13(1)(b) so that an issuer will not need to comply with the requirements in Chapter 14A unless the relevant subsidiary will become or already is a “major subsidiary”.

II. Termination of an option, a finance lease or an operating lease

We invite the Exchange to explain the rationale behind treating a termination of an option, a finance lease or an operating lease as a transaction. In other connected transactions such as an acquisition or a disposal of assets, termination is not deemed a transaction requiring separate independent shareholders’ approval. We note that termination of an option, a finance lease or an operating lease is not considered a transaction under the UK, Australia or Singapore listing rules. It seems unreasonable that a transaction cannot be terminated without the approval of the shareholders of the listed issuer in circumstances where say, the termination is a right provided by the contract (e.g. failure of payment by the issuer of agreed fee).

On a separate point, we believe it would be useful for the purposes of rule compliance if there is written guidance from the Exchange regarding how to identify the numerators for the various size tests in relation to these “transactions”.

III. A person is deemed a connected person pursuant to Rule 14A.11(4)(a) and Rule 14A.11(4)(c)

We invite the Exchange to provide written guidance on the criteria to determine whether any person referred to in Rule 14A.11(4)(a) and Rule 14A.11(4)(c) will be deemed a connected person.

For example, in the case of Rule 14A.11(4)(a), if an independent investor subscribes for a 8.8 per cent. interest in an issuer and enters into a shareholders’ agreement with a substantial shareholder of the issuer, it is not clear whether the investor is deemed a connected person.

In the case of Rule 14A.11(4)(c), the type of persons falling within this definition of associates seems over-reaching, in particular, the references to “grandparents”, “aunt”, “uncle” and “cousin”. Such a wide definition of associates in the Hong Kong Listing Rules is very different from (and at odds with) the standards of other international markets with which a sophisticated international financial or a strategic investor would be familiar. For example, associates of a related party in the UK and Singapore listing rules refer only to the immediate family of the connected person and does not extend to other relatives.

We respectfully submit that the current criteria on identifying associates of a connected person have narrowly focused on the relationship between the parties, rather than highlighting the control and/or influence of the person on the issuer group. The former could be ineffective as it may lead companies to comply with the letter of the law but not its spirit. We strongly recommend the Exchange to review the definition of associates in Chapter 14A.

Please consider reconciling the policy rationale behind Rules 14A.06, 14A.11(4)(a) and 14A.11(4)(c).

IV. Non-wholly owned subsidiary being a connected person pursuant to Rules 14A.11(5) and 14A.11(6)

Please consider relaxing the reference to 10 per cent. in these two rules to 30 per cent. We believe defining a non-wholly owned subsidiary of an issuer as a connected person when that non-wholly owned subsidiary is owned as to 10 per cent. or more by a connected person seems over-reaching. It is difficult to reconcile the policy rationale behind this rule to say a similar situation where an entity (not being a subsidiary of an issuer) will only be considered an associate when a connected person holds 30 per cent. or more in that entity. The potential influence which a connected person may have, or the benefit which a connected person may stand to gain, is unlikely to increase as a result of an issuer holding an equity interest in a company in which a connected person also holds an interest as low as 10 per cent.

On a separate issue, please consider introducing the “insignificant subsidiary exemption” contained in Question 3 to these two rules so that only a non-wholly owned subsidiary (or a non-wholly owned subsidiary and its subsidiaries) which accounts for a certain per cent. or more of the total assets, profits or revenue of an issuer will be required to comply with the requirements in Chapter 14A. We suggest the definition of major subsidiary in this case should follow the definition in Question 3 above (should it be adopted). Irrespective of whether the proposal outlined in Question 3 is adopted we believe it should be introduced for Rule 14A.11(5) and Rule 14A.11(6).

V. Rule 14A.13(1)(b)(i)

The connected party transaction concept referred to in Rule 14A.13(1)(b) seems over-reaching. For example, if a controller holds 10 per cent. in a target company where an issuer proposes to purchase a 50 per cent. interest from an independent third party seller, it is difficult to envisage the benefit the controller can derive from the acquisition or how the controller can influence the decision of the issuer in such a transaction. Please explain the rationale behind this rule.

We invite the Exchange to consider introducing exemptions to this rule for scenarios where a potential influence of a controller on an issuer is unlikely, or where the potential benefit that a controller may derive from a transaction is insignificant.

We also invite the Exchange to clarify whether there is a minimum time period when the substantial shareholder is required to remain as a controller of the company being acquired under Note 3(iv) to Rule 14A.13(1)(b)(i).

VI. Independent valuation of assets the primary significance of which is its capital value required under Rule 14A.59(6)

Please clarify the interpretation of the words “primary significance” of an asset and “capital value”. In addition, please explain the rationale behind the requirement to produce an independent valuation for an acquisition or a disposal where the asset has a strong profit-earning capacity, and the consideration of the acquisition or a disposal is not determined by reference to the asset value of the asset.

VII. Non-exercise or lapse of an option under Rule 14A.70(3)

A strict interpretation of Rule 14A.70(3) will require size tests to be performed in the event of a non-exercise of an option. If the calculation of the various size tests reveals that independent shareholders’ approval is required for the non-exercise of an option, it is possible to interpret that an issuer should seek approval from shareholders for the non-exercise of an option.

This possible interpretation seems too stringent and puts an issuer in a difficult position as any decision of this type should be a reserved matter for the management and directors of the issuer. Please consider amending the rule by (a) allowing an exemption from the requirement to seek shareholders’ approval in the case stated above and (b) requiring only an announcement of the non-exercise if the grant/writing of the option has been disclosed in the prospectus or announced in any public communications.

VIII. Others

The difference in the definitions of “connected transactions” under the Listing Rules and of “related party transactions” under Hong Kong or international accounting standards means that, while these two types of transactions for a listed issuer usually overlap to some extent, they can also differ significantly.

This discrepancy has meant that often it is impossible to obtain the most reliable data about certain kinds of connected transactions, namely, data that can be audited by an issuer’s auditors. While it is accepted that the definitions of connected transactions and of related party transactions cannot be made identical as they serve different purposes, nevertheless it would appear worthwhile to seek to align them where practicable, so long as the protection of minority shareholders is not compromised. This is a factor which we submit should be borne in mind in any future review of the connected transactions regime under the Listing Rules.

- End -