

THE HONG KONG INSTITUTE OF CHARTERED SECRETARIES
SUBMISSION ON PROPOSED CHANGES TO THE CONNECTED TRANSACTION RULES

A. Transactions with persons connected with an issuer only by virtue of their relationship with the issuer's subsidiaries				
		Yes	No	Reasons for the views
1.	Do you think that the definition of connected person should exclude persons connected by virtue of their relationship with an issuer's subsidiaries?	X		We agree with the reasons set out in paragraph 18 of the Consultation Paper.
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?	X		
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?	X		We see the merits of the "insignificant subsidiary exemption" but only if the definition of connected person continues to include persons connected at the subsidiary level.
4.	Based on your experience, do you think that the "insignificant subsidiary exemption" would be used by you (or for market practitioners, your clients)?	X		Some of our members would use this exemption.
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?	X - (ii) Option 2		
(b)	the proposed bases for assessing the significance of a		X	The proposed base for assessing the significance of a

	subsidiary, i.e. the asset ratio, revenue ratio and the profits ratio?			subsidiary should be the asset ratio. This is in line with the de minimis requirements for connected transactions prior to the Rule changes in 2004.
(c)	the proposed additional safeguard to require the consideration ratio be less than 10% if an "insignificant" subsidiary concerned is itself a party to the transaction or its securities/assets are the subject of the transaction?		X	The Consultation Paper provides no reasons for the proposed additional safeguard.
(d)	the proposed mechanism for applying the exemption to continuing connected transactions described in paragraph 27 of the Consultation Paper?		X	Once a subsidiary is classified as insignificant, all the connected transaction rules regarding the issuer's transactions with the associates of that insignificant subsidiary should not apply.
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?			
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?	X		
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	X		

	appropriate.			
(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.	X		
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?	X		
10.	Do you agree that a percentage threshold is sufficient to assess whether a connected transaction is eligible for the de minimis exemptions?	X		We agree with the reasons set out in paragraphs 42 and 43 of the Consultation Paper.
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).		X	

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?		X	We agree with the reasons set out in paragraph 49 of the Consultation Paper. Revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt from the connected transaction rules.
<u>Proposed exemption for revenue transactions with associates of a passive investor</u>				
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?	X		We agree with the reasons set out in paragraph 58 of 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?	X		
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?	X		
(b)	do you think that the exemption should be made available to other passive investors? If so, which?	X		The exemption should extend to private equity funds, which meet all the criteria set out in paragraph 59 of the Consultation Paper.
(c)	do you agree that the passive investor must not have representative on the board of directors of the issuer and its	X		A board seat does not sit well with the concept of passive investors.

	subsidiaries?			
(d)	do you agree with other proposed conditions set out in paragraph 59 of the Consultation Paper?	X		
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?	X		
<u>Proposed modification of the exemption for provision of consumer goods or consumer services</u>				
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?	X		We agree with the reasons set out in paragraph 65 of the Consultation Paper that the original rule is unduly restrictive on issuers.
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?	X		
19.	Can you think of any other suggestions to improve the regulation of revenue transactions with connected persons?	X		Revenue transactions conducted at arm's length in the ordinary and usual course of business of the issuer should be exempt 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?	X		We agree with the reasons set out in paragraph 69 of the Consultation Paper.
(i)	The holding company of the investee company or a fellow	X		

	subsidiary of this holding company described in paragraph 68(e) of the Consultation Paper.			
(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.	X		
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?	X		
(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?		X	The definition of associate is wide enough. Further extension is unnecessary.
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?			
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?	X		We agree with the reasons set out in paragraph 79 of the Consultation Paper.

25.	If your answer to question 24 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?	X		
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?	X		We agree with the reasons set out in paragraph 81 of the Consultation Paper.
27.	If your answer to question 26 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?	X		
(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?	X		We agree with the reasons set out in paragraph 85 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?	X		
(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?	X		We agree with the reasons set out in paragraph 90 of the Consultation Paper.
31.	If your answer to question 30 is "Yes", do you agree that the	X		

	proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?			
(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?	X		We agree with the reasons set out in paragraph 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?	X		
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?	X		
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?	X		
(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?	X		
37.	If your answer to question 36 is "Yes", do you agree that the	X		

	proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?			
(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?	X		
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?	X		
(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?	X		
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?	X		
42.	Are there any other comments you would like to make?		X	