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 support the arguments presented in paragraph 18 of the Consultation Paper and agree that it is reasonable to exclude persons connected at the subsidiary level from the definition of connected person. However, we believe that the relaxation should be introduced more gradually.

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.

N/A

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.

The current Rules on transactions with persons connected at the subsidiary level are onerous and the proposed exemption will help to relieve these unduly burdensome requirements and save the compliance costs of the issuers. This allows the Rules to serve the intended purposes in a balanced and cost-effective manner.

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.

N/A

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.

A 10% threshold would be more practicable and useful to relieve the present onerous requirements.

(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*): the asset ratio only

Please provide reasons for your views.

This is in line with the de minimis requirements (i.e. net tangible asset ratio) for connected transactions applicable prior to the Rules change 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?

☐ Yes

☑ No

Please provide reasons for your views.

The Consultation Paper fails to explain why the proposed additional safeguard is necessary.

(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.

The proposed requirements described in paragraph 27 of the Consultation Paper are reasonable and in line with the intent of the exemption.

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.

N/A

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.

This can avoid having different percentage thresholds for similar concepts (i.e. materiality level) in the Rules.

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.

The proposed revision of the percentage threshold to 5% will bring the requirement in line with international standards.

(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 proposed revision of the percentage threshold to 1% will substantially reduce the number of connected transactions which are immaterial requiring disclosure under the existing Rules.

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.

N/A

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 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 been seen to have increased substantially over the years due to the organic growth of the issuers as well as the addition of large-cap Chinese stocks. For instance, H shares now accounts for about 38% of the Hang Sang Index. The introduction 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.

The present regulation of connected transactions of a revenue nature is out of line with international norms. We invite the Exchange to consider introducing a general exemption for revenue transactions with connected persons on the basis that certain conditions to be fulfilled (for example, the transaction is conducted in the ordinary and normal course of business of the issuer and on an arm's length basis).

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.

The potential for the passive investor to abuse its position is relatively small and there are practical difficulties to identify the associates of such investor in the issuer's daily operations whose investments are extensive. As such, the proposed exemption would reduce the compliance burden of the issuer.

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.

This can further safeguard the substantial shareholder against taking advantage of its position with the relevant associate and its knowledge in the issuer to conduct connected transactions which are not in the interest of the issuer's minority shareholders.

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.

The nature of investment by a sovereign fund or an authorised unit trust or mutual fund is passive.

(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)*: private equity funds

☐ No

Please provide reasons for your views.

Private equity funds, which meet the criterias set out in paragraph 59 of the Consultation Paper, demonstrating that they are passive investors, should also be allowed to enjoy the exemption.

(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.

Having a representation on the issuer's board would allow the passive investor to exert certain influence over the issuer's management.

(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.

Subject to the above response to Questions 15(b), we agree with the other proposed conditions set out in paragraph 59 of the Consultation Paper which are reasonable.

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.

N/A

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.

The existing exemption, which does not apply to provision of consumer goods or services for business purposes, is too restrictive. The suggested condition set out in paragraph 66 of the Consultation Paper can safeguard against abuse of the exemption.

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.

N/A

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.

N/A

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.

It is unlikely that the connected person can exert significant influence over those entities described in paragraphs 68(e) and (f).

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.

N/A

(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.

The current definition of associate has already cast a very wide net to catch persons or entities which may only be remotely related to the connected persons.

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.

N/A

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.

There is no potential abuse by the connected person tc the detriment of the issuer's minority shareholders in this type of intra group transactions.

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.

N/A

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.

Such connected persons (i.e. the non wholly-owned subsidiaries) are not likely to take advantage in transactions with other members of the issuer group in the circumstances described in paragraphs 81(a) and (b) 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?

☒ Yes

☐ No

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

N/A

(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.

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.

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.

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.

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.

The exemption should also be extended to commonly held entity which is also a connected person as the risk of potential abuse by the connected person is remote.

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.

N/A

(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 that the risk that the target company's substantial shareholder can exert significant influence over the issuer and the transaction with a third party is remote as described in paragraph 10 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.

N/A

(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.

This can clarify the requirements in such Rules.

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.

N/A

42. Are there any other comments you would like to make?

☐ Yes

☑ No

If your answer is "Yes", please elaborate your views.

N/A

- End -