

**CONSULTATION PAPER**  
**ON PROPOSED CHANGES TO THE**  
**CONNECTED TRANSACTION RULES**

**October 2009**



**Hong Kong Exchanges and Clearing Limited**  
**香港交易及結算所有限公司**

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## **How to Respond to this Consultation Paper**

We invite interested parties to submit written comments on this paper no later than **2 December 2009**. Responses should, if possible, be made by completing and returning the questionnaire (Questionnaire) which is available at:

[http://www.hkex.com.hk/consul/paper/cp200910ctq\\_e.doc](http://www.hkex.com.hk/consul/paper/cp200910ctq_e.doc) by one of the following methods:

By mail or hand delivery to: Corporate Communications Department  
Hong Kong Exchanges and Clearing Limited  
12th Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

**Re: Consultation Paper on  
Proposed Changes to the Connected Transaction Rules**

By fax to: (852) 2524-0149

By e-mail to: [response@hkex.com.hk](mailto:response@hkex.com.hk)

Please mark in the subject line:

**“Re: Consultation Paper on  
Proposed Changes to the Connected Transaction  
Rules”**

Our submission enquiry number is (852) 2840-3844.

In the Questionnaire, we invite interested parties to give views on the proposed changes, and where appropriate support the answers with reasons. Respondents should reply to the questions against the backdrop of this Consultation Paper. For the purpose of the public consultation, respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. Please refer to the Questionnaire on how to complete it.

Our policy on handling personal data is set out in Appendix II of this paper and the Questionnaire.

### **Next Steps**

We will carefully consider and analyse all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual we will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

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# EXECUTIVE SUMMARY

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1. This paper presents a number of issues about regulation of connected transactions and seeks market views on the proposals to address them and improve the connected transaction Rules.
2. The substantive issues discussed in **Chapter 2** of this paper include:
  - A. Regulation of transactions with persons connected with an issuer only by virtue of their relationship with the issuer's subsidiaries –
    - whether the definition of connected person should include a person connected at the subsidiary level; or
    - alternatively, whether to provide an exemption where the person involved is a connected person only by virtue of his relationship with a subsidiary or subsidiaries whose size is, individually or in aggregate, “insignificant” to the issuer (or being an associate of this person).
  - B. Revising the de minimis exemptions for connected transactions
  - C. Regulation of revenue transactions with connected persons –
    - introducing an exemption for revenue transactions with associates of a substantial shareholder who is a sovereign fund or an authorised unit trust or mutual fund with a wide spread of investments and holds its interest in the issuer (including its subsidiaries) as a passive investor; and
    - expanding the exemption for provision of consumer goods or consumer services to allow an issuer to acquire consumer goods and services from connected persons in connection with the issuer's business (and not only sale of consumer goods and services by the issuer as currently provided in the Rules) provided that (i) there is an open market and transparency in pricing the goods or services concerned; and (ii) all other existing conditions for the exemption are met.
  - D. Revising the definition of associate –
    - refining the scope of associate which currently extends to persons who may not be in positions to exercise significant influence over the issuer; and

- expanding the scope of associate to include a company in which a connected person's relative has a majority control.

E. Revising the definition of connected person –

- refining the circumstances in which a non wholly-owned subsidiary should be regarded as a connected person;
- deleting “promoter” from the definition of connected person for PRC issuer;
- excluding “PRC Governmental Body” from the scope of connected person for non-PRC issuer (the current exemption only applies to PRC issuers); and
- removing the references to “management shareholder” in the GEM Rules.

3. Other proposed changes to the connected transaction Rules are set out in Part F of Chapter 2.
4. Unless the Rules are different and discussed separately, all rule references in this consultation paper are to the Main Board Rules. We propose to make corresponding changes to the GEM Rules to be consistent with the Main Board Rules.
5. The draft Rule amendments are in **Appendix I**, which may need further discussion with the Securities and Futures Commission for fine-tuning.

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## CHAPTER 1 INTRODUCTION

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6. The Stock Exchange of Hong Kong Limited (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), reviews the Rules from time to time to ensure that they address developments in the market and international best practice, and also represent acceptable standards which help ensure investor confidence.
7. We last consulted the market on the connected transaction Rules in 2002 as part of the consultation on Rule amendments relating to corporate governance issues (2002 Consultation). Following this consultation, a number of changes were made to the connected transaction Rules in March 2004 to codify our practices in regulating connected transactions or to tighten the rules to address corporate governance issues.
8. In 2008, HKEx engaged a consultant to conduct a strategic review of the Listing Rules and their application<sup>1</sup>. The objective was to review the existing listing regime (including the rules and related procedures) to identify possible means of enhancing the competitiveness of the Exchange as an international listing venue, taking full account of the need to maintain the quality of the Hong Kong securities market.
9. We are conducting this review in response to market comments that some areas in the connected transaction Rules may be unduly burdensome or restrictive or may not serve the purpose intended. The current connected transaction Rules cast a wide net and may catch persons or transactions which fall outside the purpose of the Rules. This creates an unnecessary burden on issuers and is not in the interest of minority shareholders when the compliance costs outweigh the benefits. It is important to ensure that our Rules meet their purpose and intent in a balanced and cost-effective manner.
10. We have conducted a soft consultation to solicit views from interested groups of practitioners and listed issuers on the substantive issues identified and our proposals to address them. We thank them for sharing with us their views and suggestions in this exercise.

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<sup>1</sup> See also the Listing Committee Annual Report 2008.

11. There were about 1,900 connected transactions<sup>2</sup> announced by issuers in 2008. We set out below details about these connected transactions:

- approximately 65% were transactions of revenue nature, of which 62% were of a continuing nature and 3% were one-off revenue transactions. The remaining 35% were transactions primarily of a capital nature. Please refer to paragraph 37 for a breakdown of the size of these transactions;
- 16% of these connected transactions were also notifiable transactions under Chapter 14. Notifiable transactions generally involve acquisitions or disposals of capital assets, formation of joint ventures, etc. and are at least 5% in size calculated based on consideration, asset, revenue or profit of the issuer. Revenue transactions in an issuer's ordinary and usual course of business are not included;
- approximately 26% of transactions involved parties connected only at the subsidiary level (as shareholders of subsidiaries – 22%; directors of subsidiaries – 2%; both shareholders and directors of subsidiaries – 2%). The remaining 74% of transactions were conducted with parties connected at the issuer level (including parties connected at both the issuer and the subsidiary levels – 2%);
- the connected transactions were announced by 583 issuers of which approximately 17% were PRC issuers (i.e. H shares listed). In contrast, PRC issuers represented about 12% of the total number of issuers listed on the Exchange. The distribution of transactions with persons connected at the subsidiary level and the issuer level for PRC issuers is 19% : 81%, compared to 29% : 71% for non-PRC issuers; and
- of the transactions involving persons connected at the issuer level, approximately 92% were conducted by (i) PRC issuers or (ii) non-PRC issuers with major shareholders holding 30% or more interests in the issuers.

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<sup>2</sup> This figure does not include continuing connected transactions which were announced before 2008, with the respective agreements remaining effective in 2008.

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## CHAPTER 2 ISSUES AND PROPOSALS

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### A. Transactions with persons connected with an issuer only by virtue of their relationship with the issuer's subsidiaries

12. Under Rules 1.01 and 14A.11, a connected person includes a director, chief executive or substantial shareholder of **the issuer or any of its subsidiaries** or an associate of any of them<sup>3</sup>.
13. A key concern about connected transactions is that connected persons may take advantage of their positions through transactions with the issuer or its subsidiaries at the cost of its minority shareholders. An issuer's directors, chief executive and substantial shareholders (and their respective associates) are defined as connected persons because they can exert significant influence over the issuer's actions and affect the minority shareholders' interests.
14. For a director or substantial shareholder of the issuer's subsidiary, his/its influence in the issuer group is less obvious. The issue of whether the definition of connected person should include a person connected with an issuer by virtue of his/its relationship with the issuer's subsidiary was considered in the 2002 Consultation. We made the following commentary in the consultation paper:

“ ... a large number of decisions are in fact taken at the operating subsidiary level or intermediate holding company level. Only certain significant decisions or matters are dealt with at the listed holding company level. We have to review the need to regulate connected persons of a subsidiary within the listed group and their transactions with the issuer. This will safeguard against the risk that whilst such persons may not be able to influence decisions of the issuer, they may be able to influence decisions of its subsidiary ...

*We consider that one significant aspect of corporate governance relates to the regulation of connected persons and their transactions or arrangements with the listed group and its undertakings. As many decisions are not taken at the listed holding company level, it is important to ensure that decisions taken at the subsidiary level are made from the perspective of the issuer's corporate interests.”*

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<sup>3</sup> For a PRC issuer, connected persons also include promoters and supervisors of the issuer and any of its subsidiaries.

15. In that consultation, we concluded that there was a need to regulate connected persons at the subsidiary level and the definition of connected person, which includes persons connected by virtue of their relationship at the subsidiary level, should be retained. This position was supported by a majority of the respondents.

### **Issues and proposals**

16. Under the current Chapter 14A, transactions with persons connected at the issuer level and those with persons connected at the subsidiary level are subject to the same connected transaction requirements.
17. Our connected transaction Rules governing transactions with persons connected at the subsidiary level are more stringent than those in the UK, Singapore and Australia:
- In the UK listing rules, the related party transaction rules apply to transactions (other than those of a revenue nature in the ordinary and usual course of business) with (a) a related party or (b) any other person where the purpose and effect of the transaction is to benefit a related party. The definition of “related party” includes a director or substantial shareholder of the listed company’s subsidiary (or any of their associates). However, there is an “insignificant subsidiary exemption” so that a transaction with a director or substantial shareholder (or his/its associate) of a subsidiary which has represented less than 10% of the profits and assets of the listed company in each of the previous three years will not be a related party transaction. The rules also provide that the subsidiary must have been in the listed company’s group for one year or more. If the insignificant subsidiary is itself a party to the transaction or its securities/assets are the subject of the transaction, the ratio of consideration to market capitalisation of the listed company must be less than 10%.
  - In Singapore (Main Board), the listing rules governing interested person transactions do not apply to transactions with persons connected only by virtue of their relationship with a listed company’s subsidiaries.
  - In Australia, the listing rules governing transactions with “persons in a position of influence” apply to transactions with (i) a related party (which includes a director of the listed company but not its subsidiaries); (ii) the listed company’s substantial shareholder; (iii) a subsidiary; and (iv) an associate<sup>4</sup> of any person referred to in (i) to (iii).

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<sup>4</sup> Based on the Australian Stock Exchange listing rules, associate is defined by reference to sections 11 and 13 to 17 of the Corporation Act.

18. Some issuers have raised arguments supporting a relaxation of the requirements for transactions with persons connected at the subsidiary level:
- There is no obvious need to subject the transactions with persons connected at the subsidiary level to the connected transaction Rules. The issuer has the majority control over its subsidiaries. Any undue influence on a subsidiary by the person connected at the subsidiary level would be subject to the check and balance of the issuer's board of directors who should act in the interest of the issuer and its shareholders as a whole. It is unlikely that the person can unduly influence the issuer's action only by virtue of his relationship with the subsidiary.
  - Some issuers operating with international joint venture partners have experienced difficulties in getting the joint venture partners to comply with the connected transaction requirements (including, for example, provision of information on their associates, signing of framework agreements for continuing connected transactions, disclosure of terms of transactions which are viewed as confidential). They also take the view that these joint venture partners operate independently and transactions with them are negotiated at arm's length.
19. In the past, some practitioners had raised concerns that the majority of activities of an issuer are often conducted through its subsidiaries, and connected persons at the issuer level (e.g. the issuer's holding company) can take advantage of their position to introduce persons closely associated with them as shareholders or directors of the issuer's subsidiaries. Transactions with these persons connected at the subsidiary level can potentially be abusive to the issuer's minority shareholders and the checks and balances of the issuer may not be effective. Others have counter-argued whether the scope of the connected transaction Rules should be so wide to counter these abusive situations, or whether there are more effective tools to address the concerns. For example, the Exchange can deem a person as connected person in individual cases.
20. Some practitioners have reservations in exempting all persons connected at the subsidiary level. They are concerned that the potential influence of a substantial shareholder or director of any major operating subsidiary on the issuer group can be significant. This is particularly the case if that subsidiary carries out most of the issuer group's activities. Others have counter-argued that in these circumstances, the issuer has majority control over its subsidiaries and any undue influence by the person connected at the subsidiary level should be countered by the issuer's board of directors who would act in the interest of the issuer. There is no conflict of interest given the alignment of interest between the issuer and its public shareholders. The influence exerted by the connected person over the issuer is likely one arising commercially, for example, the bargaining power of the respective parties. Public shareholders would be able to express their views over these transactions if they are material under the notifiable transaction Rules in Chapter 14.

21. In the soft consultation, the participants generally supported a relaxation of the current Rules on transactions with persons connected at the subsidiary level. Nevertheless, their views on whether to exclude persons connected at the subsidiary level from the definition of connected person were diverse. Some participants supported the arguments presented in paragraph 18 and considered it reasonable to exclude persons connected at the subsidiary level from the definition of connected person. Some viewed it a substantial relaxation of the Rules to carve out all these persons at one time and it may not be receptive for the market. Others believed that there is a need to regulate transactions with persons connected at the subsidiary level, and it would be more appropriate to provide exemptions for the transactions under specific circumstances (for example the “insignificant subsidiary exemption” described below) rather than a general exemption for persons connected at the subsidiary level.
22. We agree that our current Rules on transactions with persons connected at the subsidiary level are onerous and Rule changes in this area are necessary. We seek market views on whether persons connected at the subsidiary level should continue to be defined as connected persons in the Rules.
- Q1: Do you think that the definition of connected person should exclude persons connected by virtue of their relationship with an issuer’s subsidiaries? Please provide reasons for your views.*
- Q2: If your answer to Q1 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*
23. Alternatively, if it is considered inappropriate to exclude persons connected at the subsidiary level from the definition of connected person, we propose to introduce an exemption for a connected transaction where the person involved in the transaction is a connected person only by virtue of his relationship with the issuer’s subsidiary or subsidiaries whose size is, individually or in aggregate, “insignificant” to the issuer (or being an associate of this person).

24. In 2008, there were about 1,900 connected transactions, of which approximately 26% were connected transactions because the party was a director and/or substantial shareholder (or their associates) at the subsidiary level. Some of those subsidiaries might have been insignificant. While there is no public information on the size of the subsidiaries involved, the following is an indication of the size of the transactions involving persons connected at the subsidiary level:

<b>Value of transaction (based on percentage ratio calculation)</b>	<b>Cumulative % of the number of connected transactions announced in 2008 (involving persons connected at the subsidiary level only)</b>
< 0.10%	1.0%
0.10% - 0.25%	11.0%
0.25% - 0.50%	19.2%
0.50% - 1.00%	29.9%
1.00% - 1.50%	37.4%
1.50% - 2.00%	43.8%
2.00% - 2.50%	50.3%
2.50% - 3.00%	52.4%
3.00% - 3.50%	54.6%
3.50% - 4.00%	57.5%
4.00% - 4.50%	59.1%
4.50% - 5.00%	60.1%
> 5.00%	97.5%
<i>Others (Note)</i>	100.0%
<i>Number of transactions</i>	490

*Note: Others represent connected transactions which are not subject to percentage ratio classification, e.g. an issue of securities to a connected person (Note to Rule 14A.31(2) / Rule 14A.32), or a continuing transaction that has subsequently become connected due to the counterparty becoming a director of the issuer (Rule 14A.41).*

25. To introduce this proposed exemption, there is an issue on how to define an “insignificant” subsidiary. We propose the following two options:
- *Option 1:* We may make reference to the concept of “major subsidiary” in existing Rule 13.25<sup>5</sup> with appropriate modification to suit the purpose of connected transaction Rules. Along these lines, the proposed exemption would apply to persons connected with a subsidiary or subsidiaries which has, or together have, represented less than 5% of the total assets, profits or revenue of the issuer in the latest financial year.
  - *Option 2:* We may refer to the UK approach which adopts a 10% threshold calculated based on three years’ financial figures. This would smooth out exceptional fluctuations or anomalous results and safeguard against potential abuse of the exemption.
26. The UK rules also provide that if the “insignificant” subsidiary concerned is itself a party to the transaction or its securities/assets are the subject to the transaction, the ratio of consideration to market capitalisation of the listed company must be less than 10%. We propose to adopt a similar provision in the proposed exemption.
27. If the issuer enters into any continuing connected transactions falling within the proposed exemption, we propose that
- the duration of the agreement must follow the requirements in Rule 14A.35 (i.e. not exceeding three years except in special circumstances); and
  - the issuer must reassess the situation annually based on the latest published audited financial information of the issuer group . If the connected person no longer qualifies for the exemption, the issuer must disclose the facts in its annual report and comply with the reporting requirements for the continuing connected transactions. The issuer must also comply with all applicable connected transaction requirements (including independent shareholders’ approval) when it renews or changes the terms of the existing agreement or enters into a new agreement for the continuing connected transaction.
28. When the issuer proposes to enter into a transaction with a person connected with its subsidiary under the proposed exemption, the issuer must ensure that the connected person qualifies for the exemption. For continuing connected transactions, the issuer would need to maintain a record of its insignificant subsidiaries.

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<sup>5</sup> Rule 13.25 contains specific disclosure obligation on information relating to winding-up or liquidation of an issuer, its holding company or **any major subsidiary**. Rule 13.25(2) defines a “major subsidiary” as a subsidiary where the value of its assets, profits or revenue represents 5% or more under any of the percentage ratios as defined in Rule 14.04(9).

29. From the soft consultation, some participants commented that it would be cumbersome to identify and maintain a record of insignificant subsidiaries while some considered it acceptable. Some participants expressed views on the proposed materiality thresholds and they generally believed that a 10% threshold would be more practicable.

*Q3: 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? Please provide reasons for your views.*

*Q4: Based on your experience, do you think that the “insignificant subsidiary exemption” would be used by you (or for market practitioners, your clients)? Please describe the circumstances and refer to Option 1 or 2.*

*Q5: If your answer to Q3 is “Yes”, do you agree with*

*(a) the proposed materiality threshold under (i) Option 1 or (ii) Option 2? Please provide reasons for your views.*

*(b) the proposed bases for assessing the significance of a subsidiary, i.e. the asset ratio, revenue ratio and the profits ratio? Please provide reasons for your views.*

*(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? Please provide reasons for your views.*

*(d) the proposed mechanism for applying the exemption to continuing connected transactions described in paragraph 27? Please provide reasons for your views.*

*Q6: If your answers to Q5 are “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

*Q7: If you agree with Option 2, do you think that the definition of “major subsidiary” under Rule 13.25<sup>5</sup> should be amended to align with that in the “insignificant subsidiary exemption” if adopted? Please provide reasons for your views.*

**B. De minimis thresholds that trigger disclosure or shareholders' approval requirement for connected transactions**

30. The de minimis exemptions provide bright-line tests for determining whether connected transactions are subject to shareholders' approval and/or disclosure requirements.
31. There had been no changes to the thresholds for the de minimis exemptions since 1991 until we amended the Rules in March 2004. The following table summarises the thresholds before and after the 2004 Rule amendments:

	<b>Before 2004 Rule amendments</b>	<b>Existing</b>
<i>De minimis threshold for exemption from disclosure, reporting and shareholders' approval requirements</i>	The consideration or value of the transaction is less than the higher of: <ul style="list-style-type: none"> <li>• HK\$1 million; and</li> <li>• 0.03% of the net tangible assets of the listed issuer.</li> </ul>	Each of the percentage ratios (except for the profits test) is less than 0.1%; or  Each of the percentage ratios (except for the profits test) is equal to or more than 0.1% but less than 2.5% and the consideration is less than HK\$1 million.
<i>De minimis threshold for exemption from shareholders' approval requirement</i>	The consideration or value of the transaction is less than the higher of: <ul style="list-style-type: none"> <li>• HK\$10 million; and</li> <li>• 3% of the net tangible assets of the listed issuer.</li> </ul>	Each of the percentage ratios (except for the profits test) is less than 2.5%; or  Each of the percentage ratios (except for the profits test) is equal to or more than 2.5% but less than 25% and the consideration is less than HK\$10 million.

32. In the 2004 Rule amendments, the percentage thresholds for de minimis exemptions were adjusted in conjunction with the changes in size test calculation methods applicable to both notifiable transactions and connected transactions. These changes to the percentage thresholds were not intended to tighten or relax the de minimis exemptions for connected transactions. The monetary thresholds for the exemptions of HK\$1 million and HK\$10 million were unchanged. In effect, the materiality of the de minimis thresholds was not reviewed in that exercise.

**Issues and proposals**

33. It is important to ensure the de minimis thresholds provide an effective safeguard for material connected transactions while they are not too low to be costly and cumbersome to administer.

34. We recognise that our de minimis exemptions are considerably more stringent than those in the UK, Singapore and Australia:

	<b>Size test calculations</b>	<b>Fully exempt</b>	<b>Exempt from shareholders' approval requirement</b>
<i>Hong Kong</i>	<ul style="list-style-type: none"> <li>- Asset ratio</li> <li>- Consideration ratio</li> <li>- Revenue ratio</li> <li>- Equity ratio</li> </ul>	Less than HK\$1 m or 0.1% of the percentage ratios	Less than HK\$10 m or 2.5% of any percentage ratios
<i>The UK</i>	<ul style="list-style-type: none"> <li>- Gross asset test</li> <li>- Consideration test</li> <li>- Profits test</li> <li>- Gross capital test</li> </ul>	Not exceeding 0.25% of the percentage ratios <sup>6</sup>	Less than 5% of the percentage ratios <sup>6</sup>
<i>Singapore</i>	<ul style="list-style-type: none"> <li>- Transaction value to net tangible assets</li> </ul>	Less than S\$100,000 or 3% of the percentage ratios	Less than 5% of the percentage ratio
<i>Australia</i>	<ul style="list-style-type: none"> <li>- Value of the subject asset or consideration to equity interests of the issuer set out in the latest accounts</li> </ul>	N/A <sup>7</sup>	Less than 5% of the percentage ratios <sup>7</sup>

35. Further, in both the UK and Singapore, a transaction that triggers the relevant 5% threshold also constitutes a discloseable transaction. In other words, a connected transaction will require independent shareholders' approval in these jurisdictions if it is of the size of a discloseable transaction or above. Our Rules also adopt a 5% threshold for discloseable transaction, but the de minimis threshold that exempts a connected transaction from independent shareholders' approval is only 2.5%. We believe it appropriate to propose an increase of the threshold to 5% which is in line with international standards.
36. It is also apparent that the percentage threshold in our Rules that exempts a transaction from all connected transaction requirements is substantially lower than those in other markets. While the UK adopts a threshold of 0.25%, only transactions of a capital nature are subject to the related party transaction rules.

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<sup>6</sup> In the UK, the related party transaction rules do not apply to transactions of a revenue nature.

<sup>7</sup> In Australia, the rules governing transactions with persons in a position of influence do not apply to transactions of a revenue nature. In addition, the rules only specify the threshold that trigger shareholders' approval requirement for transactions with persons in a position of influence.

37. The following table shows the distribution by value of connected transactions (based on the percentage ratio calculation) announced by issuers listed on the Exchange in year 2008:

Value of transaction (based on percentage ratio calculation)	Cumulative % of the number of connected transactions announced in 2008		
	Connected transactions of a revenue nature	Connected transactions of a capital nature	All connected transactions
< 0.10%	1.2%	0.3%	0.9%
0.10% - 0.25%	11.9%	5.5%	9.6%
0.25% - 0.50%	23.1%	12.7%	19.4%
0.50% - 1.00%	35.6%	22.0%	30.8%
1.00% - 1.50%	43.5%	28.4%	38.1%
1.50% - 2.00%	51.0%	32.9%	44.6%
2.00% - 2.50%	58.7%	39.1%	51.8%
2.50% - 3.00%	60.5%	41.2%	53.7%
3.00% - 3.50%	62.3%	43.0%	55.5%
3.50% - 4.00%	64.2%	44.0%	57.0%
4.00% - 4.50%	65.9%	45.2%	58.5%
4.50% - 5.00%	66.9%	46.8%	59.8%
> 5.00%	97.9%	93.6%	96.4%
Others (Note)	100.0%	100.0%	100.0%
Number of transactions	1,230	670	1,900

Note: Others represent connected transactions which are not subject to percentage ratio classification, e.g. an issue of securities to a connected person (Note to Rule 14A.31(2) / Rule 14A.32), or a continuing transaction that has subsequently become connected due to the counterparty becoming a director of the issuer (Rule 14A.41).

38. About 52% of the connected transactions had a value (or annual value for continuing transactions) of less than 2.5% and were subject to disclosure only. 60% of the transactions had a value below 5%. If we adopt a 5% threshold for exempting the shareholders' approval requirement, the number of connected transactions that require shareholders' approval drops by about 8%.
39. We note from the above the majority of the connected transactions are relatively immaterial. For examples, if we adopt a 1% threshold for exempting the disclosure requirement, the number of connected transactions requiring disclosure would be reduced by 31%. A 0.5% threshold and 1.5% threshold would reduce the number of transactions subject to the disclosure requirement by 19% and 38% respectively.

40. We propose to revise the de minimis thresholds as follows:

(a) Exempt from independent shareholders' approval requirement

Each or all of the percentage ratios (except the profits ratio) is/are:

- (i) less than 5%; or
- (ii) equal to or more than 5% but less than 25% and the total consideration is less than HK\$10,000,000.

(b) Exempt from all reporting, announcement and independent shareholders' requirements

Each or all of the percentage ratios (except the profits ratio) is/are:

- (i) less than 1%; or
- (ii) equal to or more than 1% but less than 5% and the total consideration is less than HK\$1,000,000.

*Q8: (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. Please also provide reasons for your views.*

*(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. Please also provide reasons for your views.*

*Q9: If your answer to Q8 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

41. However, the view can also be taken that because the de minimis threshold is expressed as a percentage and is proposed to be increased, the monetary value of an exempted connected transaction for a large company can be significant. Applying for example, the consideration test (i.e. the consideration paid or received divided by the company's total market capitalisation) to the fiftieth largest listed company<sup>8</sup>, which has a market capitalisation of over HK\$50 billion, the revised de minimis threshold would mean that connected transactions of up to HK\$500 million would not be disclosed and transactions of up to HK\$2.5 billion would not require shareholders' approval. Therefore, it is argued that a monetary cap should be imposed in addition to the percentage cap in assessing the de minimis exemptions. Proponents of this view point out there is currently a monetary limit as a floor to exempt very small

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<sup>8</sup> As at the end of August 2009, the 50 largest companies represent 72% of the market capitalisation and their trading was about 44% of daily market turnover during the first eight months of 2009.

transactions from connected transaction requirements, it would therefore not be illogical to have a monetary cap to restrict transactions of large amounts for this exemption.

42. 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. Materiality should be assessed as a percentage of the issuers' financial figures. This is in line with international practice.
43. If a monetary cap is also imposed, the cap would treat materiality differently for different issuers, depending on their size. We would prefer to use the same percentage materiality test for all issuers and do not propose to also impose a monetary cap on the de minimis exemption, but are open to market view to the contrary.

*Q10: Do you agree that a percentage threshold is sufficient to assess whether a connected transaction is eligible for the de minimis exemptions? Please provide reasons for your views.*

44. As at 31 August 2009, there were 1,280 issuers listed on the Exchange. The market capitalisation<sup>9</sup> of these companies varied significantly, for example, the market capitalisation of the largest and fiftieth largest companies are HK\$1,513 billion and HK\$52 billion. The average market capitalisation for each one hundred of the first five hundred companies are HK\$126 billion, HK\$13 billion, HK\$6 billion, HK\$3 billion and HK\$2 billion. There are about 686 companies with market capitalisation below \$1 billion.

*Q11: 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:*

- HK\$100 million
- HK\$200 million
- HK\$500 million
- HK\$1,000 million
- Other monetary cap (please specify): HK\$\_\_\_\_\_

*The monetary cap for connected transactions exempt from independent shareholders' approval would be adjusted proportionately.*

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<sup>9</sup> The market capitalisation figures do not include companies under suspension over one year. For PRC issuers, the market capitalisation was calculated based on their H shares only.

## **C. Transactions that are revenue in nature and in the ordinary and usual course of business**

45. Under Rule 14A.10(13), connected transactions include transactions of a revenue nature in the issuer's ordinary and usual course of business. Revenue transactions may be one-off or continuing.
46. Rule 14A.14 provides that continuing connected transactions are connected transactions involving the provision of goods or services or financial assistance, which are carried out on a continuing or recurring basis and are expected to extend over a period of time. They are usually transactions in the ordinary and usual course of business of the issuer.
47. Chapter 14A sets out certain specific circumstances where a connected transaction is exempt from connected transaction requirements:
- provision of consumer goods or consumer services that meet the specific criteria set out in Rule 14A.31(7);
  - sharing of administrative services between an issuer and a connected person on a cost basis; or
  - de minimis exemption for transactions (i) below 0.1% (applying our size tests) or \$1 million (fully exempted); or (ii) below 2.5% (applying our size tests) or \$10 million (exempted from independent shareholders' approval only).
48. Continuing connected transactions that are not fully exempt under Rule 14A.33 are subject to the following requirements in Chapter 14A:
- entering into written agreement(s) for a fixed period (generally not exceeding 3 years);
  - setting an annual cap in terms of monetary value;
  - reporting and announcement requirements;
  - annual review by auditors and independent non-executive directors; and
  - independent shareholders' approval requirement (for transactions with annual cap exceeding the relevant de minimis threshold).

### **Issues and proposals**

49. Views are expressed that our regulation of connected transactions of a revenue nature is out of line with international norms and we should consider relaxing the requirements governing these transactions.

50. Rule 11.1.5 in the UK listing rules provides that:

*“A “related party transaction” means a transaction (other than a transaction of a revenue nature in the ordinary course of business) between a listed company and a related party. ...”*

51. In Australia, the connected transaction rules apply only to acquisitions or disposals of substantial assets by a listed entity or its child entity. The rules do not apply to transactions of a revenue nature.

52. On the Singapore Main Board, the connected transaction rules apply to transactions in the ordinary course of business. There are specific provisions for an issuer to seek a general mandate from shareholders for recurring transactions of a revenue or trading nature or those necessary for its day-to-day operations, and the general mandate is subject to annual renewal.

53. We consider it inappropriate to introduce a general exemption for revenue transactions with connected persons. Hong Kong has a high proportion of majority controlled listed companies and state-controlled PRC issuers. The connected person’s dominant control over the issuer makes it easy for connected transactions to take place, including revenue transactions with other business interests of the connected person. In the absence of separation of owners from managers, there is less check and balance to safeguard against connected persons taking advantage of their positions.

*Q12: Do you agree that the connected transaction Rules should govern revenue transactions with connected persons? Please provide reasons for your views.*

54. However, we also note the market comments that the current continuing connected transaction Rules have imposed significant administration burden on issuers for conducting revenue transactions in the ordinary and usual course of business. This comment is supported by our analysis that about 51% of revenue transactions with connected persons announced in 2008 had a value of 2% or less (see paragraph 37). There is a question whether the current requirements have struck an appropriate balance between addressing valid shareholder protection concerns where connected persons pose significant influence or stand to benefit, and the regulatory costs borne by issuers (i.e. shareholders) in complying with the requirements.

55. In Part B above, we have considered revising the thresholds at which the de minimis exemptions apply. Of the revenue transactions between issuers and their connected persons announced in 2008 (see paragraph 37), approximately 59% transactions had a value (or annual value for continuing transactions) of less than 2.5% (applying our size tests) and 67% transactions had a value of less than 5% (applying our size tests). If we adopt a 5% threshold for exempting shareholders' approval requirement, the number of revenue transactions that require shareholders' approval drops by about 8%. If we adopt a 1% threshold for exempting the disclosure requirement, the number of revenue transactions that require disclosure would drop by about 35%. Relaxing the de minimis exemptions will lessen compliance burdens for revenue transactions.
56. In addition, we propose to relax the connected transaction requirements in the following areas:
- Introducing new exemptions for specific circumstances involving a passive investor where the potential for a connected person to abuse its position is small. In particular, we propose to exempt revenue transactions with associates of a substantial shareholder of the issuer (including its subsidiaries) which is a sovereign fund or an authorised unit trust or mutual fund with a wide spread of investments and holds its interest in the issuer and/or its subsidiaries as a passive investor. (see paragraphs 57 to 61)
  - Expanding the exemption for provision of consumer goods or consumer services to allow an issuer to acquire consumer goods and services from connected persons in connection with the issuer's business (and not only sale of consumer goods and services by the issuer as currently provided in the Rules) provided that (i) there is an open market and transparency in pricing the goods or services concerned; and (ii) all other existing conditions for the exemption are met. (see paragraphs 62 to 66)

Proposed exemption for revenue transactions with associates of a passive investor

57. The rationale behind the connected transaction Rules is to safeguard against connected persons taking advantage of their position to the detriment of the issuer's minority shareholders.
58. Where a substantial shareholder of the issuer (including its subsidiaries) is a sovereign fund or an authorised unit trust or mutual fund with a wide spread of investments and holds interest in the issuer and/or its subsidiary as a passive investor, the potential for this shareholder to abuse its position is relatively small. There are practical difficulties in identifying this shareholder's associates in the issuer's day-to-day operations where its investments are extensive. Strict application of the connected transaction Rules on the revenue transactions with this shareholder's associates may impose considerable constraints on the issuer's ordinary course of business. The proposed exemption would reduce the compliance burden of the issuer.

59. We propose to introduce an exemption from the connected transaction requirements in the following circumstances:

- the connected transaction is of a revenue nature in the issuer's ordinary and usual course of business and is entered into on normal commercial terms;
- the transaction is a connected transaction only because it involves an associate (**relevant associate**) of a substantial shareholder of the issuer or any of its subsidiaries. Given the substantial shareholder is a passive investor, it is not expected to conduct transactions with the issuer directly;
- the substantial shareholder is a passive investor in the issuer and meets the following criteria:
  - it is a sovereign fund, or a unit trust or mutual fund authorised by the Securities and Futures Commission or an appropriate overseas authority;
  - it has a wide spread of investments other than securities of the issuer (or any of its subsidiaries) and the relevant associate.
  - it and the relevant associate are connected persons only because it is a substantial shareholder of the issuer or any of its subsidiaries;
  - it is not a controlling shareholder of the issuer or any of its subsidiaries;
  - it does not have any representative on the board of directors of the issuer or any of its subsidiaries, and is not involved in the management of the issuer group; and
  - it is independent of the directors, chief executive, controlling shareholder(s) and any other substantial shareholder(s) of the issuer or any of its subsidiaries.

60. The issuer must comply with the connected transaction requirements immediately upon it becoming aware that any transactions with the connected person no longer qualify for the exemption.

61. From the soft consultation, the participants had diverse views on some proposed conditions for the exemption. A majority of participants considered it too onerous to require the passive investor to have no representative on the issuer's board of directors. Given the size of the investment it would be unlikely that the investor would not seek a board seat. They also took the view that board representation would not necessarily allow the investor to exert undue influence over the issuer's management. In addition, some participants believed that the proposed definition of passive investor is too restrictive, for example, private equity funds should be allowed to enjoy this exemption. Others had reservation on this extended proposal. They believed that while private equity funds do not operate the issuers' businesses, they are generally involved in the management of the issuers (sometimes via negative control) and have significant influence over the actions of the issuers' boards of directors.

*Q13: 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? Please provide reasons for your views.*

*Q14: 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? Please provide reasons for your views.*

*Q15: If your answer to Q13 is "Yes",*

*(a) do you agree that the passive investor must be a sovereign fund or an authorised unit trust or mutual fund?*

*(b) do you think that the exemption should be made available to other passive investors? If so, which?*

*(c) do you agree that the passive investor must not have representative on the board of directors of the issuer and its subsidiaries?*

*(d) do you agree with other proposed conditions?*

*Please provide reasons for your views.*

*Q16: If your answer to Q13 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

Proposed modification of the exemption for provision of consumer goods or consumer services

62. Under Rule 14A.31(7), the acquisition as consumer or realisation in the ordinary and usual course of business of consumer goods or consumer services by an issuer from or to a connected person of the issuer on normal commercial terms is exempt from connected transaction requirements. The exemption is subject to a number of conditions:
- (a) the goods or services must be of a type ordinarily supplied for private use or consumption;
  - (b) they must be for the acquirer's own consumption or use, and not be processed into products of the acquirer or for resale or otherwise **for the purpose of or in connection with any business or contemplated business of the acquirer** (whether for consideration or otherwise);
  - (c) they must be consumed or used by the acquirer in the same state as when they were acquired;
  - (d) they must be of a total consideration or value that is or represents less than 1% of the total revenue or total purchases, as the case may be, of the listed issuer as shown in its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts; and
  - (e) the transactions concerned must be on terms no more favourable to the connected person than those available to independent third parties or no less favourable to the listed issuer than those available from independent third parties (as the case may be).
63. Examples of consumer goods or services include utilities provided by a listed issuer to a connected person, meals consumed by a connected person at a restaurant owned by the issuer and the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing of groceries.
64. The conditions set out in the Rule assist issuers in determining whether their transactions fall within the scope of the exemption and avoid abuse of the exemption.

65. Under the condition described in paragraph 62(b), the Rule does not permit provision of consumer goods or services for the purpose of or in connection with any business or contemplated business of the acquirer. This means that the exemption can only apply to an issuer providing consumer goods or services to individual consumers (e.g. the issuer's director), but not acquisition of consumer goods or services by the issuer because the goods or services acquired by the issuer will be in connection with its business. While this condition serves to avoid abuse of the exemption by connected persons, it may be unduly restrictive on issuers. For example, provision of utilities by a connected person to the issuer will not qualify for the exemption even if the utilities are also provided to the general public on the same terms.
66. We propose to amend the condition under Rule 14A.31(7)(b) to expand the exemption to allow an issuer to acquire consumer goods or services for the purpose of or in connection with its business if there is an open market and transparency in pricing the goods or services concerned (e.g. provision of utilities by a connected person to an issuer where the prices are published or publicly quoted and apply to other independent consumers). The transaction still needs to meet all other conditions set out in the Rule.

*Q17: Do you agree with the proposed changes to expand the exemption for acquisition of consumer goods or services described in paragraph 66? Please provide reasons for your views.*

*Q18: If your answer to Q17 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

*Q19: Can you think of any other suggestions to improve the regulation of revenue transactions with connected persons?*

## **D. Definition of associate**

### **(1) Definition of associate in Rule 1.01 (for non-PRC issuer) and Rule 19A.04 (for PRC issuer)**

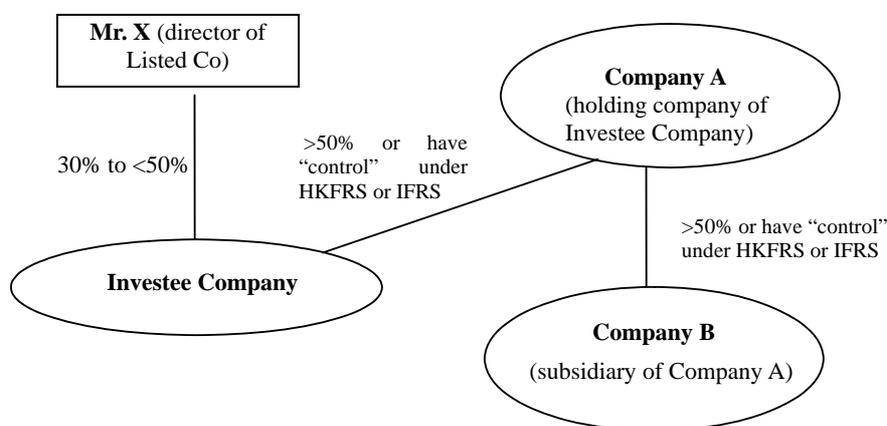
67. The definition of associate is intended to catch persons who are closely related with a connected person, in particular
- (a) the person's family members (e.g. his spouse or child under the age of 18) if the connected person is an individual;
  - (b) a group company (e.g. the connected person's subsidiary, holding company, or fellow subsidiary) if the connected person is a company;
  - (c) a trustee for any trust of which the connected person ( and in the case of an individual, any of his family members) is a beneficiary; and

- (d) any other company (investee company) where the connected person and the above entities (individually or together) have control over it (e.g. a company in which the connected person and/or any of the above entities is, or are together, a 30% shareholder or able to control the composition of a majority of the company's board of directors), and any subsidiaries of the investee company.

68. The current definition of associate further extends to entities related to the investee company described in paragraph 67(d), which include:-

- (e) The holding company of the investee company or a fellow subsidiary of this holding company.

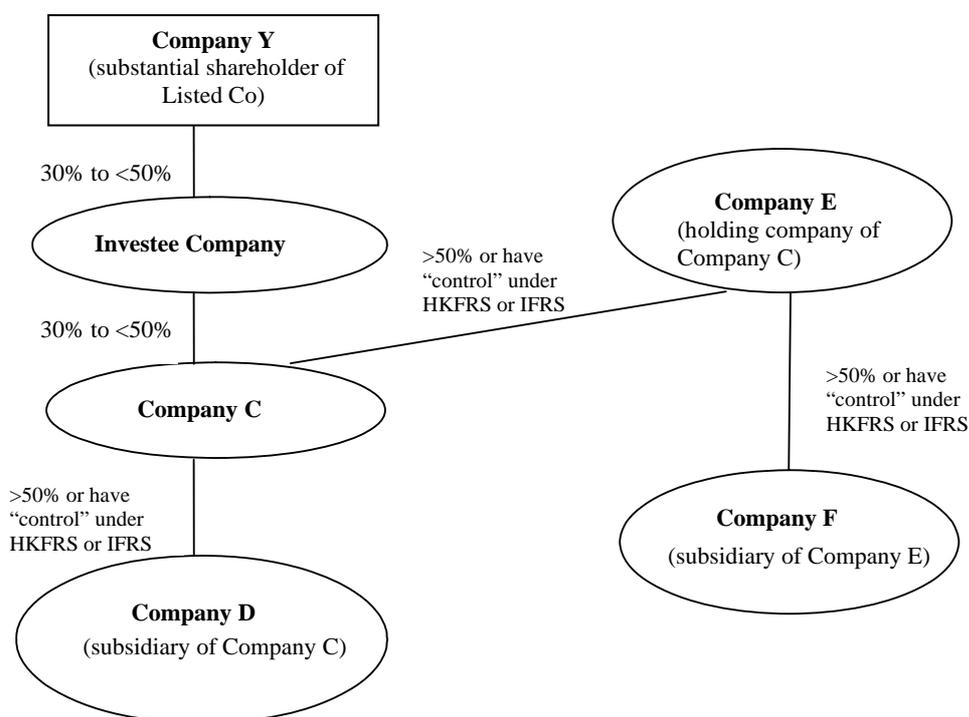
For example, Companies A and B in the following diagram are associates of Mr. X:



*Note: "HKFRS" means Hong Kong Financial Reporting Standards  
"IFRS" means International Financial Reporting Standards*

- (f) A company controlled by the investee company (not being a subsidiary of the investee company) (e.g. a company in which the investee company is a 30% shareholder), and its subsidiary, holding company or fellow subsidiary.

For example, Companies C, D, E and F in the following diagram are associates of Company Y:



69. Although the connected person (individually or together with members of his/its group described in paragraphs 67(a) to (c)) is able to control the investee company, the definition of associate applies too widely to catch entities described in paragraphs 68(e) and (f) which are related to the investee company (i.e. Companies A, B, C, D, E and F). It is unlikely that the connected person can exert significant influence over (i) the investee company's holding company and its fellow subsidiaries or (ii) the investee company's associated companies and take advantage in the transactions between the issuer and these entities.
70. The scope of "associates" for similar connected transaction rules in the UK and Singapore does not extend to the entities described in paragraphs 68(e) and (f).
71. We therefore propose to amend Rules 1.01 and 19A.04 to carve out from the definition of "associate" those entities described in paragraphs 68(e) and (f).

*Q20: 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).*
- (ii) A company controlled by the investee company (not being a subsidiary of the investee company) described in paragraph 68(f) and this company's subsidiary, holding company and fellow subsidiary.*

*Please provide reasons for your views.*

*Q21: If your answer to Q20 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

**(2) Extended definition of associate in Rule 14A.11(4)**

72. For the purpose of the connected transaction Rules, the definition of associate is extended by Rule 14A.11(4). In particular, the Rule provides that an “associate” of a connected person includes the following persons:

- close relatives of the connected person (including any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of the connected person); and
- other relatives of the connected person (including a father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of the connected person) whose association with the connected person is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of Chapter 14A.

73. While Rule 14A.11(4) catches the connected person’s relatives, it does not include a company controlled by any of these relatives as an associate. This is a potential loophole as the connected person may take advantage in a transaction between the issuer and a company under the control of his relative. In the past, we used the deeming provisions to treat companies in which these relatives had a majority control as connected persons.

74. To remove the loophole, we propose to expand the scope of associate to a company where any relative referred to in Rule 14A.11(4)(b) or (c) is entitled to exercise or control the exercise of more than 50% of the voting power at this company’s general meetings or is in a position to control the composition of a majority of the board of directors of this company.

*Q22: 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? Please provide reasons for your views.*

*Q23: If your answer to Q22 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

## E. Definition of connected person

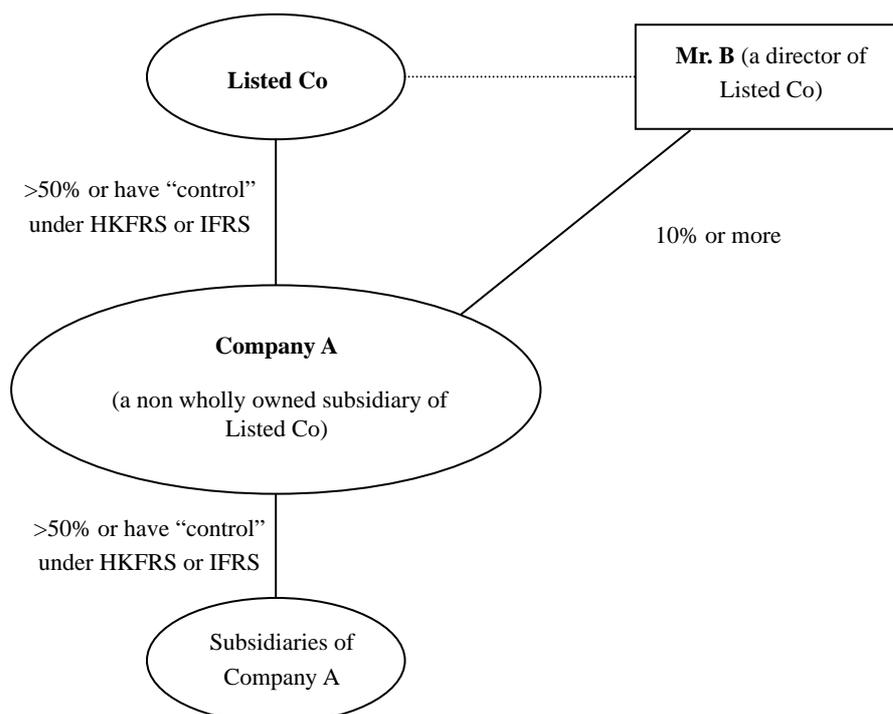
### (1) Non wholly-owned subsidiary

75. The Rules set out the circumstances under which a non wholly-owned subsidiary is defined as a connected person of the issuer.

#### (i) Rules 14A.11(5) and (6)

76. Rules 14A.11(5) and (6) define a connected person as including (i) any non wholly-owned subsidiary of the issuer where any connected person(s) of the issuer (other than at the subsidiary level) can exercise or control the exercise of 10% or more of the voting power at any general meetings of this non wholly-owned subsidiary; and (ii) any subsidiary of this non wholly-owned subsidiary (**connected subsidiary**).

77. For example, Company A and its subsidiaries in the following diagram are connected subsidiaries:



78. The person connected at the listed holding company level (i.e. Mr. B) may take advantage of his position in a transaction between a connected subsidiary (i.e. Company A) and any other member of the listed group. The potential conflict of interest is apparent when the connected person has a material interest in the connected subsidiary and is also in a position to influence the issuer.

79. By definition, a transaction between a connected subsidiary (i.e. Company A) and its own subsidiary, or between subsidiaries of this connected subsidiary, is a connected transaction. However, it is not our intention to catch this type of intra group transactions as there should not be any concern about the possible abuse by the connected person to the detriment of the issuer’s minority shareholders. We previously dealt with similar cases by granting waivers from the connected transaction Rules to the relevant issuers.
80. We therefore propose to introduce an exemption for the situation described in paragraph 79.

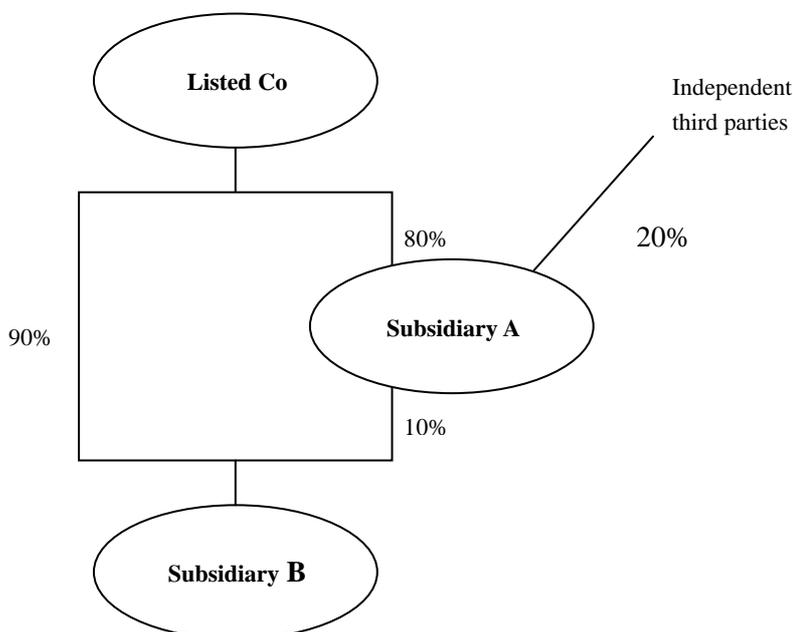
*Q24: Do you agree with the proposed exemption for (i) transactions between a connected subsidiary and any of its own subsidiaries and (ii) transactions between any subsidiaries of the connected subsidiary? Please provide reasons for your views.*

*Q25: If your answer to Q24 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

(ii) Rules 14A.11(1) and (4)

81. A non wholly-owned subsidiary may also be a connected person in the following situations under Rule 14A.11(1) or (4):
- (a) The non-wholly owned subsidiary is a substantial shareholder of another subsidiary of the issuer, and therefore a connected person under Rule 14A.11(1).

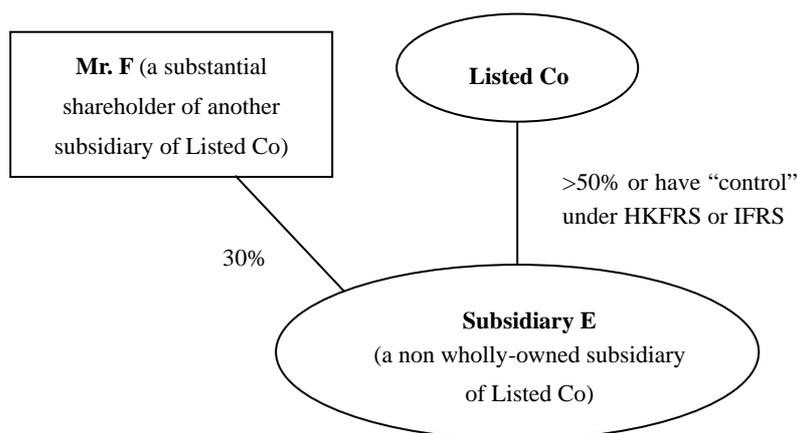
For example, Subsidiary A (being a substantial shareholder of Subsidiary B) in the following diagram is a connected person of Listed Co:



However, a transaction between Subsidiary A and other members of the Listed Co group would unlikely give rise to concern since the transaction is conducted within the issuer group.

- (b) The non wholly-owned subsidiary is an associate of a director, chief executive or substantial shareholder of any subsidiary of the issuer, and therefore a connected person under Rule 14A.11(4).

For example, Subsidiary E (being an associate of Mr. F) in the following diagram is a connected person of Listed Co:



As the issuer (i.e. Listed Co) has the majority control over its subsidiaries, it is unlikely that the connected person (i.e. Mr. F) who is not in a position to influence the issuer can take advantage in a transaction between Subsidiary E and any other members of the issuer group.

82. Given the spirit and intent of the connected transaction Rules, we propose to amend Rule 14A.11 to specify that a non wholly-owned subsidiary would not be regarded as a connected person in the circumstances described in paragraphs 81(a) and (b).

*Q26: 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)? Please provide reasons for your views.*

*Q27: If your answer to Q26 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

## (2) Promoter of a PRC issuer

83. Rule 19A.04 defines a promoter as any person who undertook the establishment of a PRC issuer, subscribed for shares of the issuer and assumes liability for the issuer's establishment, prepared the initial articles of association of the issuer and convened the inaugural meeting of the subscribers of shares of the issuer.

84. Rules 1.01 and 14A.11(3) define a connected person as including a promoter of a PRC issuer or any of its subsidiaries. No similar requirement exists for non-PRC issuers.
85. When the definition was first drafted, it was envisaged that promoters of a PRC issuer should be treated as connected persons as they were usually entities closely connected with the controlling shareholders and were able to exert significant influence on the issuer. In recent years, waivers from connected transaction requirements were granted to PRC issuers for transactions with promoters (for example customers and suppliers who were invited to subscribe nominal shareholdings in the issuer to be set up in the listing process). In their waiver applications, the PRC issuers had demonstrated that the promoters cannot exert influence over the issuer group simply because of their promoter status. In particular, the promoters do not have special rights as shareholders (other than those enjoyed by all shareholders) with respect to the company. Under PRC company law, promoters' duties arise in relation to the establishment of a company. Apart for the specific duties at the time of incorporation of the company, no other provision in the PRC company law relates to promoters specifically.
86. It may no longer be appropriate to treat a person as connected only because the person is a promoter of the issuer or any of its subsidiaries as the promoters have no particular influence over the issuer after listing. We propose to exclude a promoter of a PRC issuer and any of its subsidiaries (and his/its associates) from the definition of connected person under Chapters 1 and 14A.

*Q28: Do you support the proposal to delete “promoter” of a PRC issuer from the definition of connected person? Please provide reasons for your views.*

*Q29: If your answer to Q28 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

### **(3) PRC Governmental Body**

87. For a PRC issuer, Chapter 19A of the Rules provides that the Exchange will normally not treat a PRC Governmental Body as a connected person of the issuer.
88. As defined in Rule 19A.04, a PRC Governmental Body includes (but not limited to):
- (a) PRC Central Government, including the State Council of the PRC (中國國務院), State Ministries and Commissions (國家部委), Bureaus and Administrations directly under the State Council (國務院直屬機構), State Council Offices and Institutions (國務院辦事機構及直屬國務院事業單位), Bureaus supervised by State Ministries and Commissions (國家部委代管局);

- (b) PRC Provincial-level Governments, including Provincial Governments (省政府), Municipalities directly under the Central Government (直轄市) and Autonomous Regions (自治區), together with their respective administrative arms, agencies and institutions;
- (c) PRC local governments immediately under the PRC Provincial-level Governments, including prefectures (區), municipalities (市) and counties (縣), together with their respective administrative arms, agencies and institutions.

Under the Rule, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.

- 89. Given the “state-owned” nature of the PRC issuers, the provisions for PRC Governmental Body were introduced in 1999 to codify the then practice in determining the controlling shareholders of PRC issuers taking into account the PRC Government policy of separating governmental bodies from enterprises. In particular, entities under the PRC Government that are engaging in commercial business or operating other commercial entity are excluded from the definition of PRC Governmental Body to avoid possible abuses of the provisions.
- 90. While the provisions for PRC Governmental Body were first introduced for PRC issuers, some non-PRC issuers also encountered similar problems in identifying their connected persons, for example red-chip companies or companies with state-owned enterprises being the substantial shareholders of their subsidiaries. We consider that the provisions for PRC Governmental Body in Chapter 19A should equally apply to non-PRC issuers.
- 91. We propose to introduce provisions in Chapter 14A so that a PRC Governmental Body will not normally be treated as a connected person of a non-PRC issuer for the purpose of connected transaction Rules.

*Q30: Do you support the proposal to apply those provisions for PRC Governmental Body in Chapter 19A to connected persons of non-PRC issuers? Please provide reasons for your views.*

*Q31: If your answer to Q30 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

#### **(4) Management shareholder of a GEM issuer**

- 92. The definition of “connected person” under GEM Rule 1.01 includes a director, chief executive, substantial shareholder, **management shareholder** or (for PRC issuer only) a promoter or supervisor, of the issuer or any of its subsidiaries or an associate of any of them.

93. A “management shareholder” is defined as any person (or group of persons) who can exercise or control 5% or more of the voting power at general meetings of the issuer and who can direct or influence the management of the issuer. It is also provided in this definition that a controlling shareholder will, in all cases, be deemed to be a management shareholder.
94. The concept of management shareholder appears in GEM Rules but not the Main Board Rules. This gives rise to a difference in the definition of connected person in these Rules. The main objective of the GEM Board was originally to provide capital formation for emerging companies to facilitate their business development and/or expansion. Management shareholders were considered as principal shareholders for GEM issuers and were subject to specific requirements (e.g. lock-up requirements for their interests in GEM issuers). They were also defined as connected persons in the GEM Rules.
95. In May 2008, we repositioned GEM as a second board and adopted a gradual approach to unify the GEM and Main Board Rules and practices<sup>10</sup>. Some requirements governing management shareholders (including the lock-up requirements) were removed as they were no longer necessary. It will be logical to align the definition of connected persons under the two sets of Rules in this review of connected transaction requirements.
96. We propose to remove “management shareholder” from the definition of connected person in the GEM Rules to bring that in line with the Main Board Rules.

*Q32: Do you support the proposal to delete “management shareholder” from the definition of connected person in the GEM Rules? Please provide reasons for your views.*

*Q33: If your answer to Q32 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? 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**

97. Rules 14A.31(2) and 14A.32 exempt small transactions from disclosure and/or shareholders’ approval requirements (see Part B above). Notes to these Rules state that the exemptions do not apply to the issue of new securities by an issuer (which by definition under Rule 14A.10(6) includes its subsidiary) to a connected person.

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<sup>10</sup> See Consultation Conclusions on the Growth Enterprise Market published by the Exchange in May 2008.

98. As an issue of securities by the issuer’s subsidiary is in substance a deemed disposal of the issuer’s interest in that subsidiary, its treatment should be the same as any straight disposal. Accordingly, we propose to amend the Notes to Rules 14A.31(2) and 14A.32 by removing the restriction on applying the de minimis exemptions to deemed disposals.

*Q34: 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? Please provide reasons for your views.*

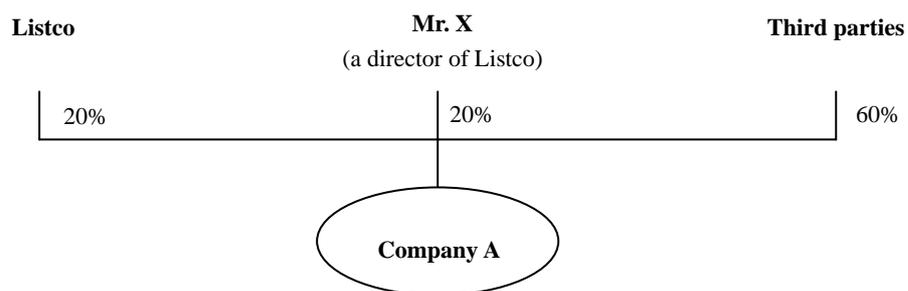
*Q35: If your answer to Q34 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

**(2) Exemption for financial assistance provided on a pro-rata basis**

99. Rule 14A.13(2)(a) states that connected transactions include an issuer giving financial assistance to:-

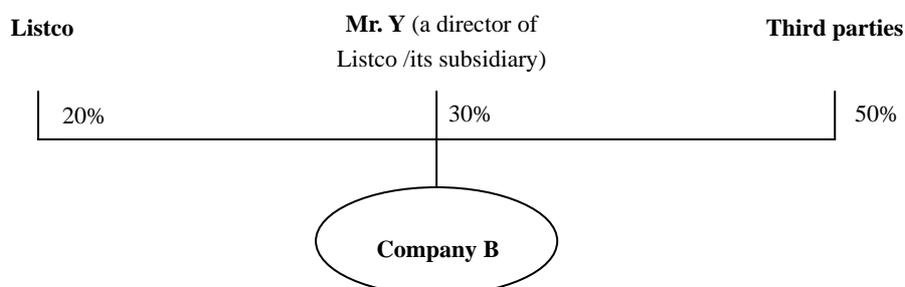
- a connected person; or
- a company in which both the issuer and a connected person are shareholders and where any connected person(s) of the issuer (except at the subsidiary level) as defined under Rules 14A.11(1) to (4) can (individually or together) control 10% or more of the voting power at any general meeting of the company (**commonly held entity**).

For example, Company A in the following diagram is a commonly held entity:



100. Under Rule 14A.65(3)(b)(i), financial assistance given by an issuer for the benefit of a commonly held entity is exempt from all connected transaction requirements if the assistance being given is in proportion to the issuer’s equity interest in the entity and any guarantees given by the issuer is on a several (and not joint and several) basis.

101. There is no similar exemption if the financial assistance is given for the benefit of a connected person in which the issuer is a shareholder. For example, in the following diagram, Company B is Mr. Y's associate and therefore a connected person of Listco. Financial assistance provided by Listco to Company B would not fall under the exemption of Rule 14A.65(3)(b)(i) even if it is made on a pro-rata basis:



102. As the risk of potential abuse is remote in the specific circumstances described in Rule 14A.65(3)(b)(i), we propose to clarify that the exemption will also apply where the commonly held entity is also a connected person.

*Q36: 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? Please provide reasons for your views.*

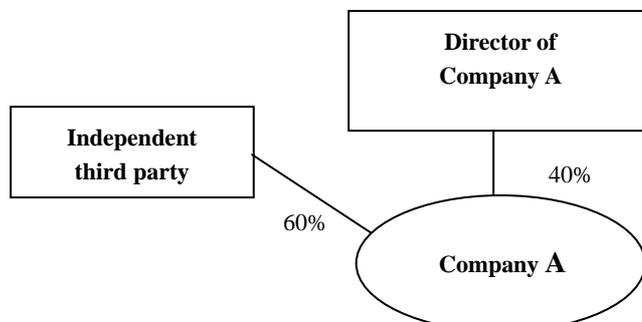
*Q37: If your answer to Q36 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

**(3) Transactions with third parties involving joint investments with connected persons**

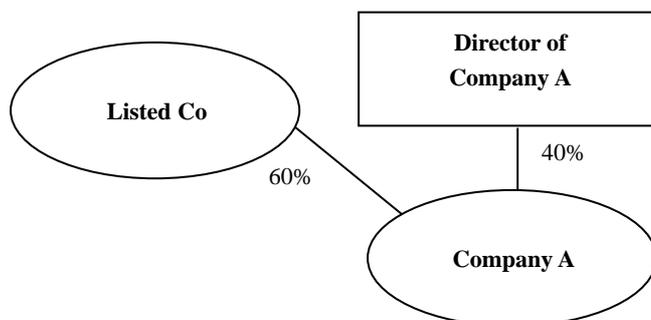
103. Rule 14A.13(1)(b)(i) states that a connected transaction includes any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller.
104. Under Rule 14A.10(3), a controller means a director, chief executive or controlling shareholder of the listed issuer or its subsidiary.
105. Note 3 to Rule 14A.13(1)(b)(i) exempts an acquisition of an interest in a target company where the substantial shareholder of the target company will become a controller only because of its position and/or shareholding in that target company. The rationale behind the exemption is that the target company's substantial shareholder is in fact an independent third party before the acquisition and it is unlikely that this person is able to exert influence over the listed group and take an advantage in the acquisition to the detriment of the issuer's shareholders.

106. For example, an issuer (Listed Co) proposes to acquire a 60% interest in a target company (Company A) from an independent third party. The following diagrams show the shareholding structures of Company A before and after the acquisition:

**Before the acquisition of 60% interest in Company A**



**After the acquisition of 60% interest in Company A**



107. The acquisition falls under the circumstances described in Rule 14A.13(1)(b)(i) but it meets the conditions set out in Note 3 to the rule. The acquisition is therefore exempt from connected transaction requirements.
108. No similar exemption exists in the Rules for a disposal of interest by the issuer in the target company. Although the substantial shareholder is already a connected person at the time of disposal because of its relationship with the target company which is a subsidiary, the risk that the target company's substantial shareholder can exert significant influence over the issuer and the transaction with a third party is still remote. We therefore propose extending the exemption to disposal transactions.

*Q38: 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? Please provide reasons for your views.*

*Q39: If your answer to Q38 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

**(4) Annual review of continuing connected transactions**

109. Rules 14A.37 and 14A.38 set out the requirements for annual review of continuing connected transactions by independent non-executive directors and auditors. However, it is unclear from the Rules whether the annual review requirements apply to all connected transactions (including those exempt from reporting, disclosure and independent shareholders' approval requirements).
110. We propose to amend the Rules to clarify that the annual review requirements apply to continuing connected transactions that are subject to reporting and disclosure requirements in Chapter 14A.

*Q40: 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? Please provide reasons for your views.*

*Q41: If your answer to Q40 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

*Q42: Are there any other comments you would like to make? If your answer is "Yes", please elaborate your views.*

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# APPENDIX I DRAFT RULE AMENDMENTS

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*(Unless otherwise specified, set out below are the draft Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)*

**The marked-up parts represent the proposed amendments to the Main Board Rules or the GEM Rules**

- 1. Draft Rule amendments relating to transactions with persons connected with an issuer only by virtue of their relationship with the issuer’s subsidiaries - [Chapter 2: Part A]**
  - (i) If the proposal to exclude persons connected at the subsidiary level from the definition of connected person is adopted**

## **“General matters concerning definitions and interpretation**

14A.10 In this Chapter:

...

- (3) “controller” means a director, chief executive or controlling shareholder of the listed issuer (other than at the level of its subsidiaries);

...

## **Definition of connected person**

14A.11 ~~Rule 1.01 contains a general definition of “connected person”.~~ In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer (other than at the level of its subsidiaries);
- (2) any person who was a director of the listed issuer (other than at the level of its subsidiaries) within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer (other than at the level of its subsidiaries);
- (4) any associate of a person referred to in rules 14A.11(1), (2) or (3). The definitions of “associate” (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 19A.04, respectively. In this Chapter, an “associate” of a person referred to in rules 14A.11(1), (2) or (3) includes the following additional persons:
  - (a) any person or entity with whom a person referred to in rules 14A.11(1), (2) or (3) has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether

express or implied, with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;

- (b) any person cohabiting as a spouse with, and any child, step-child, parent, stepparent, brother, sister, step-brother and step-sister of, a person referred to in rules 14A.11(1), (2) or (3); and
- (c) a father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a person referred to in rules 14A.11(1), (2) or (3) whose association with the person referred to in rules 14A.11(1), (2) or (3) is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of this Chapter. Listed issuers must notify the Exchange of any proposed transaction with these parties unless the transaction is exempt under rules 14A.31 or 14A.33. Listed issuers must also provide information to the Exchange to demonstrate whether or not these parties should be regarded as associates of the person referred to in rules 14A.11(1), (2) or (3);

*Notes: 1. A company which is an “associate” of a person referred to in rules 14A.11(1), (2) or (3) only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.*

~~2. A non wholly-owned subsidiary will not be regarded as an associate of a substantial shareholder of that non wholly-owned subsidiary if such substantial shareholder is a connected person only by virtue of being a director of the non wholly-owned subsidiary and/or is a substantial shareholder in the non wholly-owned subsidiary concerned.~~

- (5) any non wholly-owned subsidiary of the listed issuer where any connected-person(s) of the listed issuer (~~other than at the level of its subsidiaries~~) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and

*Notes: 1 It follows that a non wholly-owned subsidiary is not a connected person where:*

- (a) *no connected person(s) of the listed issuer (~~other than at the level of its subsidiaries~~) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and*

(b) *the non wholly-owned subsidiary is not an associate of a person referred to in rules 14A.11(1), (2) or (3).*

2 *An interest of a connected person of the listed issuer ~~(other than at the level of its subsidiaries)~~ as defined in rules 14A.11(1) to (4) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

(6) any subsidiary of a non wholly-owned subsidiary referred to in rule 14A.11(5).

...

### **Definition of connected transaction**

14A.13 A connected transaction is:

(1) (a) any transaction between a listed issuer and a connected person; or

#### *Acquisition or disposal of interest in a company*

(b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller. The Exchange may aggregate the interests of any person and his associates (as defined in rule 14A.11(4)) in determining whether together they are a “substantial shareholder” of any company. Where assets (as opposed to businesses) account for 90% or more of such a company’s net assets or total assets, the Exchange will treat the acquisition or disposal of such assets as a connected transaction and an acquisition or disposal of an interest in that company; or

*Notes: 1 A listed issuer itself will not be considered an “associate” of a controller when the listed issuer is acquiring or disposing of an interest in a company of which it is already a substantial shareholder.*

2 *A controller whose only interest in a company is through its interest in the listed issuer will not be taken to be a “substantial shareholder” of that company.*

~~3 This rule does not apply where all the following conditions are met:~~

~~(i) — the listed issuer acquires an interest in a company;~~

~~(ii) — the substantial shareholder of the company being acquired is a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) immediately prior to the acquisition;~~

~~(iii) — it is proposed that the substantial shareholder will remain a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) following the acquisition; and~~

~~(iv) — following the acquisition, the only reason why he is still a controller is that he remains a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder), as the case may be. Where he remains a controlling shareholder, there must not be any increase in his interest in such company as a result of the acquisition.~~

...

#### *Financial assistance*

(2) the provision of financial assistance:

(a) by a listed issuer to:

(i) a connected person; or

(ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer ~~(other than at the level of its subsidiaries)~~ as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company; or

*Note: An interest of a connected person of the listed issuer (~~other than at the level of its subsidiaries~~) as defined in rules 14A.11(1) to (4) in the company which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

- (b) to a listed issuer by;
  - (i) a connected person; or
  - (ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (~~other than at the level of its subsidiaries~~) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company.

*Note: An interest of a connected person of the listed issuer (~~other than at the level of its subsidiaries~~) as defined in rules 14A.11(1) to (4) in the company which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

...”

- (ii) **If the proposed “insignificant subsidiary exemption” to the connected transaction Rules is adopted**

**“Connected transactions  
(~~other than those involving financial assistance or the granting of options~~)  
exempt from the reporting, announcement and  
independent shareholders’ approval requirements**

14A.31 The following connected transactions will be exempt from all the reporting, announcement and independent shareholders’ approval requirements contained in this Chapter:

...

*Transactions with persons connected at the level of subsidiaries*

- (9) a connected transaction on normal commercial term where
  - (a) the transaction is a connected transaction only because it involves a person who is a connected person of the listed issuer by virtue of its/his relationship with the issuer’s subsidiary or subsidiaries;

- (b) the relevant subsidiary has, or the relevant subsidiaries have in aggregate, contributed less than [5% of the issuer's total assets, profits and revenue in the financial year immediately preceding the transaction]/[10% of the issuer's total assets, profits and revenue in each of the 3 financial years immediately preceding the transaction]. For this purpose, 100% of the subsidiary's or subsidiaries' total assets, profits and revenue will be used to calculate the relevant percentage ratios; and
- (c) if any relevant subsidiary (or any of its subsidiaries) is a party to the transaction or if the securities or assets of the relevant subsidiary (or any of its subsidiaries) are the subject of the transaction, the consideration ratio is less than 10%.

...

**Continuing connected transactions  
exempt from the reporting, annual review, announcement and  
independent shareholders' approval requirements**

14A.33 The following continuing connected transactions will be exempt from the reporting, annual review, announcement and independent shareholders' approval requirements of this Chapter:

...

Transactions with persons connected at the level of subsidiaries

- (4) a continuing connected transaction that meets the requirements in rule 14A.31(9) and the following requirements:
- (a) the period for the agreement must not exceed 3 years, except in special circumstances described in rule 14A.35(1); and
- (b) the listed issuer must reassess the situation annually based on its latest published audited financial information. If the transaction no longer meets the requirements in rule 14A.31(9), the listed issuer must disclose the facts in its annual report and comply with the reporting requirements for the transaction. Upon any variation or renewal of the agreement, the listed issuer must comply with all applicable requirements of this Chapter for the transaction effected after such variation or renewal."

2. **Draft Rule amendments relating to the de minimis exemptions - [Chapter 2: Parts B and F(1)]**

**“Connected transactions  
(~~other than those involving financial assistance or the granting of options~~)  
exempt from the reporting, announcement and  
independent shareholders’ approval requirements**

14A.31 The following connected transactions will be exempt from all the reporting, announcement and independent shareholders’ approval requirements contained in this Chapter:

...

*De minimis transactions*

- (2) a connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:
- (a) ~~each of the percentage ratios (other than the profits ratio) is less than 0.1%~~  
1%; or
  - (b) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1%-1%~~ but less than ~~2.5%-5%~~ and the total consideration is less than HK\$1,000,000;

*Note: This exemption does not apply to the issue of new securities by a listed issuer (other than its subsidiaries) to a connected person, which is governed by rule 14A.31(3).*

...

**Connected transactions (~~other than those involving financial assistance, the granting of options or Qualified Property Acquisitions under a General Property Acquisition Mandate~~) exempt from  
the independent shareholders’ approval requirements**

14A.32 A connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:

- (1) ~~each of the percentage ratios (other than the profits ratio) is less than 2.5%-5%~~; or
- (2) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5%-5%~~ but less than 25% and the total consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in rules 14A.45 to 14A.47 and is exempt from the independent shareholders’ approval requirements of this Chapter.

*Note: This exemption does not apply to the issue of new securities by a listed issuer (other than its subsidiaries) to a connected person, which is governed by rule 14A.31(3).*

**Continuing connected transactions  
exempt from the reporting, annual review, announcement and  
independent shareholders' approval requirements**

14A.33 The following continuing connected transactions will be exempt from the reporting, annual review, announcement and independent shareholders' approval requirements of this Chapter:

...

*De minimis transactions*

- (3) a continuing connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:
- (a) ~~each of the percentage ratios (other than the profits ratio) is~~ on an annual basis less than ~~0.1%-1%~~%; or
  - (b) ~~each of the percentage ratios (other than the profits ratio) is~~ on an annual basis equal to or more than ~~0.1%-1%~~ but less than ~~2.5%-5%~~ and the annual consideration is less than HK\$1,000,000.

**Continuing connected transactions  
exempt from the independent shareholders' approval requirements**

14A.34 A continuing connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:

- (1) on an annual basis less than ~~2.5%-5%~~%; or
- (2) on an annual basis equal to or more than ~~2.5%-5%~~ but less than 25% and the annual consideration is less than HK\$10,000,000

...

**Financial assistance**

...

*Exempt from reporting, announcement and independent shareholders' approval requirements*

14A.65 The following connected transactions are exempt from the reporting, announcement and independent shareholders' approval requirements of this Chapter:—

- (1) ...

- (2) financial assistance provided by a listed issuer for the benefit of a connected person:
- (a) in the ordinary and usual course of business of the listed issuer but not on normal commercial terms (or better to the listed issuer); or
  - (b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer),

and where each or all of the percentage ratios (other than the profits ratio) is/are: (i) ~~each of the percentage ratios (other than the profits ratio) is less than 0.1%–1%;~~ or (ii) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1%–1% but less than 2.5%–5%~~ and the total value of the assistance plus any preferential benefit to the connected person is less than HK\$1,000,000;

- (3) financial assistance provided by a listed issuer for the benefit of any company falling under rule 14A.13(2)(a)(ii):

- (a) in the ordinary and usual course of business of the listed issuer but not on normal commercial terms and where each or all of the percentage ratios (other than the profits ratio) is/are: (i) ~~each of the percentage ratios (other than the profits ratio) is less than 0.1%–1%;~~ or (ii) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1%–1% but less than 2.5%–5%~~ and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or
- (b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), provided that:

(i) ...; or

(ii) the assistance being provided is not in proportion to the listed issuer's equity interest in the company or the guarantees given by the listed issuer are not on a several basis (whether on a joint and several basis, or otherwise), and each or all of the percentage ratios (other than the profits ratio) is/are: (A) ~~each of the percentage ratios (other than the profits ratio) is less than 0.1%–1%;~~ or (B) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1%–1% but less than 2.5%–5%~~ and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or

- (4) ...

*Exempt from independent shareholders' approval requirements*

14A.66 The following connected transactions are only subject to the reporting and announcement requirements set out in rules 14A.45 and 14A.46 and rule 14A.47 respectively:

- (1) financial assistance provided by the listed issuer in the ordinary and usual course of business for the benefit of a connected person, or any company falling under rule 14A.13(2)(a)(ii), not on normal commercial terms (or better to the listed issuer), where each or all of the percentage ratios (other than the profits ratio) is/are: (i) each of the percentage ratios (other than the profits ratio) is less than 2.5%-5% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5%-5% but less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than HK\$10,000,000; or
- (2) financial assistance provided by the listed issuer not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer) for the benefit of:
  - (a) a connected person; or
  - (b) any company falling under rule 14A.13(2)(a)(ii) if the assistance being provided is not in proportion to the listed issuer's equity interest in the relevant company or any guarantees given by the listed issuer are not on a several basis,

and each or all of the percentage ratios (other than the profits ratio) is/are: (i) each of the percentage ratios (other than the profits ratio) is less than 2.5%-5% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5%-5% but less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than HK\$10,000,000.”

**3. Draft Rule amendments relating to revenue transactions with connected persons - [Chapter 2: Part C]**

**“Connected transactions  
(~~other than those involving financial assistance or the granting of options~~)  
exempt from the reporting, announcement and  
independent shareholders' approval requirements**

14A.31 The following connected transactions will be exempt from all the reporting, announcement and independent shareholders' approval requirements contained in this Chapter:

...

*Consumer goods or consumer services*

(7) the acquisition as consumer or realisation in the ordinary and usual course of business of consumer goods or consumer services by a listed issuer from or to a connected person of the listed issuer on normal commercial terms. Such goods and services:—

(a) must be of a type ordinarily supplied for private use or consumption;

(b) (i) must be for the acquirer's own consumption or use, and

(ii) must not be processed into products of the acquirer or for resale or otherwise for the purpose of or in connection with any business or contemplated business of the acquirer (whether for consideration or otherwise), except that the listed issuer may acquire consumer goods or services for the purpose of or in connection with its business if there is an open market and transparency in pricing of these goods or services;

*Note: Examples include utilities provided by a listed issuer to a connected person, meals consumed by a connected person at a restaurant owned by the listed issuer ~~and~~ the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing or groceries, and utilities provided by a connected person to a listed issuer where the prices are published or publicly quoted and apply to other independent consumers.*

(c) must be consumed or used by the acquirer in the same state as when they were acquired;

(d) must be of a total consideration or value that is or represents less than 1% of the total revenue or total purchases, as the case may be, of the listed issuer as shown in its latest published audited accounts or where consolidated accounts have been prepared, its latest published audited consolidated accounts; and

(e) the transactions concerned must be on terms no more favourable to the connected person than those available to independent third parties or no less favourable to the listed issuer than those available from independent third parties (as the case may be); and

*Note: Listed issuers are encouraged to consult the Exchange at an early stage to determine whether a transaction falls within the scope of this rule.*

...

**Continuing connected transactions  
exempt from the reporting, annual review, announcement and  
independent shareholders' approval requirements**

14A.33 The following continuing connected transactions will be exempt from the reporting, annual review, announcement and independent shareholders' approval requirements of this Chapter:

*Consumer goods or consumer services*

- (1) the provision of consumer goods or consumer services as set out in rule 14A.31(7);

*Sharing of administrative services*

- (2) ...; ~~and~~

*De minimis transactions*

- (3) ...

- (b) ...; and

*Transactions with associates of a passive investor*

- (4) a connected transaction of a revenue nature in the ordinary and usual course of the listed issuer's business and on normal commercial terms where

- (a) the transaction is a connected transaction only because it involves an associate (the "Relevant Associate") of a substantial shareholder of the listed issuer; and

- (b) the substantial shareholder is a passive investor in the listed issuer and meets the following criteria:

- (i) it is a sovereign fund, or a unit trust or mutual fund authorised by the Commission or an appropriate overseas authority;

- (ii) it has a wide spread of investments other than the securities of the listed issuer and the Relevant Associate;

- (iii) it and the Relevant Associate are connected persons only because it is a substantial shareholder of the listed issuer;

- (iv) it is not a controlling shareholder of the listed issuer;

- (v) it does not have any representative on the board of directors of the listed issuer, and is not involved in the management of the listed issuer;

and

(vi) it is independent of the directors, chief executive, controlling shareholder(s) and any other substantial shareholder(s) of the listed issuer.”

#### 4. Draft Rule amendments relating to the definition of associate – [Chapter 2: Part D(1)]

“1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

...

“associate”

(a) in relation to an individual means:—

- (i) his spouse;
- (ii) any child or step-child, natural or adopted, under the age of 18 years of such individual or of his spouse (together with (a)(i) above, the “family interests”);
- (iii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object ~~and any company (“trustee controlled company”) in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the “trustee interests”);~~ and
- (iv) ~~a holding company of a trustee controlled company or a subsidiary of any such holding company; and~~ [Repealed [insert date]]
- (v) any company in the equity capital of which he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, ~~and/or any trustee interests taken together~~

are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary ~~or holding company or a fellow subsidiary of any such holding company~~; and

(b) in relation to a company means:—

- (i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company ~~or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors;~~
- (ii) the trustees, acting in their capacity as such trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object ~~and any company ("trustee controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests"); and~~
- (iii) ~~a holding company of a trustee controlled company or a subsidiary of any such holding company; and~~  
[Repealed [insert date]]

(iv) any other company in the equity capital of which the company, such other companies referred to in (b)(i) above, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary ~~or holding company or a fellow subsidiary of any such holding company~~

(c) Insofar as a depositary is acting in its capacity as a depositary for depositary receipts, it shall not be treated as an associate of holders of the depositary receipts for the purposes of (a) and (b) merely by reason of the fact that it is holding the shares of the issuer for the benefit of the holders of the depositary receipts

*Notes (1) ...*

...

19A.04 The following terms, save where the context otherwise requires, have the following meanings:-

**“associate”**

for a PRC issuer

(a) in relation to an individual means:—

(i) his spouse;

(ii) any child or step-child, natural or adopted, under the age of 18 years of such individual or of his spouse (together with (a)(i) above, the “family interests”);

(iii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object ~~and any company (“trustee controlled company”) in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of~~

~~30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the “trustee interests”);~~

- ~~(iv) a holding company of a trustee controlled company or a subsidiary of any such holding company; [Repealed *[insert date]*]~~
- (v) any company (including an equity joint venture established under PRC law) in the equity capital of which he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary ~~or holding company or a fellow subsidiary of any such holding company;~~ and
- (vi) any company with which or individual with whom he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together directly or indirectly have 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more interest either in

the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture; and

- (b) in relation to a company means:—
- (i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company ~~or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors; and~~
  - (ii) the trustees, acting in their capacity as such trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object ~~and any company ("trustee controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests");~~
  - (iii) ~~a holding company of a trustee controlled company or a subsidiary of any such holding company;~~  
[Repealed [insert date]]
  - (iv) any other company (including an equity joint venture established under the PRC law) in the equity capital of which the company, such other companies referred to in (b)(i) above, and/or any of the trustees

referred to in (b)(ii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary ~~or holding company or a fellow subsidiary of any such holding company~~; and

- (v) any other company with which or any individual with whom the company, such other companies referred to in (b)(i) above, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where it, such other companies referred to in (b)(i) above, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, ~~and/or any trustee interests~~ taken together directly or indirectly have 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture.

*Notes 1 ...”*

**5. Draft Rule amendments relating to the extended definition of associate – [Chapter 2: Part D(2)]**

**“Definition of connected person**

14A.11 Rule 1.01 contains a general definition of “connected person”. In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer;
- (4) any associate of a person referred to in rules 14A.11(1), (2) or (3). The definitions of “associate” (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 19A.04, respectively. In this Chapter, an “associate” of a person referred to in rules 14A.11(1), (2) or (3) includes the following additional persons:
  - (a) ...
  - (b) (i) any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a person referred to in rules 14A.11(1), (2) or (3); and
    - (ii) a company which the party referred to in rule 14A.11(4)(b)(i) can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors; and
  - (c) (i) a father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a person referred to in rules 14A.11(1), (2) or (3); and
    - (ii) a company which the party referred to in rule 14A.11(4)(c)(i) can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors,

whose association with the person referred to in rules 14A.11(1), (2) or (3) is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of this Chapter. Listed issuers must notify the Exchange of any proposed transaction with these parties unless the transaction is exempt under rules 14A.31 or 14A.33. Listed issuers must also provide information to the Exchange to demonstrate whether or not these parties should be regarded as associates of the person referred to in rules

14A.11(1), (2) or (3);

...”

**6. Draft Rule amendments relating to non wholly-owned subsidiaries defined as connected persons – [Chapter 2: Part E(1)]**

**“Definition of connected person**

14A.11 Rule 1.01 contains a general definition of “connected person”. In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer;
- (4) any associate of a person referred to in rules 14A.11(1), (2) or (3). The definitions of “associate” (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 19A.04, respectively. In this Chapter, an “associate” of a person referred to in rules 14A.11(1), (2) or (3) includes the following additional persons:
  - (a) ...

*Notes: 1. A company which is an “associate” of a person referred to in rules 14A.11(1), (2) or (3) only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.*

*2. A non wholly-owned subsidiary will not be regarded as a connected person ~~an associate of a substantial shareholder of that non wholly-owned subsidiary if such substantial shareholder is a connected person only by virtue of being (i) a substantial shareholder of another subsidiary under rule 14A.11(1) or (ii) an associate of any connected persons (at the level of the issuer’s subsidiaries only) as defined in rules 14A.11(1) to (3)-a director of the non wholly-owned subsidiary and/or is a substantial shareholder in the non wholly-owned subsidiary concerned.~~*

- (5) any non wholly-owned subsidiary of the listed issuer where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non

wholly-owned subsidiary; and

*Notes: 1 It follows that a non wholly-owned subsidiary is not a connected person where:*

*(a) no connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and*

*(b) the non wholly-owned subsidiary is not an associate of a connected person of the listed issuer (other than at the level of its subsidiaries) as defined ~~referred to~~ in rules 14A.11(1), (2) or (3).*

*2 An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

(6) any subsidiary of a non wholly-owned subsidiary referred to in rule 14A.11(5).

*Note: If the subsidiaries are connected persons only by virtue of being the subsidiaries of a non wholly-owned subsidiary referred to in rule 14A.11(5), transactions among these subsidiaries or between the non wholly-owned subsidiary and any of these subsidiaries will not be regarded as connected transactions.*

## **7. Draft Rule amendments relating to promoter of PRC issuer - [Chapter 2: Part E(2)]**

“1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

...

“**associate**” (a) in relation to an individual means:—

...

*Notes (1) This definition is modified in the context of connected transactions by virtue of rules 14A.11 and 14A.12.*

*(2) In the case of a PRC issuer, its ~~promoters,~~*

*directors, supervisors, chief executive and substantial shareholders, the definition is amended to have the same meaning as in rule 19A.04.*

...

- “connected person”**
- (a) in relation to a company other than a PRC issuer, and other than any subsidiaries of a PRC issuer, means a director, chief executive or substantial shareholder of such company or any of its subsidiaries or an associate of any of them; and
  - (b) in relation to a PRC issuer means a ~~promoter~~, director, supervisor, chief executive or substantial shareholder of the PRC issuer or any of its subsidiaries or an associate of any of them

*Note: This definition is modified in the case of Chapter 14A only by the provisions of rules 14A.11 and 14A.12.*

...

#### **Definition of connected person**

14A.11 Rule 1.01 contains a general definition of “connected person”. In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a ~~promoter~~ or supervisor of a PRC issuer;

...”

#### **8. Draft Rule amendments relating to PRC Governmental Body - [Chapter 2: Part E(3)]**

##### **“Definition of connected person**

...

14A.12A For the purpose of this Chapter, the Exchange will not normally treat a PRC Governmental Body (see definition in rule 19A.04) as a connected person of a listed issuer.

...”

9. Draft Rule amendments relating to management shareholder of GEM issuer (for GEM Rules only) – [Chapter 2: Part E(4)]

“1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

...

- “connected person” or “person connected”**
- (a) in relation to a company other than a PRC issuer, and other than any subsidiaries of a PRC issuer, means a director, chief executive, or substantial shareholder ~~or management shareholder~~ of such company or any of its subsidiaries or an associate of any of them; and
  - (b) in relation to a PRC issuer means a promoter, director, supervisor, chief executive, or substantial shareholder ~~or management shareholder~~ of the PRC issuer or any of its subsidiaries or an associate of any of them

*Note: This definition is modified for the purposes of Chapter 20 by virtue of the provisions of rules 20.11 and 20.12.*

...

~~**“management shareholder”** means any person who is (or group of persons who together are) entitled to exercise or control the exercise of 5% or more of the voting power at general meetings of the issuer and who is (or are) able, as a practical matter, to direct or influence the management of the issuer;~~

~~*Notes: 1 The Exchange will not ordinarily consider a shareholder with board representation, including but not limited to a professionally managed fund, as a management shareholder if it can be demonstrated that it does not actively participate in the management of the issuer’s business.*~~

~~*2 For the purposes of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder.*~~

...

**“significant shareholder”** any person ~~other than a management shareholder~~ who, immediately prior to the date of the new applicant’s initial listing document and immediately prior to the date on which securities of the new applicant commence trading on GEM, is (or group of persons who together are) entitled to exercise or control the exercise of 5% or more of the voting power at general meetings of the new applicant

...

3.11 The sanctions in rule 3.10 may be imposed or issued against any of the following:—

(a) a listed issuer or any of its subsidiaries;

...

(e) any ~~management shareholder~~ or significant shareholder;

...

5.09 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—

(1) ...

...

(6) is or was connected with a director, the chief executive, or a substantial shareholder ~~or management shareholder~~ of the issuer within 2 years immediately prior to the date of his proposed appointment;

*Note: Without prejudice to the generality of the foregoing, any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, stepbrother and step-sister of, a director, the chief executive, or a substantial shareholder ~~or management shareholder~~ of the issuer is, for the purpose of rule 5.09(6), considered to be connected with that director, chief executive, or substantial shareholder ~~or management shareholder~~. A father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a director, the chief executive ; or a substantial shareholder ~~or management shareholder~~ of the issuer may in some circumstances also be considered to be so connected. In such cases, the issuer will need to provide the Exchange with all relevant information to enable the Exchange to make a determination.*

...

10.12 A placing by or on behalf of a new applicant or by or on behalf of a listed issuer of securities of a class new to listing must be supported by a listing document which must comply with the relevant requirements of Chapter 14 and such a placing must comply with the following specific requirements:—

(1) ...

...

(4) ...

*Notes: 1 The purpose of this rule is to enable shareholders and investors to understand the broad composition of the ownership of the placed shares immediately prior to trading in those shares. The groups of placees which the issuer must identify in the announcement, to the extent applicable, include:—*

*(a) ~~[Repealed [insert date]]management shareholders and their associates (on an individually named basis);~~*

*(b) directors and their associates (on an individually-named basis);*

*(c) ...*

...

11.04 Full and accurate disclosure of any business or interest of each director, controlling shareholder and, in relation only to the initial listing document, substantial shareholder and the respective associates of each that competes or may compete with the business of the group and any other conflicts of interest which any such person has or may have with the group must be disclosed in each listing document and circular required pursuant to the GEM Listing Rules (excluding any Explanatory Statement issued pursuant to rule 13.08) and in the annual report and accounts, half-year report and quarterly reports of the listed issuer.

*Notes: 1 ~~[Repealed [insert date]]For the purposes of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder.~~*

*2 Each of the documents referred to in this rule is required to set out the interests of directors, ~~management shareholders~~ and, in relation only to the initial listing document, substantial shareholders (including the interests of their respective associates) under a specific heading and both the heading and information must be given suitable prominence within the document.*

*3 Of the interests required to be disclosed pursuant to this rule, a director, ~~management shareholder~~ or substantial shareholder must include any directorship or ownership of an entity engaged in a business which competes or is likely to compete with the business of the group. The disclosure should*

*include the name of each such entity, the nature of its business and details of the directorship and/or ownership of the issuer's directors, ~~management shareholders~~ and substantial shareholders and their respective associates in such entity.*

...

13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

(1) ...;

...

*Notes: 1 The Explanatory Statement need not contain the statement set out in rule 2.20 concerning the characteristics of GEM nor information on the interests (if any) of the Compliance Adviser (as referred to in rule 6A.31) and all directors, ~~management shareholders~~ and their respective associates (as referred to in rule 11.04).*

...

...

17.50 An issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:—

(1) ...;

(2) any changes in its directorate (and, in the case of a PRC issuer, its supervisory committee), and shall procure that each new director or member of its governing body and, in the case of a PRC issuer, supervisor shall sign and lodge with the Exchange as soon as practicable after the date of his appointment a declaration, undertaking and acknowledgement in the relevant form set out in Appendix 6.

(a) ...

...

(e) relationships with any directors, senior management, ~~management shareholders~~, substantial shareholders, or controlling shareholders of the issuer;

...

...

18.45 Information as to the interests (if any) of the Compliance Adviser and its directors, employees and associates, as notified to the issuer pursuant to rule 6A.32 and all directors ~~and management shareholders~~ of the issuer and their respective associates as referred to in rule 11.04.

...

18.63 Information as to the interests (if any) of the Compliance Adviser and its directors, employees and associates, as notified to the issuer pursuant to rule 6A.32 and all directors ~~and management shareholders~~ of the issuer and their respective associates as referred to in rule 11.04.

...

18.75 Information as to the interests (if any) of the Compliance Adviser and its directors, employees and associates, as notified to the issuer pursuant to rule 6A.32 and all directors ~~and management shareholders~~ of the issuer and their respective associates as referred to in rule 11.04.

...

### **Preliminary**

20.01 The connected transactions rules are intended to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when the listed issuer enters into connected transactions. The rules set out in this Chapter also provide certain safeguards against listed issuers' directors, chief executives, ~~management shareholders~~ or substantial shareholders (or their associates) taking advantage of their positions.

...

### **Definition of connected person**

20.11 Rule 1.01 contains a general definition of "connected person". In this Chapter, the definition of "connected person" includes:

- (1) a director, chief executive, or substantial shareholder ~~or management shareholder~~ of the listed issuer;

...

### **Definition of connected transaction**

20.13 A connected transaction is:

- (1) (a) any transaction between a listed issuer and a connected person; or

#### *Acquisition or disposal of interest in a company*

- (b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder ~~or management shareholder~~ of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller. The Exchange may aggregate

the interests of any person and his associates (as defined in rule 20.11(4)) in determining whether together they are a “substantial shareholder” of any company. Where assets (as opposed to businesses) account for 90% or more of such a company’s net assets or total assets, the Exchange will treat the acquisition or disposal of such assets as a connected transaction and an acquisition or disposal of an interest in that company; or

...

...

### Terms of the scheme

23.03 The scheme document must include the following provisions and/or provisions as to the following (as the case may be):—

(1) ...

...

(4) the maximum entitlement of each participant under the scheme;

*Note: Unless approved by shareholders in the manner set out in this Note to rule 23.03(4), the total number of securities issued and to be issued upon exercise of the options granted to each participant (including both exercised and outstanding options) in any 12-month period must not exceed 1 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue. Where any further grant of options to a participant would result in the securities issued and to be issued upon exercise of all options granted and to be granted to such person (including exercised, cancelled and outstanding options) in the 12-month period up to and including the date of such further grant representing in aggregate over 1 per cent of the relevant class of securities in issue, such further grant must be separately approved by shareholders of the listed issuer in general meeting with such participant and his associates abstaining from voting. The listed issuer must send a circular to the shareholders and the circular must disclose the identity of the participant, the number and terms of the options to be granted (and options previously granted to such participant), the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4). The number and terms (including the exercise price) of options to be granted to such participant must be fixed before shareholders’ approval and the date of board meeting for proposing such further grant should be taken as the date of grant for the purpose of calculating the exercise price under Note 1 to rule 23.03(9).*

*“Associate” for this purpose shall have the meaning ascribed to it in rule 1.01 in relation to any director, chief executive, ~~or substantial shareholder or management shareholder~~ (being an individual).*

**Granting options to a director, chief executive, ~~management shareholder~~ or substantial shareholder of a listed issuer, or any of their respective associates**

- 23.04 (1) In addition to the shareholders' approval set out in Note 1 to rule 23.03(3) and the Note to rule 23.03(4), each grant of options to a director, chief executive, ~~management shareholder~~ or substantial shareholder of a listed issuer, or any of their respective associates, under a scheme of the listed issuer or any of its subsidiaries must comply with the requirements of this rule 23.04(1). Each grant of options to any of these persons must be approved by the independent non-executive directors of the listed issuer (excluding independent non-executive director who is the grantee of the options). Where any grant of options to a substantial shareholder or an independent non-executive director of the listed issuer, or any of their respective associates, would result in the securities issued and to be issued upon exercise of all options already granted and to be granted (including options exercised, cancelled and outstanding) to such person in the 12-month period up to and including the date of such grant:
- (a) representing in aggregate over 0.1% of the relevant class of securities in issue; and
  - (b) (where the securities are listed on the Exchange), having an aggregate value, based on the closing price of the securities at the date of each grant, in excess of HK\$5 million,

such further grant of options must be approved by shareholders of the listed issuer. The listed issuer must send a circular to the shareholders. All connected persons of the listed issuer must abstain from voting in favour at such general meeting.

...

**Disclosure requirements**

23.07 In relation to each scheme of a listed issuer or any of its subsidiaries, the listed issuer must disclose in its annual report and half-year report the following information in relation to: (i) each of the directors, chief executive, ~~management shareholders~~ or substantial shareholders of the listed issuer, or their respective associates; (ii) each participant with options granted in excess of the individual limit; (iii) aggregate figures for employees working under employment contracts that are regarded as "continuous contracts" for the purposes of the Employment Ordinance; (iv) aggregate figures for suppliers of goods or services; and (v) all other participants as an aggregate whole:—

- (1) particulars of outstanding options at the beginning and at the end of the financial year/period, including number of options, date of grant, vesting period, exercise period and exercise price;
- (2) ...

...

**Appendix 1**

**CONTENTS OF LISTING DOCUMENTS**

**Part A**

**Equity Securities**

**In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed**

...

54. Information:

- (1) as required by rule 6A.10(2) regarding interests of the Sponsor and its directors, employees and associates; and
- (2) as to the interests of all directors, ~~management shareholders~~ and substantial shareholders of the issuer and their respective associates (as referred to in rule 11.04). (Note 9)

...

**Appendix 1**

**CONTENTS OF LISTING DOCUMENTS**

**Part B**

**Equity Securities**

**In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed**

...

43. Information as to the interests (if any) of the Sponsor or Compliance Adviser, as applicable, and its directors, employees and associates (as referred to in rule 6A.32) and of all directors, ~~and management shareholders~~ of the issuer and their respective associates (as referred to in rule 11.04). (Note 8)

...

**Appendix 1**

**CONTENTS OF LISTING DOCUMENTS**

**Part C**

**Debt Securities**

**In the case where listing is sought for debt securities**

54. Information as to the interests (if any) of the Sponsor (if required) and its directors, employees and associates (as referred to in rule 6A.32) and of all directors ~~and management shareholders~~ and, in relation only to the initial listing document, substantial shareholders of the issuer and their respective associates (as referred to in 11.04).

...

**Appendix 5**

**FORMS RELATING TO LISTING**

**FORM D**

**Marketing statement (concerning a placing of equity securities)**

...

**C ANALYSIS OF DISTRIBUTION**

10.		Number of holders	Amount or number of securities	% of placing
	By the undersigned to: (Note 5)			
	(1) Connected clients (as defined in Note 2 to rule 10.12 of the GEM Listing Rules)	. . . . .	. . . . .	. . . . .
	(2) Directors/ <del>management shareholders/</del> substantial shareholders and significant shareholders * of the issuer and their respective associates (*significant shareholders in respect only of an initial public offer)	. . . . .	. . . . .	. . . . .

- (3) ...

...”

**10. Other draft Rule amendments – [Chapter 2: Parts F(2), F(3) and F(4)]**

**“Definition of connected transaction**

14A.13 A connected transaction is:

- (1) (a) any transaction between a listed issuer and a connected person; or

*Acquisition or disposal of interest in a company*

- (b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller. The Exchange may aggregate the interests of any person and his associates (as defined in rule 14A.11(4)) in determining whether together they are a “substantial shareholder” of any company. Where assets (as opposed to businesses) account for 90% or more of such a company’s net assets or total assets, the Exchange will treat the acquisition or disposal of such assets as a connected transaction and an acquisition or disposal of an interest in that company; or

*Notes: 1 A listed issuer itself will not be considered an “associate” of a controller when the listed issuer is acquiring or disposing of an interest in a company of which it is already a substantial shareholder.*

*2 A controller whose only interest in a company is through its interest in the listed issuer will not be taken to be a “substantial shareholder” of that company.*

*3 This rule does not apply where all the following conditions are met:*

*(i) the listed issuer acquires an interest in a company;*

*(ii) the substantial shareholder of the company being acquired is a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling*

shareholder) immediately prior to the acquisition;

- (iii) it is proposed that the substantial shareholder will remain a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) following the acquisition; and
- (iv) following the acquisition, the only reason why he is still a controller is that he remains a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder), as the case may be. Where he remains a controlling shareholder, there must not be any increase in his interest in such company as a result of the acquisition.

4 For a disposal of interest in a company, this rule does not apply if the disposal falls within this rule only because the substantial shareholder of the company being disposed of is a director, chief executive or controlling shareholder of this company (or an associate of such director, chief executive or controlling shareholder) immediately prior to the disposal.

...

## **General rules**

### *Categories*

14A.16 The categories of connected transactions are:

- (1) connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements (see rule 14A.31);
- (2) connected transactions exempt from the independent shareholders' approval requirements (see rule 14A.32);
- (3) continuing connected transactions exempt from the reporting, annual review, announcement and independent shareholders' approval requirements (see rule 14A.33);

- (4) continuing connected transactions exempt from the independent shareholders' approval requirements (see rule 14A.34); and
- (5) connected transactions, including continuing connected transactions, not falling under any of the categories set out in rules 14A.16(1) to (4).

14A.17 Transactions falling under rule 14A.16(5) are subject to the reporting, announcement and independent shareholders' approval requirements, and in the case of continuing connected transactions, the annual review requirements of this Chapter.

...

**Continuing connected transactions  
exempt from the reporting, annual review, announcement and  
independent shareholders' approval requirements**

14A.33 The following continuing connected transactions will be exempt from the reporting, annual review, announcement and independent shareholders' approval requirements of this Chapter:

- (1) ...
- ...

**Continuing connected transactions  
exempt from the independent shareholders' approval requirements**

14A.34 A continuing connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:

- (1) ...
- ...

is only subject to the reporting and announcement requirements set out in rules 14A.45 to 14A.47, the annual review requirements set out in rules 14A.37 to 14A.40 and the requirements set out in rules 14A.35(1) and 14A.35(2). It is exempt from the independent shareholders' approval requirements of this Chapter.

**Non-exempt continuing connected transactions**

14A.35 When an issuer enters into a continuing connected transaction not falling under rule 14A.33, it must:

- ...
- (3) ...; ~~and~~
- (4) ...; and

(5) comply with the annual review requirements described in rules 14A.37 to 14A.40.

...

### **Annual review of continuing connected transactions**

14A.37 When an issuer enters into a continuing connected transaction not falling under rule 14A.33, each ~~Each~~-year the independent non-executive directors of the listed issuer must review the continuing connected transactions and confirm in the annual report and accounts that the transactions have been entered into:

(1) ...

...

14A.38 When an issuer enters into a continuing connected transaction not falling under rule 14A.33, each ~~Each~~-year the auditors must provide a letter to the listed issuer's board of directors (with a copy provided to the Exchange at least 10 business days prior to the bulk printing of the listed issuer's annual report), confirming that the continuing connected transactions:

(1) ...

...

14A.41 Where a listed issuer has entered into an agreement involving continuing transactions and such transactions subsequently become continuing connected transactions for whatever reason (e.g. due to a party becoming a director of the listed issuer), the listed issuer must, immediately upon it becoming aware of this fact, comply with all applicable reporting, annual review and disclosure requirements of this Chapter in respect of all such continuing connected transactions. Upon any variation or renewal of the agreement, the listed issuer must comply in full with all applicable reporting, annual review, disclosure and independent shareholders' approval requirements of this Chapter in respect of all continuing connected transactions effected after such variation or renewal.

...

### **Financial assistance**

#### *Exempt from reporting, announcement and independent shareholders' approval requirements*

14A.65 The following connected transactions are exempt from the reporting, announcement and independent shareholders' approval requirements of this Chapter:—

- (1) financial assistance provided by a listed issuer in its ordinary and usual course of business for the benefit of a connected person, or any company falling under rule 14A.13(2)(a)(ii), on normal commercial terms (or better to the listed issuer);
- (2) financial assistance provided by a listed issuer for the benefit of a connected person or a company falling under rule 14A.13(2)(a)(ii):

- (a) in the ordinary and usual course of business of the listed issuer but not on normal commercial terms (or better to the listed issuer); or
- (b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer),

and where (i) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the connected person, or the company falling under rule 14A.13(2)(a)(ii), is less than HK\$1,000,000;

- (3) financial assistance provided by a listed issuer for the benefit of a connected person in which the listed issuer is a shareholder, or any company falling under rule 14A.13(2)(a)(ii);

~~(a) — in the ordinary and usual course of business of the listed issuer but not on normal commercial terms and where (i) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or~~

~~(b) — not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), provided that:~~

~~(i) — the assistance being provided is in proportion to the listed issuer's equity interest in the connected person or the company falling under rule 14A.13(2)(a)(ii). In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis; or~~

~~(ii) — the assistance being provided is not in proportion to the listed issuer's equity interest in the company or the guarantees given by the listed issuer are not on a several basis (whether on a joint and several basis, or otherwise), and (A) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (B) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or~~

- (4) ...”

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# **APPENDIX II PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT**

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## **Provision of Personal Data**

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data” in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

## **Personal Information Collection Statement**

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

## **Purpose of Collection**

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
  - administration, processing and publication of the consultation paper and any responses received;
  - performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
  - research and statistical analysis; and
  - any other purposes permitted or required by law or regulation.

## **Transfer of Personal Data**

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an “as is” basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data

unless specifically required to do so under any applicable law or regulation. If you do not wish your name to be published or your opinion to be published, please state so when responding to this paper.

### **Access to and Correction of Data**

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12th Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

**Re: Consultation Paper on  
Proposed Changes to the Connected Transaction Rules**

By email to: [pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)

### **Retention of Personal Data**

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

### **Privacy Policy Statement**

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

