

Chapter 20

EQUITY SECURITIES

CONNECTED TRANSACTIONS

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 or substantial shareholders (or their associates) taking advantage of their positions.
- 20.02 This is achieved through the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval. Accordingly, where any connected transaction is proposed, the transaction must be announced publicly and a circular must be sent to shareholders giving information about the transaction. Prior approval of the shareholders in general meeting will be required before the transaction can proceed. The connected person with a material interest in the transaction will not be permitted to vote at the meeting on the resolution approving the transaction.
- 20.03 Certain categories of transaction are exempt from the disclosure and independent shareholders' approval requirements and certain transactions are subject only to disclosure requirements.
- 20.04 Connected transactions may be either one-off transactions (in the case of listed issuers) or continuing transactions (in the case of both listed issuers and new applicants). Different rules apply in each case. A listed issuer must, in respect of all connected transactions, enter into a written agreement with the relevant parties.
- 20.05 If a listed issuer proposes to enter into a transaction which could be a connected transaction, it is essential that the listed issuer consult the Exchange at an early stage so that, in cases of doubt, the listed issuer can ascertain whether and to what extent the provisions of this Chapter apply. The relevant contract(s) or, if applicable, draft contract(s) must be supplied to the Exchange, if requested.
- 20.06 The Exchange has the specific power to deem a person to be connected (see rule 20.11(4)) and to specify that certain exemptions will not apply to particular transactions (see rule 20.30).
- 20.07 The Exchange may grant a waiver from all or any of the requirements in this Chapter where the Exchange deems it appropriate on such terms and conditions as the Exchange may determine (see rule 20.42).
- 20.08 A connected transaction may also be a reverse takeover, very substantial acquisition, very substantial disposal, major transaction, discloseable transaction, or share transaction and listed issuers should also refer to Chapter 19.
- 20.09 Listed issuers must complete and submit any checklist(s) in such form as may be prescribed by the Exchange from time to time in respect of any connected transactions or continuing connected transactions.

General matters concerning definitions and interpretation

20.10 In this Chapter:

- (1) a “banking company” means a bank, a restricted licence bank or a deposit taking company as defined in the Banking Ordinance or a bank constituted under appropriate overseas legislation or authority;
- (2) “consideration” is calculated as set out in rule 19.15;
- (3) “controller” means a director, chief executive or controlling shareholder of the listed issuer;
- (4) “financial assistance” includes granting credit, lending money, providing security for, or guaranteeing a loan;

Note: see also the definition of “ordinary and usual course of business” in rule 20.10(9).

- (5) “independent shareholder” means any shareholder of the listed issuer that is not required to abstain from voting at a general meeting to approve a connected transaction;
- (6) an “issuer” means a listed issuer or company or other legal person whose securities are the subject of an application for listing on GEM and its subsidiaries;
- (7) a “listed issuer” shall have the meaning set out in rule 19.04(6);
- (8) “normal commercial terms” are terms which a party could obtain if the transaction were on an arm’s length basis or on terms no less favourable to the listed issuer than terms available to or from independent third parties;
- (9) “ordinary and usual course of business” of an entity means the existing principal activities of the entity or an activity wholly necessary for the principal activities of the entity. In the context of financial assistance provided in the ordinary and usual course of business, this means financial assistance provided by a banking company only and, in the context of financial assistance not provided in the ordinary and usual course of business, it means financial assistance not provided by a banking company;
- (10) “percentage ratios” shall have the meaning set out in rule 19.04(9);
- (10A) “Qualified Connected Person” means any person that is a connected person of the Qualified Issuer, solely because it is a substantial shareholder (or its associate) with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;
- (10B) “Qualified Issuer” has the meaning in rule 19.04(10B);
- (10C) “Qualified Property Acquisition” has the meaning in rule 19.04(10C);

- (11) "recognised stock exchange" means a regulated, regularly operating, open stock market recognised for this purpose by the Exchange;
- (12) "total assets" shall have the meaning set out in rule 19.04(12); and
- (13) a "transaction" by an issuer, whether or not it is of a revenue nature in the ordinary and usual course of business as defined in rule 19.04(1)(g), includes:
 - (a) the acquisition or disposal of assets including deemed disposals set out in rule 19.29;
 - (b) any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating (in the manner described in rule 20.68) an option to acquire or dispose of assets or to subscribe for securities;
 - (c) entering into or terminating finance leases;
 - (d) entering into or terminating operating leases or sub-leases, including those of properties;
 - (e) granting an indemnity or a guarantee or providing financial assistance;
 - (f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement;
 - (g) issuing new securities;
 - (h) the provision of or receipt of services;
 - (i) sharing of services; and
 - (j) providing or acquiring raw materials, intermediate products and finished goods.

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 of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a supervisor of a PRC issuer;

(4) any associate of a person referred to in rules 20.11 (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 25.04, respectively. In this Chapter, an “associate” of a person referred to in rules 20.11(1), (2) or (3) includes the following additional persons:

(a) any person or entity with whom a person referred to in rules 20.11(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) (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 20.11(1), (2) or (3); and

(ii) a company which the party referred to in rule 20.11(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 20.11(1), (2) or (3); and

(ii) a company which the party referred to in rule 20.11(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 20.11(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 20.31 or 20.33. 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 20.11(1), (2) or (3);

Notes: 1. A company which is an “associate” of a person referred to in rules 20.11(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. [Repealed 3 June 2010]

3. For the purpose of rules 20.11(4)(b)(ii) and 20.11(4)(c)(ii), the Exchange may aggregate the interests of a person referred to in rule 20.11(1), (2) or (3) and his relatives in a company to determine whether they together have a majority control over the company.

(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 20.11(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 [Repealed 3 June 2010]

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 subsidiaries of a non wholly-owned subsidiaries referred to in rule 20.11(5).

20.12 The definition of “connected person” in rule 20.11 does not include any wholly-owned subsidiaries of the company whose securities are listed on the Exchange, whether directly or indirectly held.

20.12A For the purpose of this Chapter,

(1) a non wholly-owned subsidiary will not be regarded as a connected person by virtue of being:

(a) a substantial shareholder of another subsidiary; or

(b) an associate of any connected persons (at the level of the issuer’s subsidiaries only) as defined in rules 20.11(1) to (3); and

(2) the Exchange will not normally treat a PRC Governmental Body (see definition in rule 25.04) as a connected person of a listed issuer. If requested by the Exchange the issuer must make written representations to the Exchange explaining its legal, commercial or other relationships with the PRC Governmental Body and must satisfy the Exchange that it should not be treated as a connected person, or if the Exchange determines that it should be treated as a connected person, the issuer must agree to comply with any additional obligations arising from such treatment as may be requested by the Exchange.

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 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

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 (i) 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; and (ii) there is no change in the substantial shareholder’s interest in such company as a result of the disposal or any related arrangement.*

(ii) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring an interest in a company (or an option to acquire such interest) of which a controller (or an associate of a controller) is, or will become, a shareholder where the interest being acquired is:

(A) of a fixed income nature;

(B) shares to be acquired on less favourable terms than those granted to the controller or its associate; or

(C) shares which are of a different class from those held by, or to be granted to, the controller or its associate.

Note: This rule does not apply where the acquisition is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.

Subscription on favourable terms

- (iii) any transaction between a listed issuer and a person who is not a connected person and the transaction involves a controller (or an associate of a controller) subscribing on specially favourable terms shares in a company in which the listed issuer is a shareholder; or

Note: This rule does not apply where the subscription is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.

Subscription of different class of shares

- (iv) any transaction between a listed issuer and a person who is not a connected person and the transaction involves a controller (or an associate of a controller) subscribing shares in a company in which the listed issuer is a shareholder but which are of a different class from those held by the listed issuer.

Note: This rule does not apply where the subscription is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.

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 20.11(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) 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 20.11(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) in the company which is held through the listed issuer is to be excluded from the 10% referred to in this rule.

- (3) a listed issuer granting an indemnity or guarantee or providing financial assistance to and/or for the benefit of a connected person or any company falling under rule 20.13(2)(a)(ii).
- (4) the granting of security over the assets of a listed issuer in respect of any financial assistance made to the listed issuer by a connected person or any company falling under rule 20.13(2)(b)(ii).

Financial assistance transactions are governed by rules 20.63 to 20.66;

Options

- (5) the writing, acceptance, transfer, exercise or non-exercise of an option (as defined in rule 19.72) involving a listed issuer and a connected person. Options are governed by rules 20.67 to 20.71; and

Joint ventures

- (6) the entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement by a listed issuer and a connected person (see rule 20.10(13)(f)). Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is governed by rules 20.72 to 20.73. In this case, the size of a listed issuer's financial commitment will be calculated in the manner set out in rule 19.15(2).

Definition of continuing connected transaction

20.14 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.

20.15 Continuing connected transactions are governed by rules 20.33 to 20.41.

General rules

Categories

20.16 The categories of connected transactions are:

- (1) connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements (see rule 20.31);
- (2) connected transactions exempt from the independent shareholders' approval requirements (see rule 20.32);

- (3) continuing connected transactions exempt from the reporting, annual review, announcement and independent shareholders' approval requirements (see rule 20.33);
- (4) continuing connected transactions exempt from the independent shareholders' approval requirements (see rule 20.34); and
- (5) connected transactions, including continuing connected transactions, not falling under any of the categories set out in rules 20.16 (1) to (4).

20.17 Transactions falling under rule 20.16(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.

Independent shareholders' approval

20.18 The Exchange will require that connected transactions and continuing connected transactions are made conditional on prior approval by the shareholders of the listed issuer in general meeting. The listed issuer must ensure that the following parties abstain from voting at the relevant meeting on resolution(s) approving the relevant transactions:

- (1) any connected person with a material interest in the transaction; and
- (2) any person falling within rules 20.13(1)(b)(i) to (iv) that has a material interest in the transaction and its associates,

and a statement that such persons will not vote must be included in the relevant circular to shareholders.

20.19 The listed issuer must comply with the independent shareholders' approval requirements set out in rules 20.52 to 20.54 and the contents requirements for the announcement and circular set out in rules 20.56 and 20.58 to 20.60 respectively.

20.20 [Repealed 3 June 2010]

Independent financial advice

20.21 In relation to a connected transaction that is subject to independent shareholders' approval under this Chapter, the listed issuer must comply with the requirements set out in rules 17.47(6) and (7).

20.22 The separate letter from the independent financial adviser required under rule 17.47(7)(b) must set out:

- (1) the reasons for the opinion;
- (2) the key assumptions made;
- (3) the factors taken into consideration in forming that opinion;
- (4) a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the listed issuer and its shareholders as a whole; and
- (5) advice from the independent financial adviser to the independent board committee and independent shareholders (or, if applicable, to the independent shareholders only) on whether independent shareholders should vote in favour of the transaction.

20.23 The agreement referred to in rule 20.04 will be the basis on which the independent financial adviser will give its opinion to independent shareholders.

Methods of calculating the consideration

20.24 The methods of calculating the consideration as set out in rule 19.15 also apply to connected and continuing connected transactions.

Aggregation of transactions

20.25 The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the connected transactions when aggregated. Where a series of acquisitions of assets over a longer period is being aggregated under rule 19.06(6)(b) (i.e. they constitute a reverse takeover), the aggregation period under this rule 20.25 for such acquisitions shall cover 24 rather than 12 months.

20.26 Factors which the Exchange may take into account in determining whether connected transactions will be aggregated include whether the transactions:

- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
- (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- (3) involve the acquisition or disposal of parts of one asset; or
- (4) together lead to substantial involvement by the listed issuer in a business activity which did not previously form a part of the listed issuer's principal business activities.

20.27 The Exchange may consider aggregating all continuing connected transactions with a single connected person to determine in which category the aggregated transaction falls.

20.27A For the purposes of aggregating connected transactions under rule 20.25, a listed issuer must consult the Exchange before it enters into any proposed connected transaction(s) if:

- (1) any circumstances described in rule 20.26 or rule 20.27 exist in respect of such proposed connected transaction(s) and any other connected transaction(s) entered into by the listed issuer in the preceding 12-month period; or
- (2) the proposed connected transaction(s) and any other transaction(s) entered into by the listed issuer involve acquisitions of assets from a person or group of persons or any of his/their associates within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries).

The listed issuer must provide details of the transactions to the Exchange to enable it to determine whether the transactions will be aggregated.

Note: This rule serves to set out certain specific circumstances where the listed issuer must seek guidance from the Exchange before it enters into any proposed connected transaction(s). The Exchange may nevertheless aggregate connected transactions pursuant to rule 20.25 where no prior consultation was made by the listed issuer under rule 20.27A.

Exceptions

- 20.28 Certain types of connected transactions, described in rule 20.31, are exempt from all disclosure and independent shareholders' approval requirements. The connected transactions described in rule 20.32 are not required to be approved by independent shareholders but must in every case be disclosed by way of an announcement and must be reported on in the listed issuer's next published annual report and accounts.
- 20.29 Certain types of continuing connected transactions, described in rule 20.33, are exempt from all disclosure, annual review and independent shareholders' approval requirements. The continuing connected transactions described in rule 20.34 are not required to be approved by independent shareholders but must in every case be disclosed by way of an announcement when the listed issuer enters into the transaction. The transaction must also be reported on in the listed issuer's subsequent published annual report and accounts for the financial years during which the listed issuer undertakes the transaction pursuant to the relevant written agreement.

Exchange discretion

- 20.30 The Exchange reserves the power to specify that an exemption will not apply to a particular transaction. The Exchange may also require, at its discretion, that any other connected transaction be made conditional on independent shareholders' approval and that the same requirements as in rules 20.18 to 20.23 will apply.

Connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements

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

Intra-group transactions

- (1) a transaction between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries where no connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(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 any of the subsidiaries concerned and none of the subsidiaries concerned is itself a connected person under rule 20.11 or rule 1.01;

Note: 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.

- (1A) a transaction between a listed issuer's non wholly-owned subsidiary referred to in rule 20.11(5) and any of its subsidiaries which are connected persons only by virtue of being the subsidiaries of the non wholly-owned subsidiary; or a transaction between any of these subsidiaries;

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) less than 0.1%;

- (b) less than 1% and 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(s) with the issuer's subsidiary or subsidiaries; or
- (c) less than 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 20.31(3).

Issue of new securities

- (3) where a listed issuer issues new securities to a connected person and:
 - (a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder; or
 - (b) securities are issued under a share option scheme which complies with Chapter 23 or securities that are issued under a share option scheme in existence before the securities of the listed issuer first commenced dealing on the Exchange for which approval for listing was granted at the time such dealing first commenced; or
 - (c) the connected person is acting as underwriter or sub-underwriter of an issue of securities by the listed issuer, provided that rules 10.31(2) and 10.42(2) have been complied with; or

Notes: 1 The entity whose issue of securities is being underwritten or sub-underwritten by a connected person must make full disclosure of the terms and conditions of the underwriting in the listing document.

2 Excess application and the taking up of pro rata entitlements in respect of a rights issue or open offer are not connected transactions. Rules 10.31(1) and 10.42(1) provide that, where securities not subscribed by allottees are to be disposed of by means of excess application forms, such securities must be available for subscription by all shareholders and allocated on a fair basis. An intention to so offer such securities must be fully disclosed in the rights issue or open offer announcement, listing document and any circular.

3 If a listed issuer which is a holding company acts as underwriter or sub-underwriter of an issue of securities by its subsidiary that is also a listed issuer, such transaction is also connected for the listed holding company if the listed subsidiary is a connected person under rules 20.11(5) or 20.11(6). In this case, the listed issuer which is a holding company is subject to connected transaction requirements unless exempted under rules 20.31(1) or 20.31(2). The exemption under this rule is applicable to the listed subsidiary but not the listed holding company.

- (d) securities are issued to a connected person within 14 days after such connected person has executed an agreement to reduce its holding in that class of securities by placing securities to a third person who is not its associate. The securities must be issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing. The number of securities issued to the connected person must not exceed the number of securities placed by it;

Note: Under rule 17.30, the listed issuer is required to make an announcement containing details of the placing and subscription of shares by the connected person.

Stock Exchange dealings

- (4) a transaction, falling within rule 20.13(1)(b)(i), which comprises a dealing in securities listed on the Exchange or a recognised stock exchange by a listed issuer in the ordinary and usual course of its business. If the transaction is not carried out on the Exchange or a recognised stock exchange, this exemption will still apply if no consideration passes to or from a connected person. This exemption will not apply if the purpose is to confer a direct or indirect benefit upon a controller(s) or associate of a controller who is also a substantial shareholder in the relevant company;

Purchase of own securities

- (5) any purchase by a listed issuer of its own securities from a connected person on the Exchange or a recognised stock exchange or under a general offer made in accordance with the Code on Share Repurchases. Where the purchase is on the Exchange or a recognised stock exchange, this exemption will not apply if the connected person knowingly sells its securities to the listed issuer;

Directors' service contracts

- (6) the entering into of a service contract by a director of the listed issuer with the listed issuer;

Note: A director's service contract to which rule 17.90 applies is subject to independent shareholders' approval under that provision;

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) must be for the acquirer's own consumption or use, and not be
 - (i) processed into products of the acquirer or for resale; or
 - (ii) otherwise for the purpose of or in connection with any business or contemplated business of the acquirer (whether for consideration or otherwise), except for the case where the issuer is the acquirer and there is an open market and transparency in the 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, the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing of groceries, and utilities provided by a connected person to a listed issuer when 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);

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

Sharing of administrative services

- (8) the sharing of administrative services between a listed issuer and a connected person on a cost basis. The cost of the services must be identifiable and allocated to the parties involved on a fair and equitable basis. Examples include company secretarial services, legal services and staff training services;

Transactions with persons connected at the level of subsidiaries

- (9) a connected transaction on normal commercial terms 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(s) with the issuer's subsidiary or subsidiaries;
 - (b) the value of the relevant subsidiary's total assets, profits and revenue (or the aggregate value of the relevant subsidiaries' total assets, profits and revenue) represents
 - (i) less than 10% under the relevant percentage ratios as defined under rule 19.04(9) for each of the latest three financial years (or if less, the period since the incorporation or establishment of the subsidiary or subsidiaries); or
 - (ii) less than 5% under the relevant percentage ratios as defined under rule 19.04(9) for the latest financial year.

For this purpose, 100% of the subsidiary's or subsidiaries' total assets, profits and revenue will be used to calculate the relevant percentage ratios. Where any of the calculations of the percentage ratios produces an anomalous result, the Exchange may disregard the calculation and the listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration; 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%. This requirement will not apply if the transaction is of a revenue nature in the issuer's ordinary and usual course of business; and

Transactions with associates of a passive investor

- (10) 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 (including any influence over the listed issuer's management through negative control e.g. its veto rights on material matters 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.

Connected transactions exempt from the independent shareholders' approval requirements

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

- (1) less than 5%; or
- (2) 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 20.45 to 20.47 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 20.31(3).

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

20.33 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 20.31(7);

Sharing of administrative services

- (2) the sharing of administrative services as set out in rule 20.31(8);

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 on an annual basis:
- (a) less than 0.1%;
 - (b) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the issuer by virtue of its/his relationship(s) with the issuer's subsidiary or subsidiaries; or
 - (c) less than 5% and the annual consideration is less than HK\$1,000,000;

Transactions with persons connected at the level of subsidiaries

- (4) a continuing connected transaction that meets the requirements in rule 20.31(9); and

Transactions with associates of a passive investor

- (5) a continuing connected transaction that meets the requirements in rule 20.31(10).

Notes: 1. *When a connected person no longer meets the conditions under rule 20.33(4) or 20.33(5), the issuer must, subject to Note 2 to rule 20.33, comply with all applicable reporting, annual review, announcement and independent shareholders' approval requirements for its subsequent continuing connected transactions with the connected person.*

2. *If the connected person no longer meets the conditions under rule 20.33(4) or 20.33(5) during the term of an agreement for continuing connected transactions, the issuer is only required to comply with the applicable reporting, annual review and announcement requirements if:*

(a) the agreement is for a fixed period with fixed terms; and

(b) the exemption under rule 20.33(4) or 20.33(5) applies at the time of the agreement.

Issuers are encouraged to consult the Exchange on the application of this Note.

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

20.34 A continuing connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are on an annual basis:

- (1) less than 5%; or
- (2) less than 25% and the annual consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in rules 20.45 to 20.47, the annual review requirements set out in rules 20.37 to 20.40 and the requirements set out in rules 20.35(1) and 20.35(2). It is exempt from the independent shareholders' approval requirements of this Chapter.

Non-exempt continuing connected transactions

20.35 When an issuer enters into a continuing connected transaction not falling under rule 20.33, it must:

- (1) in respect of each connected transaction, enter into written agreement(s) with the connected person. The agreement must set out the basis of the calculation of the payments to be made. The period for the agreement must be fixed and reflect normal commercial terms and, except in special circumstances, must not exceed 3 years. Special circumstances are limited to cases where the nature of the transaction requires the contract to be of a duration longer than 3 years. In such cases, the independent financial adviser will need to explain why a longer period for the agreement is required and to confirm that it is normal business practice for contracts of this type to be of such duration;

Note: Examples of bases of calculation of the payments to be made include the sharing of costs, price per unit for on-going purchases, annual rental for a lease, and percentage of total construction cost for a management fee.

- (2) in respect of each connected transaction, set a maximum aggregate annual value ("cap"), the basis of which must be disclosed. This annual cap must be expressed in terms of monetary value rather than a percentage of the issuer's annual revenue as derived from its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts. The cap must be determined by reference to previous transactions and figures which are readily ascertainable from published information of the issuer. If there are no previous transactions, the cap must be made based on reasonable assumptions, details of which must be disclosed;

Note: Reference to annual revenue and other bases may help to determine the monetary value of the cap.

- (3) comply with the reporting and announcement requirements described in rules 20.45 to 20.47;
- (4) comply with the independent shareholders' approval requirements described in rule 20.48 for transactions not falling under rule 20.34; and
- (5) comply with the annual review requirements described in rules 20.37 to 20.40.

20.36 The listed issuer must re-comply with rules 20.35(3) and (4) in the following circumstances:—

- (1) if the cap in rule 20.35(2) is exceeded; or
- (2) when the relevant agreement is renewed or there is a material change to the terms of the agreement.

Annual review of continuing connected transactions

20.37 When an issuer enters into a continuing connected transaction not falling under rule 20.33, 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) in the ordinary and usual course of business of the listed issuer;
- (2) either on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the listed issuer than terms available to or from (as appropriate) independent third parties; and
- (3) in accordance with the relevant agreement governing them on terms that are fair and reasonable and in the interests of the shareholders of the listed issuer as a whole.

20.38 When an issuer enters into a continuing connected transaction not falling under rule 20.33, 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 bulk printing of the listed issuer's annual report), confirming that the continuing connected transactions:

- (1) have received the approval of the listed issuer's board of directors;
- (2) are in accordance with the pricing policies of the listed issuer if the transactions involve provision of goods or services by the listed issuer;
- (3) have been entered into in accordance with the relevant agreement governing the transactions; and
- (4) have not exceeded the cap disclosed in previous announcement(s).

20.39 The listed issuer shall allow, and shall procure that the counterparty to the continuing connected transactions shall allow, the auditors sufficient access to their records for the purpose of reporting on the transactions as set out in this rule. The listed issuer's board of directors must state in the annual report whether its auditors have confirmed the matters stated in rule 20.38.

20.40 A listed issuer shall promptly notify the Exchange and publish an announcement if it knows or has reason to believe that the independent non-executive directors and/or the auditors will not be able to confirm the matters set out in rules 20.37 and/or 20.38 respectively. The listed issuer may have to re-comply with rules 20.35(3) and (4) and any other conditions the Exchange considers appropriate.

20.41 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.

Waivers

Exchange discretion

20.42 The Exchange may consider granting waivers from all or any of the requirements of this Chapter. In particular, the Exchange will consider granting waivers for the following transactions:

- (1) a transaction which is connected only because of the interest of a non-executive director of the listed issuer where the Exchange is satisfied that:
 - (a) such director does not control the listed issuer; and
 - (b) his principal business interest is not the listed issuer.

Where a waiver is given from the requirement to obtain independent shareholders' approval pursuant to this rule 20.42(1), the Exchange may require a letter from the listed issuer's auditor or a financial adviser acceptable to the Exchange stating that in their opinion the transaction is fair and reasonable so far as the shareholders of the listed issuer are concerned. The Exchange will normally also require that:

- (i) an announcement containing brief details of the transaction be published as soon as possible thereafter; and
 - (ii) details of the transaction be included in the listed issuer's next published annual report and accounts;
- (2) where the listed issuer guarantees (or gives an indemnity in respect of) the obligations of (i) a non wholly-owned subsidiary described in rule 20.11(5) or any of its subsidiaries described in rule 20.11(6) or (ii) a company falling under rule 20.13(2)(a)(ii), to a third party creditor and the guarantee or indemnity is joint and several, if:
 - (a) the guarantee is required in connection with a government or public sector contract awarded by tender;
 - (b) each of the shareholders of the non wholly-owned subsidiary or company has given a similar joint and several guarantee or indemnity to the third party; and
 - (c) each of the other shareholders of the non wholly-owned subsidiary or company has agreed to indemnify the listed issuer for a percentage of the liability guaranteed or indemnified at least in proportion to its percentage equity interest in the subsidiary or company and the Exchange is satisfied that such shareholder indemnity is of sufficient substance; or
- (3) upon an application by a new applicant, specific continuing connected transactions. Such waivers will be from the announcement and independent shareholders' approval requirements of this Chapter. General waivers will not be granted. The applicant's Sponsor is required to state in the listing document whether the continuing connected transactions for which the waivers are sought are in the ordinary and usual course of business of the listed issuer, on normal commercial terms, are fair and reasonable and in the interests

of the shareholders as a whole. In addition, the issuer is required to comply with rules 20.35(1), 20.35(2), 20.36, 20.37, 20.38, 20.39 and 20.40.

Shareholders' meeting waiver

20.43 Where independent shareholders' approval of a connected transaction is required, the approval shall be given by a majority vote at a general meeting of shareholders of the issuer unless the following conditions are met, in which case a written shareholders' approval may be accepted in lieu of holding a general meeting:—

- (1) no shareholders of the issuer are required to abstain from voting if the issuer were to convene a general meeting for the approval of the connected transaction; and
- (2) the written shareholders' approval has been obtained from a shareholder or closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at that general meeting to approve the connected transaction.

Notes: 1 The Exchange will take into account the factors set out in rule 19.45 in determining whether a group of shareholders constitutes a "closely allied group of shareholders."

2 Where a listed issuer discloses inside information to any shareholder in confidence to solicit the written independent shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.

Waiver conditions

20.44 In granting any waiver, the Exchange may impose conditions whenever it considers appropriate.

Reporting requirements

20.45 The following details of the connected transaction must be included in the listed issuer's next published annual report and accounts:

- (1) the transaction date;
- (2) the parties to the transaction and a description of their connected relationship;
- (3) a brief description of the transaction and its purpose;
- (4) the total consideration and terms (including, where relevant, interest rates, length of repayment and security); and
- (5) the nature and extent of the connected person's interest in the transaction.

20.46 An issuer which has entered into a continuing connected transaction not falling under rule 20.33, must disclose the information set out in rule 20.45 in its subsequent published annual report and accounts for the financial years during which the issuer undertakes the transaction under the written agreement entered into pursuant to rule 20.35(1).

Announcement requirements

20.47 Issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements must:—

- (1) notify the Exchange as soon as possible after the terms of the transaction have been agreed;
- (2) submit an announcement to the Exchange to be published on the GEM website as soon as possible; and

Note: Where the connected transaction is also a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, rule 19.37 (requirement for trading halt or suspension of dealings) also applies.

- (3) comply with rules 20.45 or 20.46 (the reporting requirements).

20.47A Where there is expected to be delay in despatch of the circular by the date previously announced under rule 20.56(10) or this rule, the listed issuer must as soon as practicable disclose this fact by way of an announcement stating the reason for the delay and the new expected date of despatch of the circular.

Independent shareholders' approval requirements

20.48 Listed issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to independent shareholders' approval must:

- (1) comply with rules 20.45 or 20.46 (the reporting requirements) and 20.47 (the announcement requirements); and
- (2) comply with the requirements set out in rules 20.49 to 20.54, (the circular and independent shareholders' approval requirements).

Shareholders' circular

20.49 The listed issuer must also send a circular, which complies with rules 20.58 to 20.62, to the shareholders and arrange for its publication in accordance with the provisions of Chapter 16:

- (a) if the transaction is approved or is to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders under rule 20.43, within 15 business days after publication of the announcement; or
- (b) if the transaction is to be approved by shareholders at a general meeting, at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction.

A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 10 business days before the date of the relevant general meeting. The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 10 business day requirement under this rule by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).

Note: The listed issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention after publication of the circular, when deciding whether to issue a revised or supplementary circular or publish an announcement. Where the revisions or updating required are significant, the listed issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The listed issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.

20.50 [Repealed 1 January 2009]

20.51 The circular must (subject to rule 17.59) be in English and Chinese.

Independent shareholders' approval

20.52 The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders at the time when the listed issuer enters into the transaction.

20.53 The Exchange will consider waiving the requirement to hold a shareholders' meeting and permitting shareholders' approval to be given in writing in the circumstances set out in rule 20.43.

20.54 The Exchange will require any connected person with a material interest in a proposed transaction, and any shareholder with a material interest in such transaction and its associate(s), to abstain from voting at the relevant general meeting on the relevant resolution(s).

20.55 [Repealed 3 June 2010]

Contents of announcements

20.56 The announcement for connected transactions and continuing connected transactions must contain at least the following:

- (1) the information set out in rules 19.58 to 19.60 (contents of announcements – share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition and reverse takeover) and the views of the independent non-executive directors on the transaction if no independent shareholders' approval is required for the transaction;
- (2) a description of the connected relationship between the parties to the transaction and the nature and extent of the connected person's interest in the transaction;
- (3) a statement that the transaction is subject to independent shareholders' approval, if applicable;

- (4) in the case of continuing connected transactions, the amount of the cap for the purpose of rule 20.35(2);
- (5) where the transaction involves the purchase of assets by the listed issuer, the original purchase cost of the asset to the connected person;
- (6) where appropriate, the original acquisition cost of the assets which will be sold to connected persons where the listed issuer has held such assets for a period of 12 months or less;
- (7) where the transaction is a connected transaction approved or to be approved by way of written independent shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule 20.43, details of the shareholder or the closely allied group of shareholders (as the case may be), including the name of the shareholder(s), the number of securities held by each such shareholder and the relationship between the shareholders;
- (8) where applicable, the information required in rule 19.62 if the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries;
- (9) if no circular is required under this Chapter, a statement on whether any directors have a material interest in the transaction and, if so, whether they have abstained from voting on the board resolution; and
- (10) where independent shareholders' approval is required, the expected date of despatch of the circular and if this is more than 15 business days after the publication of the announcement, the reasons why this is so.

Note: If there is expected to be delay in despatch of the circular, the listed issuer must as soon as practicable publish a further announcement in accordance with rule 20.47A.

Guaranteed profits or net tangible assets

20.57 Where a listed issuer acquires a company or business from a connected person, and the profits or net tangible assets or other matters regarding the financial performance of that company or business are guaranteed by the connected person, the listed issuer must (unless expressly exempted by the Exchange) make an announcement if the profits or net tangible assets or other matters regarding the financial performance are less than the amount guaranteed. Any such announcement must include details of:

- (1) the shortfall and the adjustment, if any, of the consideration for the transaction;
- (2) whether the connected person has fulfilled its obligations under the guarantee;
- (3) whether or not the listed issuer has exercised any option to sell the company or business back to the connected person or other rights it held under the terms of the guarantee, and the reasons for its decision; and
- (4) the opinion of the independent non-executive directors as to whether:
 - (a) the connected person fulfilled its obligations; and
 - (b) the decision to exercise or not to exercise any option to sell the company or business back to the connected person or other rights under the guarantee is fair and reasonable and in the interests of the shareholders as a whole.

Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.67 to 20.71.

Contents of circular

General principles

20.58 All circulars sent by a listed issuer to holders of its listed securities must:

- (1) provide a clear and adequate explanation of its subject matter and demonstrate the advantages and disadvantages of the transaction for the listed issuer;
- (2) where practicable, include an arithmetical evaluation in the circular; and
- (3) where independent shareholders' approval is required, contain:
 - (a) all information necessary to allow the holders of securities to make a properly informed decision;
 - (b) a heading drawing attention to the importance of the document and advising holders of securities, who are in any doubt as to what action to take to consult appropriate independent advisers;
 - (c) a separate letter from the independent board committee, if applicable (see rule 20.21); and
 - (d) a separate letter from the independent financial adviser (see rule 20.22).

Note: If all the independent non-executive directors have a material interest in the relevant transactions or arrangements, no independent board committee can be formed. In that event, the independent financial adviser shall make its recommendation to the independent shareholders only in its letter set out in the circular to shareholders.

Specific disclosure in circular

20.59 The circular must contain at least:

- (1) a prominent and legible disclaimer on its front cover or inside front cover in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) full details of the transaction including:
 - (a) the date of the transaction and the identity and activities of the parties to the transaction including the identity and activities of the ultimate beneficial owner of the disposing or acquiring party;
 - (b) a general description of the nature and the value (being the book value and valuation, if any) of any assets concerned. If any of the assets are securities, the circular must include the name of the company in which the shares are or were held and a general description of its activities;

- (c) a description of the terms and conditions of the consideration and a statement of the total consideration, explaining how this is being or is to be satisfied;
 - (d) the name of the connected person concerned;
 - (e) a statement of the nature of the connected person's relationship with any controller and the name and office held by that controller; and
 - (f) the nature and extent of the interest of the connected person in the transaction;
- (4) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:
- 1 — name
 - 2 — directors' responsibility
 - 5 — expert statements
 - 10 — securities to be issued (if applicable)
 - 29(2) — requirements if there is a profit forecast (see rule 19.61 for the definition of "profit forecast")
 - 32 — no material adverse change
 - 39 — directors' service contracts
 - 40 — directors' interests in assets
 - 42(2)(a) & (c) — documents on display
- (5) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34, 38 and 38A of Appendix 1, Part B;
- (6) where independent shareholders' approval is required, a statement that any connected person with a material interest in the transaction, and any shareholder with a material interest in the transaction and its associates, will not vote and the information required under rule 2.28;
- (7) information on the property interests (as defined in rule 8.01(3)) under rule 8.03 and an independent valuation if the primary significance of the asset (except for property interests) being acquired or disposed of is its capital value;
- (8) where independent shareholders' approval is required, a letter from the independent board committee as required under rule 20.58(3)(c) and its recommendation to the independent shareholders as required under rule 20.21;
- (9) a copy of the independent financial adviser's opinion letter referred to in rule 20.22;
- (10) in the case of a continuing connected transaction, details of the cap for the purpose of rule 20.35(2) and an explanation of how and the basis upon which it was calculated;
- (11) where a listed issuer acquires a company or business from a connected person who provides a guarantee of the profits or net tangible assets or other matters regarding the financial performance of that company or business,
- (a) statements that:
 - (i) the listed issuer will publish an announcement if the profits or net tangible assets or other matters regarding the financial performance are less than the amount guaranteed and will include details in its next published annual report and accounts; and

- (ii) the independent non-executive directors of the listed issuer will provide an opinion in the listed issuer's next published annual report and accounts as to whether the connected person has fulfilled its obligations under the guarantee; and
- (b) details of any option granted to the listed issuer to sell the company or business back to the connected person and/or other rights granted to the listed issuer;

Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.67 to 20.71.

- (12) information as to the competing interests (if any) of the Compliance Adviser and its directors, employees and associates (as referred to in rule 6A.32) and each of the directors and any proposed director of the issuer and his/her respective associates (as if each of them were treated as a controlling shareholder under rule 11.04);
- (13) where appropriate, details of any guarantee and/or other security given and required as part of the transaction;
- (14) reasons for entering into the transaction and the benefits which are expected to accrue to the listed issuer as a result of the transaction;
- (15) where the transaction involves the purchase of assets by the listed issuer, the original purchase cost of the asset to the connected person;
- (16) where appropriate, the original acquisition cost of the assets which will be sold to connected persons where the listed issuer has held such assets for a period of 12 months or less;
- (17) if the transaction involves a disposal of an interest in a subsidiary by a listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction;
- (18) (a) where appropriate, the business valuation report on a business or company being acquired or disposed of and/or traffic study report in respect of any infrastructure project or infrastructure or project company. Such report(s) must clearly set out:
 - (i) all fundamental underlying assumptions including discount rate or growth rate used; and
 - (ii) a sensitivity analysis based on the various discount rates and growth rates;
- (b) where any business valuation is based on a profit forecast, the accounting policies and calculations for the underlying forecasts must be examined and reported on by the auditors or reporting accountants. Any financial adviser mentioned in the circular must also report on the underlying forecasts;
- (19) a statement on whether any directors have a material interest in the transaction and, if so, whether they have abstained from voting on the board resolution; and
- (20) any additional information requested by the Exchange.

**Additional information to be included in circular
where connected transaction is also a Chapter 19 transaction**

- 20.60 Where a connected transaction is also a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the circular must also contain the information required by Chapter 19 for that type of transaction.
- 20.61 Where a notice of meeting to approve any proposed transaction has been sent to shareholders and subsequently the transaction becomes a connected transaction, the issuer shall publish a further announcement. The issuer must ensure that the following parties abstain from voting at that meeting on resolution(s) approving the transaction:
- (1) any connected person with a material interest in the transaction; and
 - (2) any shareholder with a material interest in the transaction and its associates.
- 20.62 The listed issuer shall also send a supplementary circular to its shareholders. Both the announcement and the circular shall state that the transaction has become a connected transaction and identify the parties that are required to abstain from voting. The listed issuer must also include in the circular the opinion of the independent board committee and an independent financial adviser (in the form of a separate letter) on the transaction and the other information mentioned in rules 20.58 and 20.59.

Financial assistance

General

- 20.63 Any transaction involving a connected person, or any company falling under rule 20.13(2)(a)(ii) or 20.13(2)(b)(ii), and financial assistance which is not exempted under rules 20.65 or 20.66 is subject to the reporting, announcement and independent shareholders' approval requirements of this Chapter.

Treatment of attributable interest in calculating proportionate financial assistance

- 20.64 In calculating proportionate financial assistance to any company falling under rule 20.13(2)(a)(ii), the Exchange will not consider the listed issuer's attributable interest in the company receiving the financial assistance. For example, where a principal purpose or effect of the transaction is for the granting by a non-wholly owned subsidiary of the listed issuer of financial assistance on normal commercial terms (or better to the listed issuer) to a company falling under rule 20.13(2)(a)(ii), the Exchange will calculate the proportionate financial assistance from the listed issuer's point of view by reference to the equity interest of the group company which directly holds the interest in the company receiving the financial assistance.

Exempt from reporting, announcement and independent shareholders' approval requirements

- 20.65 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 20.13(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 20.13(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 each or all of the percentage ratios (other than the profits ratio) is/are: (i) less than 0.1%; (ii) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the issuer by virtue of its/his relationship(s) with the issuer's subsidiary or subsidiaries; or (iii) less than 5% and the total value of the assistance plus any preferential benefit to the connected person, or a company falling under rule 20.13(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 20.13(2)(a)(ii), not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), provided that the assistance being provided is in proportion to the listed issuer's equity interest in the connected person or the company falling under rule 20.13(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
- (4) financial assistance provided by a connected person, or any company falling under rule 20.13(2)(b)(ii), for the benefit of a listed issuer on normal commercial terms (or better to the listed issuer) where no security over the assets of the listed issuer is granted in respect of the financial assistance.

Exempt from independent shareholders' approval requirements

20.66 The following connected transactions are only subject to the reporting and announcement requirements set out in rules 20.45 and 20.46 and rule 20.47 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 20.13(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) less than 5%; or (ii) 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 20.13(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) less than 5%; or (ii) 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.

Options

- 20.67 The definitions set out in rule 19.72 also apply to this Chapter.
- 20.68 The grant, acquisition, transfer, or exercise of an option involving a listed issuer and its connected person will be treated as a connected transaction and classified by reference to the percentage ratios (other than the profits ratio). The termination of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratio (other than the profits ratio), unless the termination is in accordance with the terms of the original agreement entered into by the listed issuer and does not involve payment of any amounts by way of penalty, damages or other compensation. The de minimis ratios under rules 20.31(2) and 20.32 apply to such connected transactions. The listed issuer must comply with the connected transaction requirements of the relevant classification and other specific requirements of rules 20.69 to 20.71.
- 20.69 The following apply to an option involving a listed issuer and a connected person, the exercise of which is not at the listed issuer's discretion:
- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. For the purpose of the percentage ratios, the consideration includes the premium and the exercise price of the option;
 - (2) on the exercise or transfer of such option, such exercise or transfer must be announced pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter; and
 - (3) if the grant of the option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must as soon as reasonably practicable upon:
 - (a) the expiry of the option;
 - (b) the option holder notifying the grantor that the option will not be exercised; or
 - (c) the transfer by the option holder of the option to a third party(whichever is the earliest) announce such fact in accordance with the requirements of Chapter 16.
- 20.70 The following apply to an option involving a listed issuer and a connected person, the exercise of which is at the listed issuer's discretion:
- (1) on the acquisition by, or grant of the option to, the listed issuer, only the premium will be taken into consideration for the purpose of classification of the transaction. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets, the revenue attributable to such assets and the sum of the premium and the exercise price will be used for the purpose of the percentage ratios;
 - (2) on the exercise of such option by the listed issuer, the exercise price, the value of the underlying assets and the revenue attributable to such assets will be used for the purpose

of the percentage ratios. Where an option is exercised in stages, the Exchange may at any stage require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction; and

- (3) non-exercise of the option or transfer of the option to a third party will be treated as if the option was exercised. The exercise price, the value of the underlying assets, the revenue attributable to such assets and (if applicable) the premium for transferring the option will be used for the purpose of the percentage ratios.

20.71 For the purpose of rules 20.69(1) and 20.70(1), where, on the grant of the option, the actual monetary value of the premium, the exercise price, the value of the underlying assets and the revenue attributable to such assets have not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which will then be used for the purpose of classification of the transaction. Failure to do so may result in the transaction being subject to all connected transaction requirements under this Chapter. The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the revenue attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification of the transaction as a result, the listed issuer must publish an announcement stating this fact as soon as reasonably practicable and comply with the additional requirements of such higher classification.

Exemption for Qualified Property Acquisitions

20.72 A Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is exempt from the independent shareholders' approval requirements if:

- (1) it satisfies the requirements in rule 19.33A(2)(a) to (d); and
- (2) the independent board committee and the independent financial adviser have confirmed that the Qualified Property Acquisition is in the Qualified Issuer's ordinary and usual course of business; and that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.

20.73 (1) A Qualified Issuer must publish an announcement as soon as possible after notification of the success of a bid by a joint venture for a Qualified Property Acquisition falling under rule 20.72 and send a circular to its shareholders.

(2) The announcement and circular must contain:

- (a) information required in rules 19.33B(2)(a) and (b); and
- (b) information to demonstrate that the conditions in rule 20.72 were met.

Note: If any of these details are not available when the issuer publishes the initial announcement, it must publish subsequent announcement(s) to disclose the details as soon as possible after they have been agreed or finalised,

- (3) The announcement, circular and reporting requirements under chapter 20 apply to the acquisition and the joint venture according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.