

# Chapter 20

## EQUITY SECURITIES

### CONNECTED TRANSACTIONS

#### Introduction

- 20.01 This Chapter applies to connected transactions entered into by a listed issuer or its subsidiaries. The connected transaction rules ensure that the interests of shareholders as a whole are taken into account by the listed issuer when the listed issuer's group enters into a connected transaction.
- 20.02 Connected transactions include both capital and revenue nature transactions. They may be one-off transactions or continuing transactions.
- 20.03 The general requirements for connected transactions include disclosures in announcements, circulars and annual reports, and shareholders' approval. Persons with material interests cannot vote on the resolution approving the transaction. Continuing connected transactions also require annual reviews by independent non-executive directors and the auditors.
- 20.04 To reduce listed issuers' compliance burden, exemptions and waivers from all or some of the connected transaction requirements are available for specific categories of connected transactions. These apply to connected transactions that are immaterial to the listed issuer's group, or specific circumstances where the risk of abuse by connected persons is low.
- 20.05 The rules in this Chapter are illustrated with diagrams. If there is any conflict between the rules and the diagrams, the rules prevail.

#### Definitions

- 20.06 In this Chapter, the following definitions apply:
- (1) a "**30%-controlled company**" means a company held by a person who can:
    - (a) exercise or control the exercise of 30% (or an amount for triggering a mandatory general offer under the Takeovers Code, or for PRC issuers only, an amount for triggering a mandatory general offer or establishing legal or management control over a business enterprise under the PRC law) or more of the voting power at general meetings; or
    - (b) control the composition of a majority of the board of directors;
  - (2) an "**associate**" has the meaning in rules 20.10 to 20.13;
  - (3) a "**banking company**" has the meaning in rule 20.86;
  - (4) a "**cap**" has the meaning in rule 20.51;
  - (5) a "**closely allied group of shareholders**" has the meaning in rule 19.45;

- (6) a “**commonly held entity**” has the meaning in rule 20.25;
- (7) a “**connected person**” has the meaning in rules 20.07 to 20.09;
- (8) a “**connected person at the issuer level**” includes:
  - (a) a director, chief executive or substantial shareholder of a listed issuer;
  - (b) a supervisor of a PRC issuer;
  - (c) a person who was a director of the listed issuer in the last 12 months; and
  - (d) an associate of any of the above persons;
- (9) a “**connected person at the subsidiary level**” means a person who is a connected person only because of the person’s connection with the listed issuer’s subsidiary or subsidiaries;
- (10) a “**connected subsidiary**” has the meaning in rule 20.14;
- (11) a “**connected transaction**” has the meaning in rules 20.21 to 20.28;
- (12) a “**continuing connected transaction**” has the meaning in rule 20.29;
- (13) a “**controller**” has the meaning in rule 20.26(1);
- (14) a “**deemed disposal**” has the meaning in rule 19.29;
- (15) a company “**directly held**” by an individual or an entity means that the individual or the entity has a direct ownership interest in the company;
- (16) a “**family member**” has the meaning in rule 20.10(2)(a);
- (17) “**financial assistance**” has the meaning in rule 20.22(4);
- (18) an “**immediate family member**” has the meaning in rule 20.10(1)(a);
- (19) a company “**indirectly held**” by an individual or an entity means that the individual or the entity has an indirect ownership interest in the company through (in the case of an individual) his majority controlled company or companies or (in the case of an entity) its subsidiary or subsidiaries;
- (20) an “**insignificant subsidiary**” or “**insignificant subsidiaries**” has the meaning in rule 20.08;
- (21) a “**listed issuer**” means a company or other legal person whose securities are listed;
- (22) a “**listed issuer’s group**” means a listed issuer and its subsidiaries, or any of them;

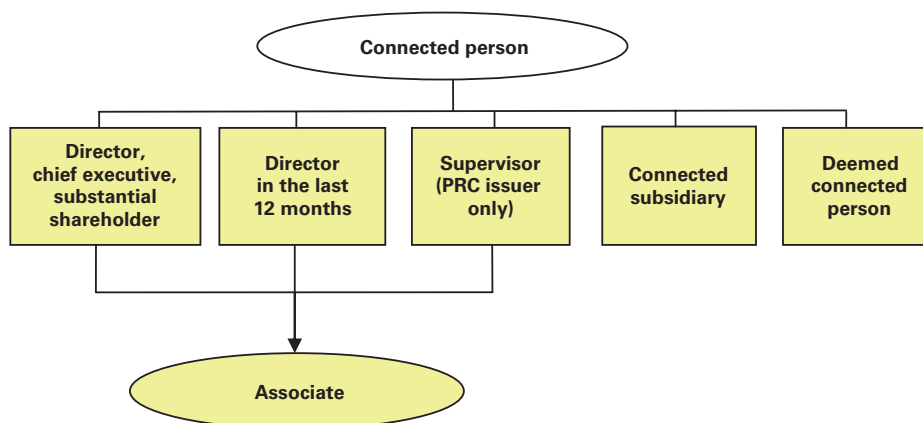
- (23) a “**majority-controlled company**” means a company held by a person who can exercise or control the exercise of more than 50% of the voting power at general meetings, or control the composition of a majority of the board of directors;
- (24) “**material interest**” in a transaction has the meaning in rules 2.26 and 2.27;
- (25) a “**monetary advantage**” has the meaning in rule 19.12;
- (26) “**normal commercial terms or better**” are terms which a party could obtain if the transaction were on an arm’s length basis or terms no less favourable to the listed issuer’s group than terms available to or from independent third parties;
- (27) an “**option**” and terms related to it (including “**exercise price**”, “**premium**” and “**expiration**”) have the meaning in rule 19.72;
- (28) “**ordinary and usual course of business**” of an entity means the entity’s existing principal activities or an activity wholly necessary for its principal activities;
- (29) a “**passive investor**” has the meaning in rule 20.98;
- (30) “**percentage ratios**” has the meaning in rule 19.04(9);
- (31) a “**PRC Governmental Body**” has the meaning in rule 25.04(2);
- (32) a “**profit forecast**” has the meaning in rule 19.61;
- (33) a “**qualified connected person**” means a connected person of the qualified issuer solely because he or it is a substantial shareholder (or its associate) in one or more of the qualified issuer’s non wholly-owned subsidiaries formed to participate in property projects, each of which is single purpose and project specific. This person may or may not have representation on the board of the subsidiary or subsidiaries;
- (34) a “**qualified issuer**” has the meaning in rule 19.04(10B);
- (35) a “**qualified property acquisition**” has the meaning in rule 19.04(10C);
- (36) a “**recognised stock exchange**” means a regulated, regularly operating, open stock market recognised for this purpose by the Exchange;
- (37) a “**relative**” has the meaning in rule 20.19(1)(a);
- (38) a “**transaction**” has the meaning in rule 20.22; and
- (39) “**trustees**” has the meaning in rule 20.10(1)(b) or 20.11(2).

## Definition of connected person

20.07 A “connected person” is:

- (1) a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries;
- (2) a person who was a director of the listed issuer or any of its subsidiaries in the last 12 months;
- (3) a supervisor of a PRC issuer or any of its subsidiaries;
- (4) an associate of any of the above persons;
- (5) a connected subsidiary; or
- (6) a person deemed to be connected by the Exchange.

Diagram 1



## Exceptions

### *Persons connected with insignificant subsidiaries*

20.08 Rules 20.07(1) to (3) do not include a director, chief executive, substantial shareholder or supervisor of the listed issuer’s insignificant subsidiary or subsidiaries. For this purpose:

- (1) an “insignificant subsidiary” is a subsidiary whose total assets, profits and revenue compared to that of the listed issuer’s group are less than:
  - (a) 10% under the percentage ratios for each of the latest three financial years (or if less, the period since the incorporation or establishment of the subsidiary); or
  - (b) 5% under the percentage ratios for the latest financial year;
- (2) if the person is connected with two or more subsidiaries of the listed issuer, the Exchange will aggregate the subsidiaries’ total assets, profits and revenue to determine whether they are together “insignificant subsidiaries” of the listed issuer; and
- (3) when calculating the percentage ratios, 100% of the subsidiary’s total assets, profits and revenue will be used. If a percentage ratio produces an anomalous result, the Exchange may disregard the calculation and consider alternative test(s) provided by the listed issuer.

PRC Governmental Body

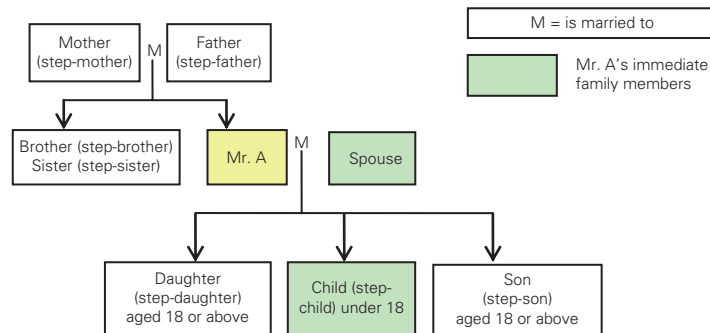
20.09 The Exchange will not normally treat a PRC Governmental Body as a connected person. The Exchange may request a listed issuer to explain its relationship with a PRC Governmental Body and why it should not be treated as a connected person. If the Exchange decides to treat the PRC Governmental Body as a connected person, the listed issuer must comply with any additional requirements requested by the Exchange.

**Definition of associate**

20.10 An “associate” of a connected person described in rule 20.07(1), (2) or (3) who is an individual includes:

- (1) (a) his spouse; his (or his spouse’s) child or step-child, natural or adopted, under the age of 18 years (each an “immediate family member”);

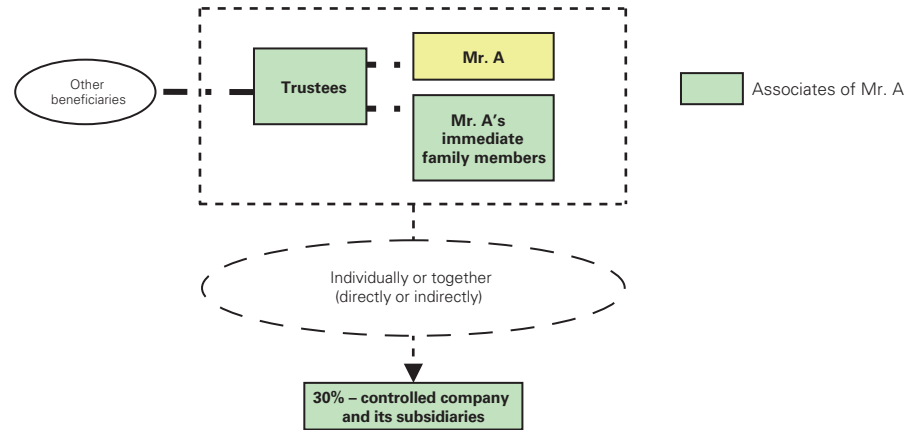
Diagram 2



- (b) the trustees, acting in their capacity as trustees of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (other than a trust which is an employees’ share scheme or occupational pension scheme established for a wide scope of participants and the connected persons’ aggregate interests in the scheme are less than 30%) (the “trustees”); or

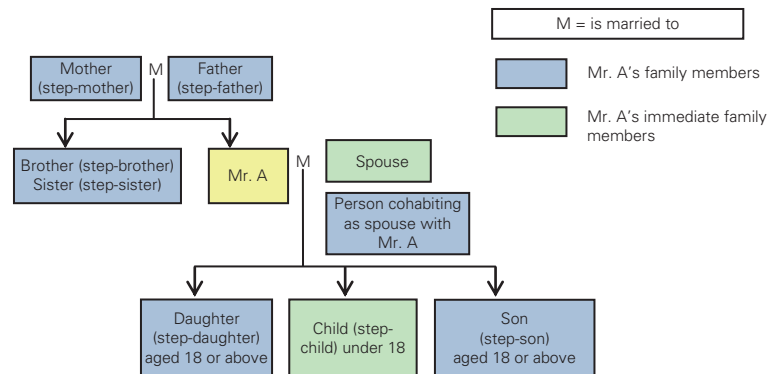
- (c) a 30%-controlled company held, directly or indirectly, by the individual, his immediate family members and/or the trustees (individually or together), or any of its subsidiaries; or

Diagram 3



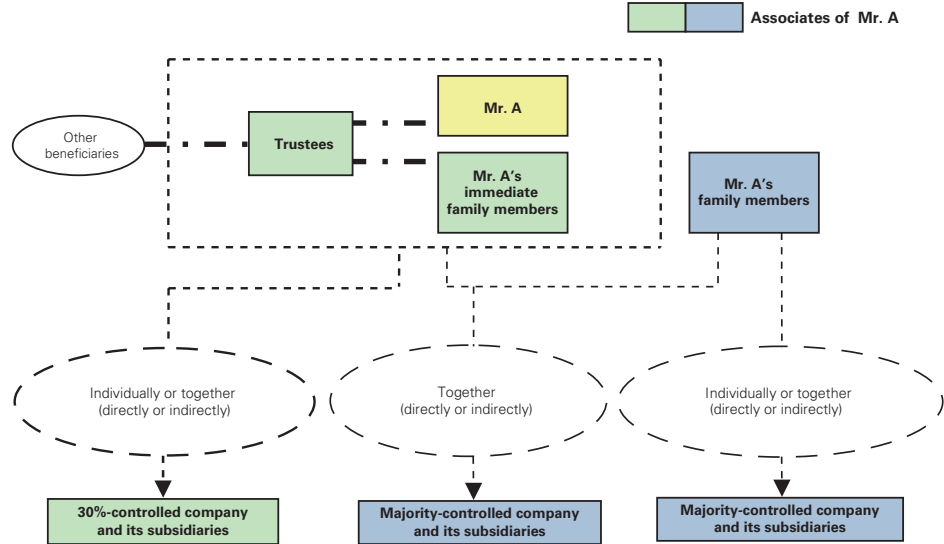
- (2) (a) a person cohabiting with him as a spouse, or his child, step-child, parent, step-parent, brother, step-brother, sister or step-sister (each a "family member"); or

Diagram 4



- (b) a majority-controlled company held, directly or indirectly, by the family members (individually or together), or held by the family members together with the individual, his immediate family members and/or the trustees, or any of its subsidiaries.

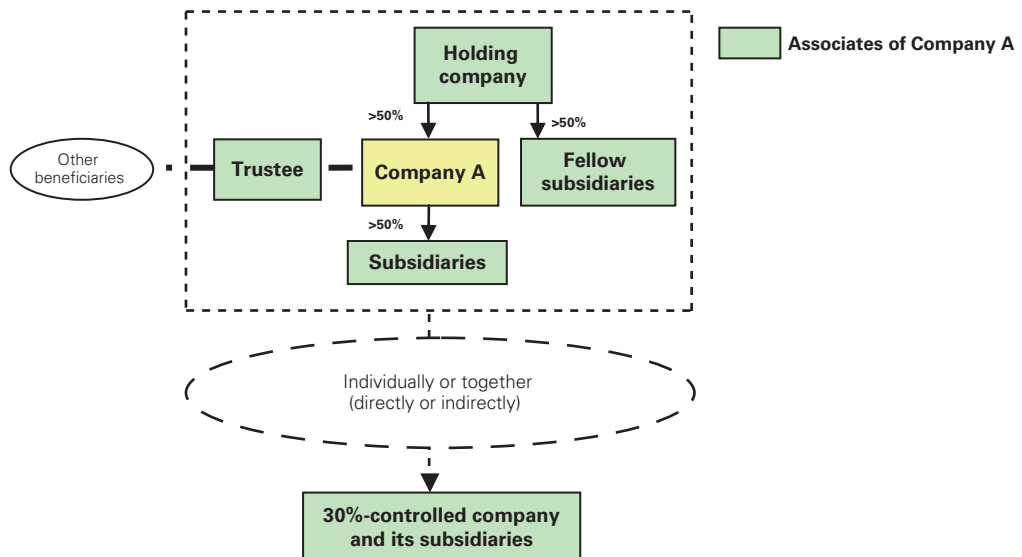
Diagram 5



20.11 An “associate” of a connected person described in rule 20.07(1), (2) or (3) which is a company includes:

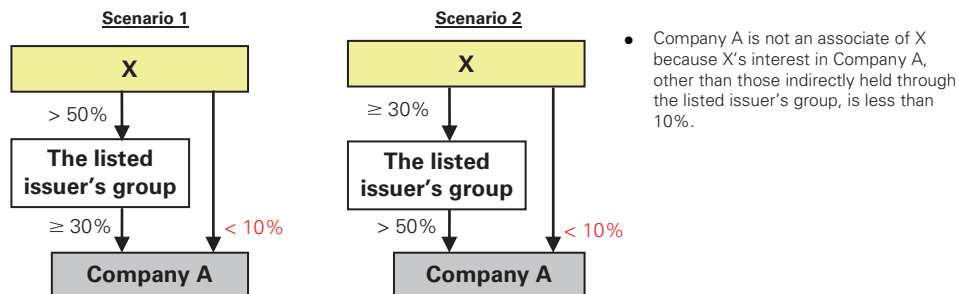
- (1) its subsidiary or holding company, or a fellow subsidiary of the holding company;
- (2) the trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to its knowledge) a discretionary object (the “trustees”); or
- (3) a 30%-controlled company held, directly or indirectly, by the company, the companies referred to in (1) above, and/or the trustees (individually or together), or any of its subsidiaries.

Diagram 6



20.12 A 30%-controlled company held by a person will not be regarded as his or its associate if the person's and his or its associates' interests in the company, other than those indirectly held through the listed issuer's group, are together less than 10%.

Diagram 7



20.13 For PRC issuers only, a person's associates include any joint venture partner of a cooperative or contractual joint venture (whether or not it is a separate legal entity) where:

- (1) the person (being an individual), his immediate family members and/or the trustees; or
- (2) the person (being a company), any company which is its subsidiary or holding company or a fellow subsidiary of the holding company, and/or the trustees,

together directly or indirectly hold 30% (or an amount that would trigger a mandatory general offer or establish legal or management control over a business enterprise under the PRC law) or more in the joint venture's capital or assets contributions, or the contractual share of its profits or other income.

Diagram 8

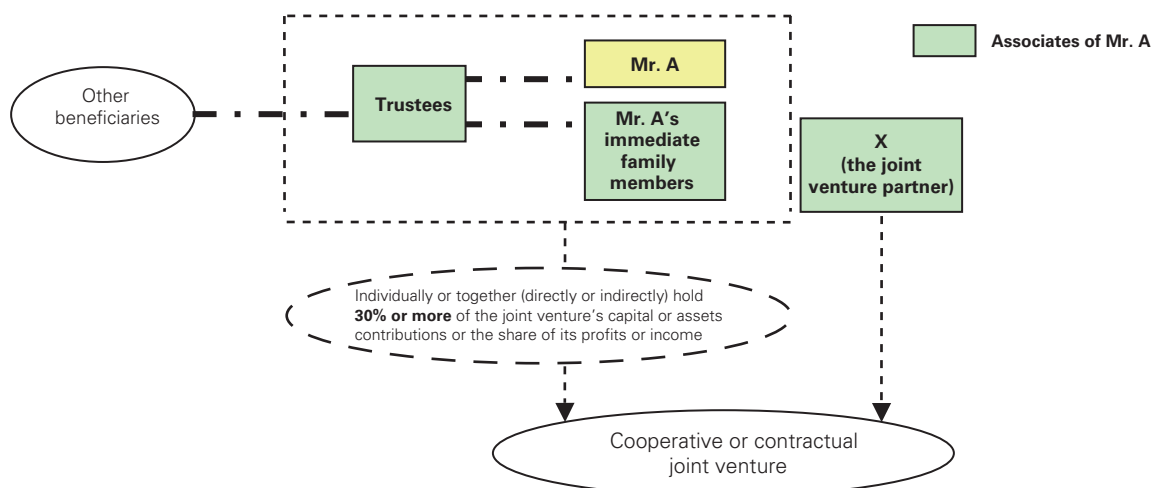
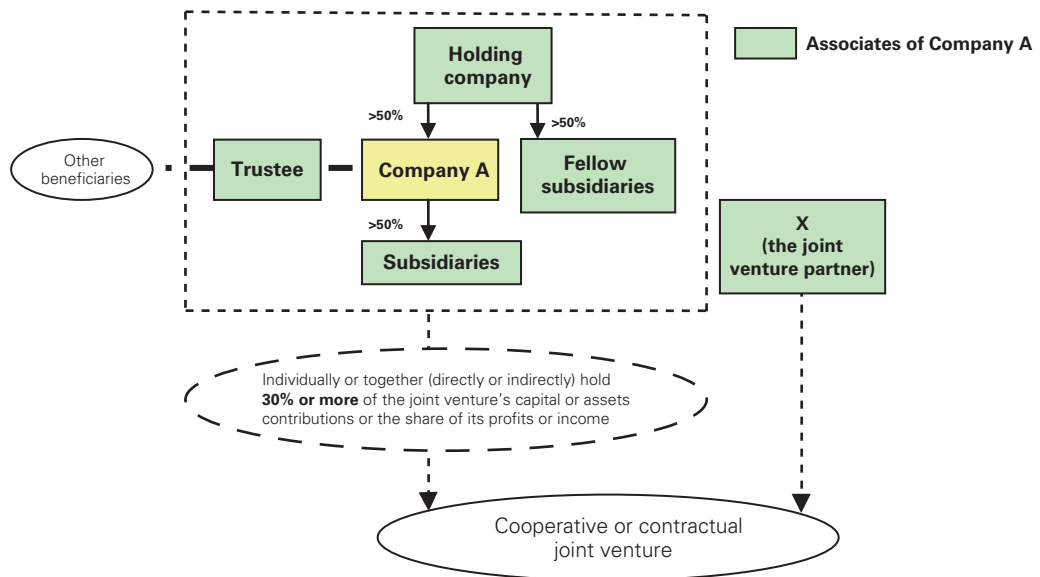




Diagram 9



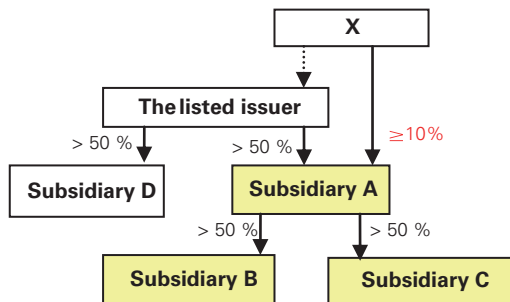
**Definition of connected subsidiary**

20.14 A “connected subsidiary” is:

- (1) a non wholly-owned subsidiary of the listed issuer where any connected person(s) at the issuer level, individually or together, can exercise or control the exercise of 10% or more of the voting power at the subsidiary’s general meeting. This 10% excludes any indirect interest in the subsidiary which is held by the connected person(s) through the listed issuer; or
- (2) any subsidiary of a non wholly-owned subsidiary referred to in (1) above.

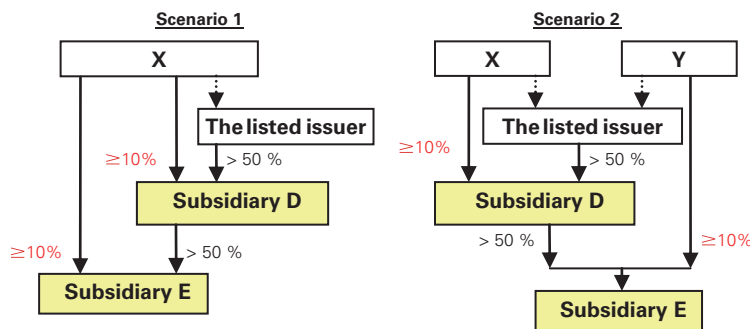
20.15 If a listed issuer's subsidiaries are connected persons only because they are the subsidiaries of a connected subsidiary, transactions between these subsidiaries will not be treated as connected transactions.

Diagram 10



- X is a connected person at the issuer level, and he or it has a 10% (or more) shareholding in Subsidiary A.  
→ Subsidiary A is a connected subsidiary. (See rule 20.14(1))
- Subsidiaries B and C are subsidiaries of Subsidiary A.  
→ Subsidiaries B and C are also connected subsidiaries. (See rule 20.14(2))
- Transactions between the listed issuer or Subsidiary D with Subsidiary A/B/C are connected transactions.
- Transactions between any of Subsidiaries A, B and C are not connected transactions if Subsidiaries B and C are connected solely because of their relationship with Subsidiary A. (See rule 20.15)

Diagram 11

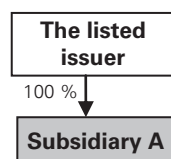


- X and Y are connected persons at the issuer level.  
→ Subsidiaries D and E are connected subsidiaries.
- Subsidiary E is a subsidiary of Subsidiary D. However, the exemption in rule 20.15 does not apply to transactions between them because Subsidiary E is a connected subsidiary not only because of its relationship with Subsidiary D but also its relationship with X or Y.

20.16 A subsidiary of the listed issuer is not a connected person if:

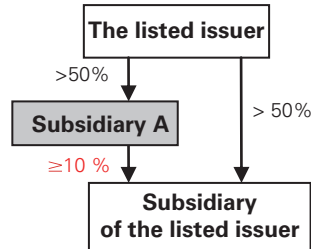
- (1) it is directly or indirectly wholly-owned by the listed issuer; or

Diagram 12



- (2) it falls under the definition of connected person only because it is:
- (a) a substantial shareholder of another subsidiary of the listed issuer; or

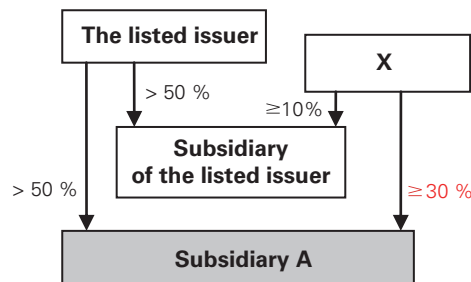
Diagram 13



- Subsidiary A is a substantial shareholder of another subsidiary of the listed issuer. However, this relationship will not make Subsidiary A a connected person of the listed issuer.

- (b) an associate of a director (or a person who was in the past 12 months a director), a chief executive, a substantial shareholder or a supervisor of any subsidiary of the listed issuer.

Diagram 14



- X is a substantial shareholder of a subsidiary of the listed issuer.
- X holds 30% (or more) shareholding in Subsidiary A.  
→ Subsidiary A is an associate of X. However, this relationship will not make Subsidiary A a connected person of the listed issuer because X is only a connected person at the subsidiary level.

### Deemed connected persons

20.17 The Exchange has the power to deem any person to be a connected person.

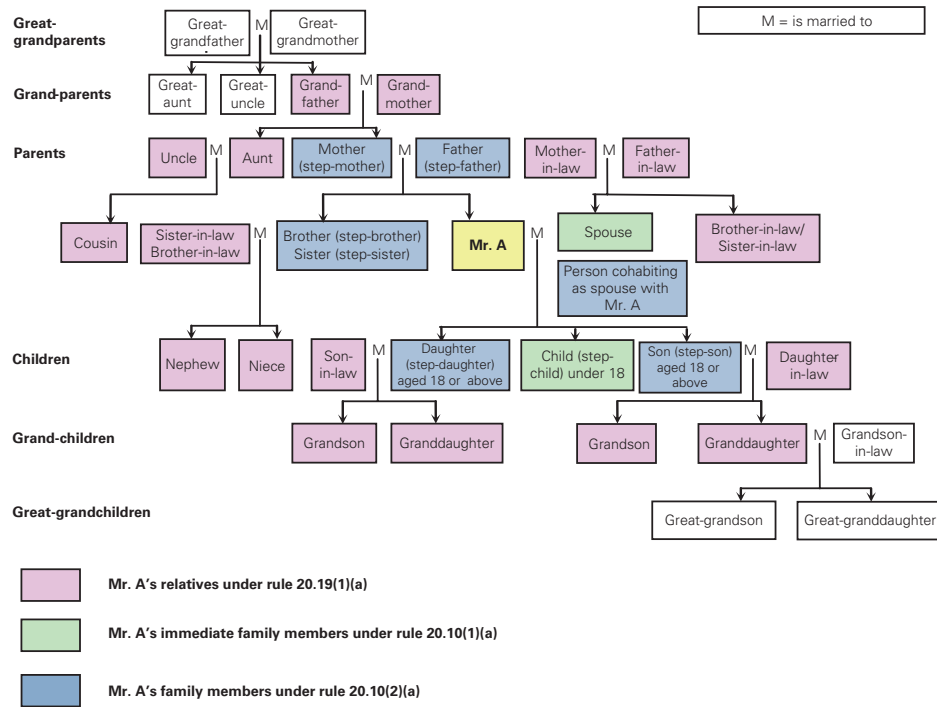
20.18 A deemed connected person includes a person:

- (1) who has entered, or proposes to enter, into:
- (a) a transaction with the listed issuer's group; and
- (b) an agreement, arrangement, understanding or undertaking (whether formal or informal and whether express or implied) with a connected person described in rule 20.07(1), (2) or (3) with respect to the transaction; and
- (2) who, in the Exchange's opinion, should be considered as a connected person.

20.19 A deemed connected person also includes a person:

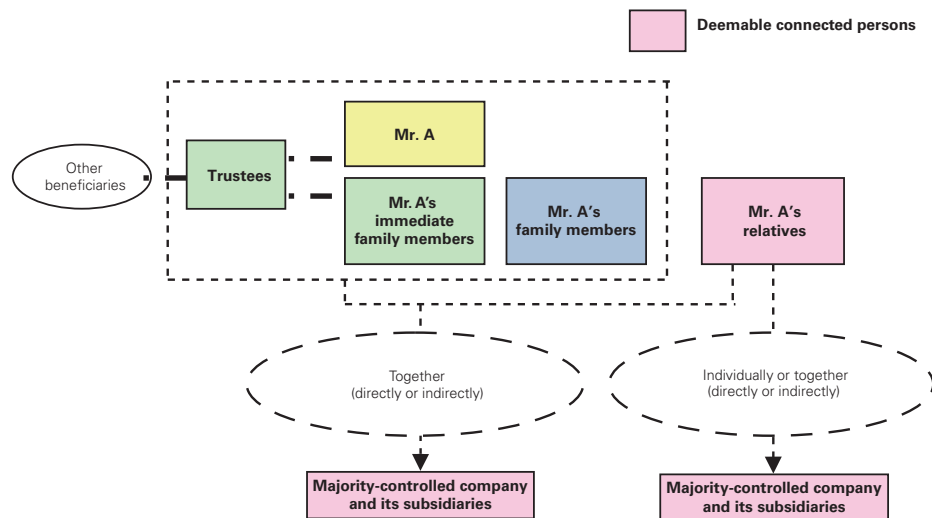
- (1) who is:
  - (a) a father in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, uncle, aunt, cousin, nephew or niece (each a “relative”) of a connected person described in rule 20.07(1), (2) or (3); or

Diagram 15



- (b) a majority-controlled company held, directly or indirectly, by the relatives (individually or together) or held by the relatives together with the connected person as described in rule 20.07(1), (2) or (3), the trustees, his immediate family members and/or family members, or any subsidiary of that majority-controlled company; and

Diagram 16



- (2) whose association with the connected person is such that, in the Exchange’s opinion, the proposed transaction should be subject to the connected transaction requirements.

20.20 The listed issuer must inform the Exchange of any proposed transaction with the person described in rule 20.18(1) or 20.19(1) unless it is exempt from all of the connected transaction requirements. It must provide information to the Exchange to demonstrate whether or not the transaction should be subject to connected transaction requirements.

### **What are connected transactions**

20.21 Connected transactions are transactions with connected persons, and specified categories of transactions with third parties that may confer benefits on connected persons through their interests in the entities involved in the transactions. They may be one-off transactions or continuing transactions.

20.22 "Transactions" include both capital and revenue nature transactions, whether or not conducted in the ordinary and usual course of business of the listed issuer's group. This includes the following types of transactions:

- (1) any acquisition or disposal of assets by a listed issuer's group including a deemed disposal;
- (2) (a) a listed issuer's group granting, accepting, exercising, transferring or terminating an option to acquire or dispose of assets or to subscribe for securities; or

*Note: Terminating an option is not a transaction if it is made under the terms of the original agreement and the listed issuer's group has no discretion over the termination.*

- (b) a listed issuer's group deciding not to exercise an option to acquire or dispose of assets or to subscribe for securities;
- (3) entering into or terminating finance leases or operating leases or sub-leases;
- (4) granting an indemnity or providing or receiving financial assistance. "Financial assistance" includes granting credit, lending money, or providing an indemnity against obligations under a loan, or guaranteeing or providing security for a loan;
- (5) entering into an agreement or arrangement to set up a joint venture in any form (e.g. a partnership or a company), or any other form of joint arrangement;
- (6) issuing new securities of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities;
- (7) providing, receiving or sharing services; or
- (8) acquiring or providing raw materials, intermediate products and/or finished goods.

## Transactions with connected persons

20.23 Any transaction between a listed issuer's group and a connected person is a connected transaction.

## Transactions with third parties

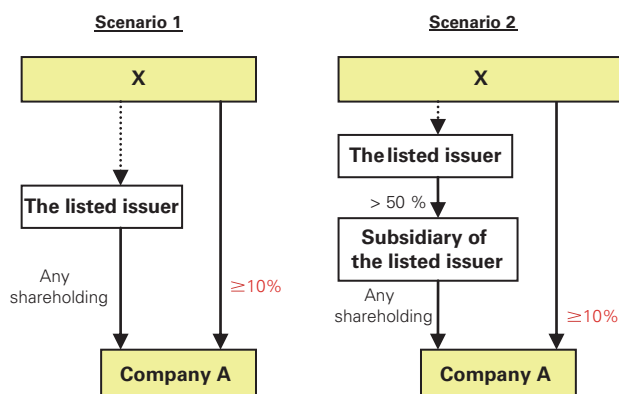
### *Financial assistance to or from commonly held entities*

20.24 Financial assistance provided by a listed issuer's group to, or received by a listed issuer's group from, a commonly held entity is a connected transaction.

20.25 A "commonly held entity" is a company whose shareholders include:

- (1) a member of the listed issuer's group; and
- (2) any connected person(s) at the issuer level who, individually or together, can exercise or control the exercise of 10% or more of the voting power at the company's general meeting. This 10% excludes any indirect interest held by the person(s) through the listed issuer.

Diagram 17



- X is a connected person at the issuer level
- Both the listed issuer's group and X are shareholders of Company A, and X holds 10% (or more) of shareholding in Company A.
  - Company A is a commonly held entity.
  - Financial assistance provided by the listed issuer's group to, or received by the listed issuer's group from, Company A is a connected transaction.

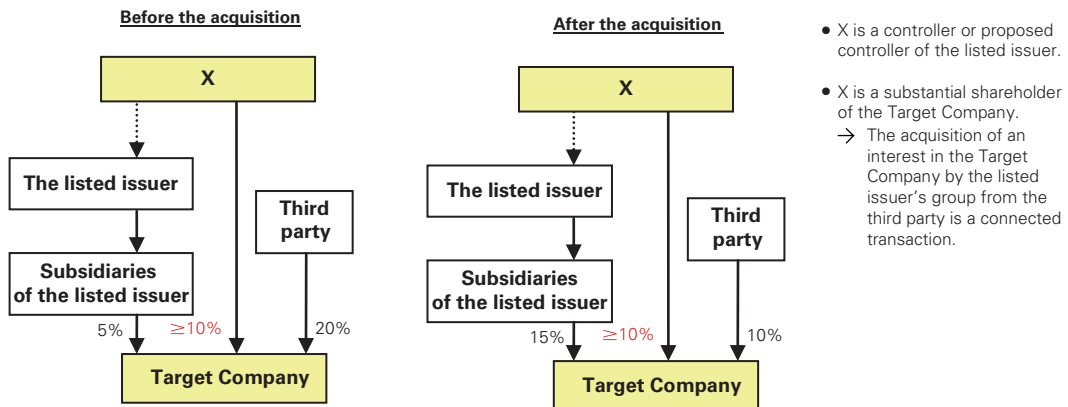
Other transactions with third parties

20.26 A listed issuer's group acquiring an interest in a company (the "target company") from a person who is not a connected person is a connected transaction if the target company's substantial shareholder:

- (1) is, or is proposed to be, a controller. A "controller" is a director, chief executive or controlling shareholder of the listed issuer; or
- (2) is, or will, as a result of the transaction, become, an associate of a controller or proposed controller.

Note: Acquiring the target company's assets is also a connected transaction if these assets account for 90% or more of the target company's net assets or total assets.

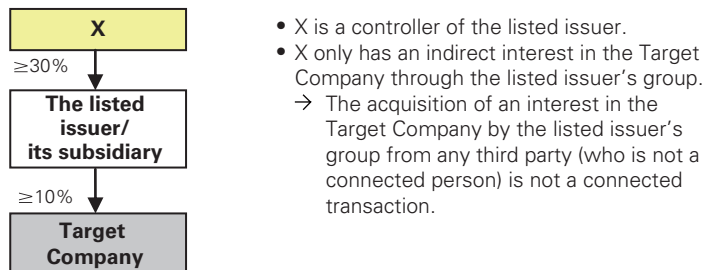
Diagram 18



20.27 The Exchange may aggregate the interests of the controller and his or its associates in the target company to decide whether they together are the target company's substantial shareholder.

20.28 Rule 20.26 does not apply to a listed issuer's proposed acquisition if the controller or his or its associate(s) is or are together the target company's substantial shareholders only because of their indirect shareholdings in the target company held through the listed issuer's group.

Diagram 19



### **Definition of continuing connected transaction**

20.29 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 listed issuer's group.

### **Requirements for connected transactions**

20.30 This section sets out the requirements for connected transactions.

20.31 Exemptions or waivers from all or some of the requirements are available for specified categories of connected transactions. See rules 20.71 to 20.103.

### **Written agreement**

20.32 The listed issuer's group must enter into a written agreement for a connected transaction.

### **Announcement**

20.33 The listed issuer must announce the connected transaction as soon as practicable after its terms have been agreed. See rule 20.66 for the content requirements.

*Note: If the connected transaction is subsequently terminated or there is any material variation of its terms or material delay in the completion, the listed issuer must announce this fact as soon as practicable. The listed issuer must also comply with all other applicable provisions under the Rules.*

### **Shareholders' approval**

20.34 The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.

20.35 The Exchange may waive the general meeting requirement and accept a written shareholders' approval, subject to the conditions that:

- (1) no shareholder of the listed issuer is required to abstain from voting if a general meeting is held to approve the transaction; and
- (2) the approval is given by a shareholder or a closely allied group of shareholders who (together) hold more than 50% of the voting rights in the general meeting.

20.36 If the listed issuer discloses inside information to any shareholder in confidence to solicit the written approval, it must ensure that the shareholder is aware that he must not deal in the securities before the information has been made available to the public.

20.37 If the connected transaction requires shareholders' approval, the listed issuer must (1) set up an independent board committee; and (2) appoint an independent financial adviser.



*Independent board committee*

- 20.38 The independent board committee must, taking into account the recommendation of an independent financial adviser, advise the listed issuer's shareholders:
- (1) whether the terms of the connected transaction are fair and reasonable;
  - (2) whether the connected transaction is on normal commercial terms or better and in the ordinary and usual course of business of the listed issuer's group;
  - (3) whether the connected transaction is in the interests of the listed issuer and its shareholders as a whole; and
  - (4) how to vote on the connected transaction.
- 20.39 The independent board committee must consist only of independent non-executive directors who do not have a material interest in the transaction.
- 20.40 If all the independent non-executive directors have a material interest in the transaction, an independent board committee will not be formed.
- 20.41 If an independent board committee is formed, the circular must include a letter from the independent board committee containing its opinion on the matters in rule 20.38 and its recommendation.

*Independent financial adviser*

- 20.42 The listed issuer must appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and shareholders on the matters in rules 20.43(1) to (4). The independent financial adviser will give its opinion based on the written agreement for the transaction.
- 20.43 The circular must include a letter from the independent financial adviser containing its opinion and recommendation. The independent financial adviser's letter must also set out the reasons for its opinion, the key assumptions made, the factors that it has taken into consideration in forming the opinion, and a statement whether:
- (1) the terms of the connected transaction are fair and reasonable;
  - (2) the connected transaction is on normal commercial terms or better and in the ordinary and usual course of business of the listed issuer's group;
  - (3) the connected transaction is in the interests of the listed issuer and its shareholders as a whole; and
  - (4) the shareholders should vote in favour of the connected transaction.

## **Circular**

20.44 The listed issuer must send a circular to its shareholders:

- (1) at the same time or before the listed issuer gives notice of the general meeting if the connected transaction is to be approved by shareholders in a general meeting; or
- (2) if no general meeting is to be held, within 15 business days after publication of the announcement. The listed issuer may apply for a waiver from this requirement if it requires additional time to prepare the circular.

*Note: See rules 20.67 and 20.68 for the content requirements.*

20.45 If the listed issuer expects a delay in distribution of the circular by the date previously announced (see rule 20.66(11)), it must announce this fact, the reason for the delay and the new expected date of distribution of the circular as soon as practicable and in any event before the original despatch date.

### *Supplementary circular or announcement*

20.46 If the listed issuer is aware of any material information relating to the connected transaction after it has issued the circular, it must publish this information in a supplementary circular or announcement at least 10 business days before the date of the general meeting to consider the transaction. The meeting must be adjourned by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect if it is necessary for the compliance with the 10 business day requirement. (See rule 17.46(2) for the factors that the listed issuer should consider when deciding whether to issue a supplementary circular or announcement.)

## **Annual reporting**

20.47 The listed issuer must disclose its connected transactions conducted during the financial year in its annual report. See rules 20.69 and 20.70 for the content requirements.

## **Requirements for continuing connected transactions**

20.48 The following additional requirements apply to a continuing connected transaction.

### *Terms of an agreement*

20.49 A written agreement for a continuing connected transaction must contain the basis for calculating the payments to be made. Examples include sharing of costs incurred by the parties, unit prices for goods or services provided, annual rental for leasing a property, or management fees based on a percentage of the total construction cost.

20.50 The period for the agreement must be fixed and reflect normal commercial terms or better. It must not exceed three years except in special circumstances where the nature of the transaction requires a longer period. In this case, the listed issuer must appoint an independent financial adviser to explain why the agreement requires a longer period and to confirm that it is normal business practice for agreements of this type to be of such duration.

### *Annual cap*

- 20.51 The listed issuer must set an annual cap (the “cap”) for the continuing connected transaction. The cap must be:
- (1) expressed in monetary terms;
  - (2) determined by reference to previous transactions and figures in the published information of the listed issuer’s group. If there were no previous transactions, the cap must be set based on reasonable assumptions; and
  - (3) approved by shareholders if the transaction requires shareholders’ approval.

### *Changes to cap or terms of agreement*

- 20.52 The listed issuer must re-comply with the announcement and shareholders’ approval requirements before:
- (1) the cap is exceeded; or
  - (2) it proposes to renew the agreement or to effect a material change to its terms.

*Note: The revised or new cap(s) will be used to calculate the percentage ratios for classifying the continuing connected transaction.*

### *Annual review by independent non-executive directors and auditors*

- 20.53 The listed issuer’s independent non-executive directors must review the continuing connected transactions every year and confirm in the annual report whether the transactions have been entered into:
- (1) in the ordinary and usual course of business of the listed issuer’s group;
  - (2) on normal commercial terms or better; and
  - (3) according to the agreement governing them on terms that are fair and reasonable and in the interests of the listed issuer’s shareholders as a whole.
- 20.54 The listed issuer must engage its auditors to report on the continuing connected transaction every year. The auditors must provide a letter to the listed issuer’s board of directors confirming whether anything has come to their attention that causes them to believe that the continuing connected transactions:
- (1) have not been approved by the listed issuer’s board of directors;
  - (2) were not, in all material respects, in accordance with the pricing policies of the listed issuer’s group if the transactions involve the provision of goods or services by the listed issuer’s group;
  - (3) were not entered into, in all material respects, in accordance with the relevant agreement governing the transactions; and
  - (4) have exceeded the cap.

- 20.55 The listed issuer must provide a copy of the auditors' letter to the Exchange at least 10 business days before the bulk printing of its annual report.
- 20.56 The listed issuer must allow, and ensure that the counterparties to the continuing connected transactions allow, the auditors sufficient access to their records for the purpose of reporting on the transactions.
- 20.57 The listed issuer must promptly notify the Exchange and publish an announcement if the independent non-executive directors and/or the auditors cannot confirm the matters as required. The Exchange may require the listed issuer to re-comply with the announcement and shareholders' approval requirements and may impose additional conditions.

*When a continuing transaction subsequently becomes connected*

- 20.58 If the listed issuer's group has entered into an agreement for a fixed period with fixed terms for:
- (1) a continuing transaction, and the transaction subsequently becomes a continuing connected transaction, or

*Note: This includes a continuing transaction between the listed issuer's group and a connected person exempt under the "insignificant subsidiary exemption" (see rule 20.08), and the connected person subsequently cannot meet the conditions for the exemption.*

- (2) a continuing connected transaction exempt under the "passive investor exemption" (see rules 20.97 and 20.98), and the transaction subsequently cannot meet the conditions for the exemption,

the listed issuer must:

- (a) as soon as practicable after becoming aware of this fact, comply with the annual review and disclosure requirements including publishing an announcement and annual reporting if the listed issuer's group continues to conduct the transaction under the agreement; and
- (b) when the agreement is renewed or its terms are varied, comply with all connected transaction requirements.

**Other requirements relating to connected transactions**

*Options*

- 20.59 If the listed issuer's group grants an option to a connected person and the listed issuer's group does not have discretion to exercise the option, the transaction is classified as if the option has been exercised (see rule 20.77(1)). In addition, the listed issuer must announce the following subsequent events as soon as practicable:
- (1) any exercise or transfer of the option by the option holder; and/or
- (2) (if the option is not, or is not to be, exercised in full), the option holder notifying the listed issuer's group that it will not exercise the option, or the expiry of the option, whichever is earlier.

### *Guaranteed profits or net assets*

- 20.60 The following apply if the listed issuer's group acquires a company or business from a connected person, and the connected person guarantees the profits or net assets or other matters regarding the financial performance of the company or business.
- 20.61 (1) The listed issuer must disclose by way of an announcement any subsequent change to the terms of the guarantee and the reason therefor, and whether the issuer's independent non-executive directors consider that such change is fair and reasonable and in the interests of the shareholders as a whole.
- (2) If the actual performance fails to meet the guarantee (or where applicable, the guarantee as amended), the listed issuer must disclose the following by way of an announcement:
- (a) the shortfall, and any adjustment in the consideration for the transaction or other consequence under the guarantee;
  - (b) whether the connected person has fulfilled its obligations under the guarantee;
  - (c) whether the listed issuer's group 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
  - (d) the independent non-executive directors' opinion on:
    - (i) whether the connected person has fulfilled its obligations; and
    - (ii) whether the decision of the listed issuer's group to exercise or not to exercise any options or rights set out in rule 20.61(2)(c) is fair and reasonable and in the interests of the shareholders as a whole.
- (3) The listed issuer must disclose whether the actual performance of the company or business acquired meets the guarantee in its next annual report.

### *When a proposed transaction becomes connected*

- 20.62 If a connected transaction is also a notifiable transaction, the listed issuer must also comply with the requirements in Chapter 19.
- 20.63 If a listed issuer has entered into an agreement for a proposed transaction which is conditional on shareholders' approval in general meeting and the proposed transaction becomes a connected transaction before the shareholders' approval, the listed issuer must comply with the connected transaction requirements. Where a notice of meeting to approve the proposed transaction has been sent to shareholders, the listed issuer must issue a further announcement and a supplementary circular (see rule 20.46) to disclose that the transaction has become a connected transaction and the parties that are required to abstain from voting. The circular must also contain information required for a connected transaction circular.

### *Checklists*

- 20.64 The listed issuer must complete and submit any checklists for connected transactions prescribed by the Exchange from time to time.

## Content Requirements

20.65 This section sets out the information that a listed issuer must disclose in its announcements, circulars and annual reports.

### Announcements

20.66 An announcement of a connected transaction must contain at least:

- (1) the information set out in rules 19.58 to 19.60 (contents of announcements for notifiable transactions);
- (1A) the identities and a description of the principal business activities of the parties to the transaction and of their ultimate beneficial owner(s);
- (2) the connected relationship between the parties to the transaction, and the connected person's interests in the transaction;
- (3) the independent non-executive directors' views on the matters set out in rules 20.38(1) to (3) if no shareholders' approval is required;
- (4) if the transaction is a continuing connected transaction, the basis for calculating the payments to be made (see rule 20.49) and the amount of its cap. If a circular is not required, the listed issuer must also disclose how it determines and calculates the cap, including the assumptions and the amounts of previous transactions which form the basis of the cap;
- (5) if the transaction involves the listed issuer's group acquiring assets from a connected person, the original acquisition cost of the assets to the connected person;
- (6) if the transaction involves the listed issuer's group disposing of assets which it has held for 12 months or less, the original acquisition cost of the assets to the listed issuer's group;
- (7) if the announcement contains a profit forecast of the listed issuer's group or a company which is, or will become, the listed issuer's subsidiary, the information set out in rule 19.62 (requirements for profit forecast in notifiable transaction announcement);
- (8) if no circular is required, a statement whether any directors of the listed issuer have a material interest in the transaction and, if so, whether they have abstained from voting on the board resolution;
- (9) a statement that the transaction is subject to shareholders' approval, if applicable;
- (10) if the transaction is, or will be, approved by way of shareholders' written approval, details of the shareholders giving the approval (including their names and shareholdings in the listed issuer) and the relationship between the shareholders; and
- (11) if a circular is required, the expected date of distribution of the circular, and, if this is more than 15 business days after the publication of the announcement, the reasons why this is so.

## **Circulars**

20.67 A circular for a connected transaction 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's group;
- (2) where practicable, include a numerical evaluation;
- (3) contain all information necessary to allow the listed issuer's shareholders to make a properly informed decision; and
- (4) contain a heading drawing attention to the importance of the document and advising shareholders who are in any doubt to consult appropriate independent advisers on the appropriate course of action.

20.68 The circular must contain at least:

- (1) the Exchange's disclaimer statement (see rule 2.19) on its front cover or inside front cover;
- (2) the information required to be disclosed in the announcement for the transaction;
- (3) the identities and a description of the principal business activities of the parties to the transaction and of their ultimate beneficial owner(s);
- (4) the name of the connected person concerned, his or its relationship with any controller and the name and office held by that controller;
- (5) if the transaction is a continuing connected transaction, how the listed issuer determines and calculates the cap, including the assumptions and the amounts of previous transactions which form the basis of the cap;
- (6) a letter from each of the independent financial adviser and, if applicable, the independent board committee containing its opinion and recommendation on the transaction (see rules 20.41 and 20.43);
- (7) if the transaction involves the acquisition or disposal of any property interests or a company whose assets consist solely or mainly of property, a valuation and information on the property if required under rule 8.03;
- (8) if the primary significance of the asset (other than property interests) being acquired or disposed of is its capital value, an independent valuation of the asset;
- (9) if the transaction involves an acquisition or disposal of a company or business engaging in an infrastructure project, a business valuation report on that company or business and/or traffic study report on the project. The report(s) must clearly set out:
  - (a) all significant underlying assumptions including the discount rate or growth rate used; and
  - (b) a sensitivity analysis based on different discount rates and growth rates.

If the 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.

- (10) if the transaction involves the listed issuer's group acquiring a company or business from a connected person, details of:
- (a) any guarantee of the profits or net tangible assets or other matters regarding the financial performance of the company or business provided by the connected person, and a statement by the listed issuer that it will comply with the disclosure requirements (see rule 20.61) if the actual performance fails to meet the guarantee; and
  - (b) any option granted to the listed issuer's group to sell the company or business back to the connected person and/or other rights given to the listed issuer's group;
- (11) a statement whether any directors of the listed issuer have a material interest in the transaction and, if so, whether they have abstained from voting on the board resolution;
- (12) a statement that any shareholder with a material interest in the transaction will not vote and the information required in rule 2.28;
- (13) the information set out in the following paragraphs of Appendix 1, Part B:
- 1 — listed issuer's name
  - 2 — directors' responsibility
  - 5 — expert statements
  - 10 — securities to be issued (if applicable)
  - 29(2) — requirements if there is a profit forecast
  - 32 — no material adverse change
  - 39 — directors' service contracts
  - 40 — directors' interests in assets
  - 42(2)(a) & (c) — documents on display
- (14) information regarding directors' and chief executive's interests in the listed issuer described in paragraphs 34, 38 and 38A of Appendix 1, Part B;
- (15) information regarding the competing interests (if any) of the Compliance Adviser and its directors, employees and close associates (as referred to in rule 6A.32) and each of the directors and any proposed director of the listed issuer and his respective close associates as would be required to be disclosed under rule 11.04 as if each of them was a controlling shareholder; and
- (16) any additional information requested by the Exchange.



## **Annual reports**

20.69 The listed issuer's annual report must contain the following information on the connected transactions conducted in that financial year (including continuing connected transactions under agreements signed in previous years):

- (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;
- (5) the nature of the connected person's interest in the transaction; and
- (6) for continuing connected transactions,
  - (a) a confirmation from the listed issuer's independent non-executive directors on the matters set out in rule 20.53; and
  - (b) a statement from the listed issuer's board of directors whether the auditors have confirmed the matters set out in rule 20.54.

20.70 When the listed issuer discloses in its annual report information of any related party transaction under the accounting standards for preparing its financial statements, it must specify whether the transaction is a connected transaction under this Chapter and whether it has complied with the requirements in this Chapter.

## **Exemptions**

20.71 Exemptions from the connected transaction requirements are available for the following types of transactions:

- (1) de minimis transactions (rule 20.74);
- (2) financial assistance (rules 20.85 to 20.89);
- (3) issues of new securities by the listed issuer or its subsidiary (rule 20.90);
- (4) dealings in securities on stock exchanges (rule 20.91);
- (5) repurchases of securities by the listed issuer or its subsidiary (rule 20.92);
- (6) directors' service contracts and insurance (rules 20.93 and 20.94);
- (7) buying or selling of consumer goods or services (rule 20.95);
- (8) sharing of administrative services (rule 20.96);
- (9) transactions with associates of passive investors (rules 20.97 and 20.98); and
- (10) transactions with connected persons at the subsidiary level (rule 20.99).

20.72 The exemptions are broadly divided into two categories: (1) fully exempt from shareholders' approval, annual review and all disclosure requirements; and (2) exempt from shareholders' approval requirement.

20.73 The Exchange has the power to specify that an exemption will not apply to a particular transaction.

#### **De minimis transactions**

20.74 This exemption applies to a connected transaction (other than an issue of new securities by the listed issuer) conducted on normal commercial terms or better as follows:

- (1) The transaction is fully exempt if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 0.1%;
  - (b) less than 1% and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level; or
  - (c) less than 5% and the total consideration (or in the case of any financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$3,000,000.
- (2) The transaction is exempt from the circular (including independent financial advice) and shareholders' approval requirements if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 5%; or
  - (b) less than 25% and the total consideration (or in the case of any financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$10,000,000.

#### *Percentage ratio calculations*

20.75 The methods of percentage ratio calculations set out in Chapter 19 (notifiable transactions) also apply to connected transactions in this Chapter subject to the modifications described in rules 20.76 to 20.77.

20.76 For continuing connected transactions, the listed issuer must calculate the assets ratio, revenue ratio and consideration ratio using the cap as the numerator. If the agreement for the transaction covers over one year, the transaction will be classified based on the largest cap during the term of the agreement.

20.77 The following applies when calculating percentage ratios for connected transactions involving options:

- (1) if the listed issuer's group grants an option to a connected person and the listed issuer's group does not have discretion to exercise the option, it is classified as if the option has been exercised. The percentage ratios are calculated based on the consideration for the transaction (which includes the premium and the exercise price of the option), the value of the underlying assets, and the revenue attributable to the assets (See rule 20.59 for the disclosure requirement when the option holder exercises or transfers the option, or when the option expires);
- (2) if the listed issuer's group acquires or accepts an option granted by a connected person where the listed issuer's group has discretion to exercise the option, it is classified based on the amount of the premium payable by the listed issuer's group. However, if the premium represents 10% or more of the sum of the premium and the exercise price, the transaction will be classified as if the option has been exercised (see rule 20.77(1));
- (3) if the listed issuer's group exercises an option granted by a connected person, it is classified based on the exercise price, the value of the underlying assets, and the revenue attributable to the assets. If the option is exercised in stages, the Exchange may require aggregation of the transactions;
- (4) if the listed issuer's group transfers an option granted by a connected person to a third party, terminates the option or decides not to exercise the option:
  - (a) the listed issuer must classify the transaction as if the option has been exercised. The percentage ratios are calculated based on the exercise price, the value of the underlying assets, and the revenue attributable to the assets, and (if applicable) the consideration for transferring the option, or the amount receivable or payable by the listed issuer's group for terminating the option; or
  - (b) the Exchange may allow the listed issuer to disregard the percentage ratios calculated under paragraph (a) above and to classify the transaction using the asset and consideration ratios calculated based on the higher of:
    - (i) (for a put option held by the listed issuer's group) the exercise price over the value of the assets subject to the option, or (for a call option held by the listed issuer's group) the value of the assets subject to the option over the exercise price; and
    - (ii) the consideration or amount payable or receivable by the listed issuer's group.

These alternative tests would be allowed only if the assets' valuation is provided by an independent expert using generally acceptable methodologies, and the listed issuer's independent non-executive directors and an independent financial adviser have confirmed that the transfer, termination or non-exercise of the option is fair and reasonable and in the interests of the listed issuer and its shareholders as a whole. The listed issuer must announce the transfer, termination or non-exercise of the option with the views of the independent non-executive directors and the independent financial adviser; and

- (5) if the actual monetary value of the premium, the exercise price, the value of the underlying assets and the revenue attributable to the assets have not been determined when the listed issuer's group grants or acquires or accepts the option:
- (a) the listed issuer must demonstrate the highest possible monetary value for calculating the percentage ratios and classifying the transaction. If the listed issuer is unable to do so, it may be required to comply with all the connected transaction requirements for the transaction; and
  - (b) the listed issuer must inform the Exchange when the actual monetary value has been determined. If the transaction falls under a higher classification based on the actual monetary value, the listed issuer must as soon as reasonably practicable announce this fact and comply with the requirements applicable to the higher classification.

*Note: The requirements in this rule are the same as the requirements applicable to options under Chapter 19 (notifiable transactions), except that*

- 1. Under Chapter 19, the listed issuer may, at the time of the listed issuer's group acquiring or accepting an option granted by a third party, seek shareholders' approval for its exercise of the option in the future. This is not allowed under this Chapter.*
- 2. Under Chapter 19, transfer or termination of an option by the listed issuer's group is a transaction which is classified based on the consideration for transferring the option or the amount receivable or payable by the listed issuer's group for terminating the option. Under this Chapter, the transfer or termination is classified as if the option is exercised or based on the alternative tests set out in rule 20.77(4)(b).*
- 3. Under Chapter 19, non-exercise of an option is not a transaction. Under this Chapter, the non-exercise is classified as if the option is exercised or based on the alternative tests set out in rule 20.77(4)(b).*

#### *Exception to percentage ratio calculations*

20.78 If any calculation of the percentage ratio produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, the listed issuer may apply to the Exchange to disregard the calculation and/or apply other relevant indicators of size, including industry specific tests. The listed issuer must seek prior consent of the Exchange if it wishes to apply this rule and must provide alternative test(s) which it considers appropriate to the Exchange for consideration. The Exchange may also require the listed issuer to apply other size test(s) that the Exchange considers appropriate.

#### *Aggregation of transactions*

20.79 The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all entered into or completed within a 12-month period or are otherwise related. The listed issuer must comply with the applicable connected transaction requirements based on the classification of the connected transactions when aggregated. The aggregation period will cover 24 months if the connected transactions are a series of acquisitions of assets being aggregated which may constitute a reverse takeover.

- 20.80 Factors that the Exchange will consider for aggregation of a series of connected transactions include whether:
- (1) they are entered into by the listed issuer's group with the same party, or parties who are connected with one another;
  - (2) they involve the acquisition or disposal of parts of one asset, or securities or interests in a company or group of companies; or
  - (3) they together lead to substantial involvement by the listed issuer's group in a new business activity.
- 20.81 The Exchange may aggregate all continuing connected transactions with a connected person.
- 20.82 A listed issuer must consult the Exchange before the listed issuer's group enters into any connected transaction if:
- (1) the transaction and any other connected transactions entered into or completed by the listed issuer's group in the last 12 months fall under any of the circumstances described in rule 20.80; or
  - (2) the transaction and any other transactions entered into by the listed issuer's group involve the acquisition of assets from a person or group of persons or any of their associates within 24 months after the person(s) gain control (as defined in the Takeovers Code) of the listed issuer.
- 20.83 The listed issuer must provide information to the Exchange on whether it should aggregate the transactions.
- 20.84 The Exchange may aggregate a listed issuer's connected transactions even if the listed issuer has not consulted the Exchange.

### **Financial assistance**

#### *Financial assistance provided by the listed issuer's group*

- 20.85 For any financial assistance provided by a banking company in its ordinary and usual course of business to a connected person or commonly held entity:
- (1) the transaction is fully exempt if it is conducted on normal commercial terms or better;
  - (2) the transaction is fully exempt if it is not conducted on normal commercial terms or better but all the percentage ratios (other than the profits ratio) are:
    - (a) less than 0.1%;
    - (b) less than 1% and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level; or
    - (c) less than 5% and the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity is less than HK\$3,000,000; or

- (3) the transaction is exempt from the circular, independent financial advice and shareholders' approval requirements if it is not conducted on normal commercial terms or better but all the percentage ratios (other than the profits ratio) are:
- (a) less than 5%; or
  - (b) less than 25% and the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity is less than HK\$10,000,000.

20.86 A "banking company" is a listed issuer or its subsidiary which is 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.

20.87 Financial assistance provided by a listed issuer's group to a connected person or commonly held entity is fully exempt if it is conducted:

- (1) on normal commercial terms or better; and
- (2) in proportion to the equity interest directly held by the listed issuer or its subsidiary in the connected person or the commonly held entity. Any guarantee given by the listed issuer's group must be on a several (and not a joint and several) basis.

*Financial assistance received by the listed issuer's group*

20.88 Financial assistance received by a listed issuer's group from a connected person or commonly held entity is fully exempt if:

- (1) it is conducted on normal commercial terms or better; and
- (2) it is not secured by the assets of the listed issuer's group.

*The listed issuer's group providing an indemnity for a director*

20.89 Providing an indemnity for a director of the listed issuer or its subsidiaries is fully exempt if:

- (1) the indemnity is for liabilities that may be incurred in the course of the director performing his duties; and
- (2) the indemnity is in a form permitted under the laws of Hong Kong and where the company providing the indemnity is incorporated outside Hong Kong, the laws of the company's place of incorporation.

### **Issues of new securities by the listed issuer or its subsidiary**

20.90 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
  - (a) through excess application (see rule 10.31(1) or 10.42(1)); or
  - (b) [Repealed 3 July 2018]
- (3) the securities are issued to the connected person under:
  - (a) a share option scheme that complies with Chapter 23; or
  - (b) a share option scheme adopted by the listed issuer before its securities first start dealing on the Exchange, and where the Exchange has approved the listing of the securities to be issued under the scheme; or
- (4) the securities are issued under a “top-up placing and subscription” that meets the following conditions:
  - (a) the new securities are issued to the connected person:
    - (i) after it has reduced its holding in the same class of securities by placing them to third parties who are not its associates under a placing agreement; and
    - (ii) within 14 days from the date of the placing agreement;
  - (b) the number of new securities issued to the connected person does not exceed the number of securities placed by it; and
  - (c) the new securities are issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.

*Note: An issue of new securities by a subsidiary of the listed issuer may be exempt as a de minimis transaction.*

### **Dealings in securities on stock exchanges**

20.91 Dealing in securities of a target company (i.e. a connected transaction described in rule 20.26) by the listed issuer's group is fully exempt if it meets the following conditions:

- (1) the dealing in the securities is conducted as part of the ordinary and usual course of business of the listed issuer's group;
- (2) the securities are listed on the Exchange or a recognised stock exchange;
- (3) the dealing is carried out on the Exchange or a recognised stock exchange, or if not, no consideration passes to or from a connected person; and
- (4) the transaction is not made for the purpose of conferring a direct or indirect benefit upon any connected person who is a substantial shareholder of the target company.

### **Repurchases of securities by the listed issuer or its subsidiary**

20.92 Repurchases of own securities by a listed issuer or its subsidiary from a connected person is fully exempt if it is made:

- (1) on the Exchange or a recognised stock exchange, except where the connected person knowingly sells the securities to the listed issuer's group; or
- (2) in a general offer made under the Code on Share Buy-backs.

### **Directors' service contracts and insurance**

20.93 A director entering into a service contract with the listed issuer or its subsidiary is fully exempt.

20.94 Purchase and maintenance of insurance for a director of the listed issuer or its subsidiaries against liabilities to third parties that may be incurred in the course of performing his duties are fully exempt if it is in the form permitted under the laws of Hong Kong and where the company purchasing the insurance is incorporated outside Hong Kong, the laws of the company's place of incorporation.

### **Buying or selling of consumer goods or services**

20.95 A listed issuer's group buying consumer goods or services as a customer from, or selling consumer goods or services to, a connected person on normal commercial terms or better in its ordinary and usual course of business is fully exempt if it meets the following conditions:

- (1) the goods or services must be of a type ordinarily supplied for private use or consumption;
- (2) they must be for the buyer's own consumption or use, and not be:
  - (a) processed into the buyer's products, or for resale; or
  - (b) used by the buyer for any of its businesses or contemplated businesses. This condition does not apply if the listed issuer's group is the buyer and there is an open market and transparency in the pricing of the goods or services;



- (3) they must be consumed or used by the buyer in the same state as when they were bought; and
- (4) the transaction must be made on no more favourable terms to the connected person, or no less favourable terms to the listed issuer's group, than those available from independent third parties.

*Note: Examples of consumer goods and services are:*

- (1) *Meals consumed by a director at a restaurant owned by the listed issuer's group.*
- (2) *A director buying groceries for his own use at a retail store operated by the listed issuer's group.*
- (3) *Utilities provided by the listed issuer's group to a director's apartment.*
- (4) *Utilities provided by a connected person to the listed issuer's group where the prices are published or publicly quoted and apply to other independent consumers.*

### **Sharing of administrative services**

20.96 Administrative services shared between the listed issuer's group and a connected person on a cost basis are fully exempt, provided that the costs are identifiable and are allocated to the parties involved on a fair and equitable basis.

*Note: Examples of shared administrative services are shared secretarial, legal and staff training services.*

### **Transactions with associates of passive investors**

20.97 A connected transaction conducted between the listed issuer's group and an associate of a passive investor is fully exempt if it meets the following conditions:

- (1) the passive investor is a connected person only because it is a substantial shareholder of the listed issuer and/or any of its subsidiaries;
- (2) the passive investor
  - (a) is not a controlling shareholder of the listed issuer or its subsidiaries;
  - (b) does not have any representative on the board of directors of the listed issuer or its subsidiaries, and is not involved in the management of the listed issuer's group (including having any influence over the management of the listed issuer's group through negative control (e.g. its veto rights) on material matters of the listed issuer's group);
  - (c) is independent of the directors, chief executive, controlling shareholder(s) and any other substantial shareholder(s) of the listed issuer or its subsidiaries; and
- (3) the transaction is of a revenue nature in the ordinary and usual course of business of the listed issuer's group, and conducted on normal commercial terms or better.

20.98 A “passive investor” is a substantial shareholder of the listed issuer and/or any of its subsidiaries that:

- (1) is a sovereign fund, or a unit trust or mutual fund authorised by the Securities and Futures Commission or an appropriate overseas authority; and
- (2) has a wide spread of investments other than the securities of the listed issuer’s group and the associate that enters into the transaction with the listed issuer’s group.

#### **Transactions with connected persons at the subsidiary level**

20.99 A connected transaction between the listed issuer’s group and a connected person at the subsidiary level on normal commercial terms or better is exempt from the circular, independent financial advice and shareholders’ approval requirements if:

- (1) the listed issuer’s board of directors have approved the transactions; and
- (2) the independent non-executive directors have confirmed that the terms of the transaction are fair and reasonable, the transaction is on normal commercial terms or better and in the interests of the listed issuer and its shareholders as a whole.

*Note: In the case of formation of a joint venture by a qualified issuer and a qualified connected person to make a qualified property acquisition, the qualified issuer must announce the transaction as soon as practicable after receiving notification of the success of the bid by the joint venture. If any details of the acquisitions or the joint venture required to be disclosed are not available when the qualified issuer publishes the initial announcement, it must publish subsequent announcement(s) to disclose the details as soon as practicable after they have been agreed or finalized.*

#### **Waivers**

20.100 The Exchange may waive any requirements under this Chapter in individual cases, subject to any conditions that it may impose.

#### **Transactions relating to non-executive directors**

20.101 The Exchange may waive all or some of the connected transaction requirements for a connected transaction with a non-executive director of the listed issuer or its subsidiaries if:

- (1) the transaction is connected only because of the interest of a non-executive director; and
- (2) the director does not control the listed issuer’s group, and his principal business interest is not the listed issuer’s group.

Where a waiver is granted from the shareholders’ approval requirement under this rule, the Exchange may require the listed issuer’s auditor or an acceptable financial adviser to give the opinion that the transaction is fair and reasonable to the shareholders as a whole.

**Provision of guarantees to connected subsidiaries or commonly held entities  
for public sector contracts awarded by tender**

20.102 The Exchange may waive all or some of the connected transaction requirements for a joint and several guarantee or indemnity provided by the listed issuer's group to a third party creditor for the obligations of a connected subsidiary or a commonly held entity if:

- (1) the guarantee or indemnity is required for a government or public sector contract awarded by tender;
- (2) each of the other shareholders of the connected subsidiary or commonly held entity has given a similar joint and several guarantee or indemnity to the third party creditor; and
- (3) each of the other shareholders of the connected subsidiary or commonly held entity has agreed to indemnify the listed issuer's group for the liability guaranteed, or indemnified at least in proportion to its equity interest in the subsidiary or entity. The listed issuer must demonstrate that such shareholder indemnity is sufficient.

**Continuing connected transactions of new applicants**

20.103 The Exchange may waive the announcement, circular and shareholders' approval requirements for continuing connected transactions entered into by a new applicant or its subsidiaries. The new applicant must disclose in the listing document its sponsor's opinion on whether the transactions are in the ordinary and usual course of business of the listed issuer's group, on normal commercial terms or better, are fair and reasonable and in the interests of the shareholders as a whole.