Asian Roundtable
Task Force on
Related Party Transactions

Introduction: What is the context?
Ms. Jennifer Lee, Securities and Futures Commission, Hong Kong

Manila, 5-6 February 2009
Related Party Transactions

5 February 2009

Jennifer Lee
Associate Director, Corporate Finance
Securities and Futures Commission
Overview

- Definitions
  - Related Parties
  - Associates
  - Related Party Transactions

- What are the requirements

- What are the thresholds

- Thresholds and requirements

- Issues under consideration
Related Parties

- Director, chief executive or substantial shareholder of the issuer or any of its subsidiaries
- Director within the preceding 12 months of the issuer or any of its subsidiaries
- Promoter and supervisor of a PRC issuer

Associates
Associates – where the related party is an Individual

Great-grandparents
- Great-grandfather
- Great-grandmother

Grandparents
- Great-aunt
- Great-uncle
- Grand-father
- Grand-mother

Parents
- Uncle
- Aunt
- Mother
- Father
- Mother-in-law
- Father-in-law

Children
- Cousin
- Cousin
- Sister-in-law
- Brother (and step-brother)
- Sister (and step-sister)

Grand-children

Great-grandchildren

M = is married to

Close family

“Deemed associates” where their association with the connected person is such that, in the Exchange’s opinion, the transaction should be subject to the connected transaction provisions

- Mother-in-law
- Spouse
- Brother-in-law/Sister-in-law
- Daughter-in-law
- Grandson
- Granddaughter
- Great-grandson
- Great-granddaughter

- Mother
- Father
- Uncle
- Aunt
- Brother-in-law/Sister-in-law
- Cousin
- Cousin
- Sister-in-law
- Brother (and step-brother)
- Sister (and step-sister)
- Nephew
- Niece
- Son-in-law
- Daughter (and Step-daughter)
- Son (and Step-son)
- Daughter-in-law
- Grandson
- Granddaughter
- Great-grandson
- Great-granddaughter
Associates – where the related party is an Individual

“Individual” refers to directors, chief executive, substantial shareholders of a listed issuer and its subsidiaries

Note 1: Individual or any of the Family interest is a beneficiary of the Trust or, in the case of a discretionary trust, is a discretionary object. For this purpose, interest of the Individual and his Family interest include all beneficial interest directly or indirectly held (e.g. a company beneficially controlled by the Individual, which is the beneficiary of a trust).

Note 1: Together hold >30% or control board composition
Associates – where the related party is a Corporation

"Corporation" refers to substantial shareholders of a listed issuer and its subsidiaries

Note 1: The Corporation is a beneficiary of the Trust or, in the case of a discretionary trust, is a discretionary object. For this purpose, interest of the Corporation include its subsidiaries (e.g. a subsidiary of the Corporation, which is the beneficiary of a trust).
Related Party Transactions

A transaction between an issuer or any of its subsidiaries and a related party

- **One-off nature**
  - Acquisition or disposal of assets
  - Writing, accepting, transferring, exercising or terminating an option to acquire or dispose of assets or to subscribe for securities
  - Entering into or terminating finance or operating leases
  - Granting an indemnity or a guarantee or providing financial assistance
Related Party Transactions

- Forming a joint venture, partnership or other joint arrangement
- Issuing new securities

- **Continuing nature**
  - Provision or receipt of services
  - Sharing of services
  - Supply or purchase of raw materials, intermediate products and finished goods
**What are the requirements**

- **Reporting**
  - report details of the connected transaction in the annual report

- **Announcement**
  - publish an announcement as soon as practicable after entering into the transaction

- **Independent shareholders’ approval**
  - issue a circular to shareholders
  - appoint an independent financial adviser to advise independent shareholders as to whether the terms of the transaction are fair and reasonable
  - convene a shareholders’ meeting to obtain the approval from independent shareholders
  - any shareholder with a material interest needs to abstain
  - any vote must be taken by poll
What are the requirements

- **Additional requirements on continuing related party transactions**
  - the agreement must not exceed 3 years
  - must specify an annual cap
  - annual review by independent non-executive directors
  - annual confirmation by auditors
What are the thresholds

Size tests

- Assets test
- Consideration test
- Revenue test
- Equity capital test
Thresholds and requirements

- De minimis (if <HK$1m)
  - OR
  - Reporting and announcement
- Reporting and announcement (if <HK$10m)
  - OR
  - Independent shareholders’ approval

- Independent shareholders’ approval

Threshholds: 0.1% 2.5% 25%
Issues under consideration

- Whether all transactions of a revenue nature in the ordinary and usual course of the listed issuer should be excluded from the definition of the transaction

- Whether a transaction which is only related because the party involved is a director or substantial shareholder of an insignificant subsidiary (e.g. representing less than 10% of the profits/assets of the listed issuer)

- Any views
Thank you