

TRICOR SEMINAR 2009 QUESTIONS FOR THE SPEAKERS

Q1) Relating to the Proposed Changes to the Connected Transaction Rules

In relation to the proposed changes to the Connected Transaction Rules, revisiting whether "connected person" should include a person connected at the subsidiary level.

Does it mean, any transactions between for example, a subsidiary of a listed issuer and the subsidiary's substantial shareholder, do not constitute connected transactions anymore, if the change of definition of "connected person" is adopted?

Answer

One of the proposals of the Exchange's "Consultation Paper on Proposed Changes to the Connected Transaction Rules" (the "Consultation Paper") issued in October 2009 is to revisit whether the definition of connected person should include a person connected at the subsidiary level; or alternatively whether to provide an exemption for the person who is connected only by virtue of his relationship with a subsidiary whose size is "insignificant" to the issuer. The issues and proposed amendments to the Listing Rules are set out in the Consultation Paper for comments by the public. Interested parties and practitioners are invited to submit written comments to the issues and proposals set out in the Consultation Paper no later than 2 December 2009. The final conclusions on the proposals of the Consultation Paper will be issued after careful consideration and analysis of all responses received.

Q2) Relating to Disclosing Price Sensitive Information

How to handle the questions in the AGM to avoid disclose price sensitive information?

Answer

The primary disclosure obligations of listed issuers are laid down in Main Board Listing Rule 13.09(1) (GEM Rule 17.10) and supplemented by its notes. Listed issuers should keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group of the issuer (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:

- (a) is necessary to enable them and the public to appraise the position of the group; or
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

Information should not be divulged outside the issuer and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons. Information should not be released in such a way that Exchange transactions may be entered into at prices which do not reflect the latest available information. There should be appropriate mechanisms in place to ensure timely disclosure without selective or uneven dissemination of price sensitive information.

Issuers and their directors and management are advised to refer to various guidance materials in respect of disclosure of price sensitive information released by the Exchange from time to time and to consult the Exchange should they have any enquiry in this matter.

Q3) Relating to PRC Tax Residency

(i) How to implement in PRC?

Answer

This issue may be raised by the tax authorities on a case by case basis. The general principle is to look at substance and may be judged on a totality of facts basis.

(ii) If PRC companies distribute dividend to HK company A, does PRC company still keep the withholding tax?

Answer

If the HK Company is recognized as a PRC tax resident, dividend derived from PRC companies should theoretically exempt from PRC withholding tax.

(iii) Any clear guidance for PRC's authority? Or is it still a grey area?

Answer

The PRC residency concept is a new concept in PRC taxation and there is no clear guideline yet. At the moment, one has to look at each case individually and make a determination based on substance.