

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201304.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

Chapter III: Plain Language Amendments to Connected Transaction Rules

1. Do you support the proposal to re-write Chapter 14A?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

2. Do you consider that the draft new Chapter 14A in Appendix I of the Consultation Paper accurately reflects the current Chapter 14A?

☐ Yes

☐ No

If your answer is "No", please give reasons for your views.

3. Do you have any other comments on the draft Rule amendments in Appendix I of the Consultation Paper?

☐ Yes

☐ No

If your answer is "Yes", please elaborate your views.

Chapter IV: Scope of Connected Persons and Connected Transactions

Part 1 – Scope of connected persons

A. Definition of connected person

A(1) Connected persons at the issuer level

4. Do you agree that there is no need to extend the definition of connected person to the key management personnel of an issuer's controlling shareholder/holding company?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

--

A(2) Connected persons at the subsidiary level

5. Do you support:

- (a) the proposal described in paragraph 90(a) of the Consultation Paper to require transactions with persons connected only at the subsidiary level be subject to the approval of the issuer's board members (including independent non-executive directors) who do not have a material interest in the transaction, instead of the approval of shareholders, and disclosed to the shareholders?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

While we note that certain assumptions are made in paragraph 89 about the likely nature of the 90 transactions conducted in 2011 between subsidiaries and persons connected with those subsidiaries, which may or may not be justified, we consider that as long as there is no connection between, for example, entity "X" in the diagram and the issuer, the proposal is acceptable.
--

- (b) the proposal described in paragraph 90(b) of the Consultation Paper to exempt all transactions between the issuer group and connected persons at the subsidiary level, other than transactions between a subsidiary (or any subsidiary below it) and the person connected with that subsidiary?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

B. The deeming provision

6. Do you agree with the proposal to introduce principle-based tests described in paragraph 95 of the Consultation Paper for deeming a person as connected?

☐ Yes

☒ No

If your answer is "No", please give reasons for your views.

We are of the view that the current general deeming provision, empowering the Exchange "to deem any person to be an issuer's connected person" (paragraph 14A.16 of the draft new Chapter 14A, Appendix 1 to the consultation paper) is sufficiently wide to serve the purpose.

However, if it is considered necessary and appropriate to specify certain additional persons that will be deemed by the Exchange to be connected persons, it would be better and less confusing to adopt similar phraseology to the existing examples in paragraphs 14A.17 and 14A.18.

Furthermore, we would recommend that if the persons specified in the first bullet point in paragraph 95 of the consultation paper, i.e., "shadow director or de facto controlling shareholder of the issuer", are to be given as examples of persons that will be deemed to be connected persons, they should be more clearly defined. In addition, the test that will be adopted by the Exchange for assessing whether a person is accustomed to acting according to a connected person's directions or instructions, should also be indicated, in order to provide clarity and facilitate better understanding of the connected transaction rules, which is one of the objectives of rewriting Chapter 14A.

C. Exceptions to the definition of connected person

C(1) Insignificant subsidiary exemption (if persons connected at the subsidiary level are not excluded from the definition of connected person)

7. Do you agree with the proposal described in paragraph 100 of the Consultation Paper to exempt all persons connected only because of its relationship with the issuer's insignificant subsidiaries?

☒ Yes

☐ No

If your answer is "No", please give reasons for your reviews.

--

C(2) Exemption for trustee interests

8. Do you agree with the proposal described in paragraph 105 of the Consultation Paper to exclude from the definition of associate any trustee of an employee share scheme or occupational pension scheme if the connected persons' interests in the scheme are less than 10%?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

--

C(3) Exemption for connected person holding an interest in an associate through the issuer

9. Do you agree with the proposal described in paragraph 110 of the Consultation Paper to clarify that the exemption in Note 1 to Rule 14A.11(4) (paragraph 9 of the Guide) would apply if the connected person and his associate's interests in the entity (other than those held through the issuer) are less than 10%?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

Part 2 – Scope of connected transactions

D. Financing arrangements with a commonly held entity

10. Do you agree that we should retain the connected transaction requirements for financing arrangements with commonly held entities?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

E. Buying or selling interests in a target company

11. Do you agree with the proposal described in paragraph 131(a) of the Consultation Paper to restrict Paragraph (i) of Rule 14A.13(1)(b) (paragraphs 27 to 29 of the Guide) to transactions involving controllers at the issuer level?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

12. Do you agree with the proposal described in paragraph 131(b) of the Consultation Paper to exclude disposals of interests in target companies from Paragraph (i) of Rule 14A.13(1)(b) (paragraphs 27 to 29 of the Guide)?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

However, we recommend that, rather than having to apply the deeming provision, which may give rise to uncertainty in the market, the Exchange should consider retaining a third party transaction with a listed issuer as a connected transaction if the third party has entered, or proposes to enter, into any agreement or arrangement with a connected person with respect to his/its transaction with the issuer.

13. Do you agree with the proposal described in paragraph 131(c) of the Consultation Paper to remove Paragraphs (ii) to (iv) of Rule 14A.13(1)(b) (paragraphs 31 and 32 of the Guide)?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

Chapter V: Connected Transaction Requirements

F. Compliance framework for continuing connected transactions ("CCTs")

14. Do you consider that information provided to shareholders regarding CCTs conducted under framework agreements contains sufficient specificity, in particular as to the methods or procedures to determine pricing for investors to make informed decisions?

☒ Yes

☐ No

If your answer is "No", please also state the information that you consider should be disclosed in announcements and circulars.

Please give reasons for your views.

We consider that it is important to strike a balance between the level of transparency and disclosure of detailed terms about the transactions which may be commercially sensitive, disclosure of which could be detrimental to the business/operation of the issuer. We are of the view that the information currently disclosed by listed issuers in relation to the methods or procedures to determine pricing (e.g., on normal commercial terms, at market price, on a "cost plus" basis, at a certain percent discount to the average wholesale price, etc.) could benefit from some additional information on how the relevant benchmarks have been determined in individual cases. However, given that there are other conditions and safeguards provided in the Listing Rules to protect the interest of shareholders, disclosure of the detailed terms of transactions may not be necessary.

15. Do you consider that the current Rules governing CCTs and market practice in relation to CCTs that are conducted under framework agreements are appropriate? Do they provide sufficient safeguards to ensure that the transactions will be on normal commercial terms and will not be prejudicial to the interests of the issuers and its minority shareholders?

☒ Yes

☐ No

Please give reasons for your views.

See the answer to question 14 above.

F(1) Written agreements

16. Do you agree with the proposal to codify the waiver practice to allow an issuer to obtain a shareholders' mandate (or a mandate from the board if the transactions is exempt from the shareholder approval requirement) in lieu of a framework agreement with the connected person?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

17. If your answer to Question 16 is 'Yes':

- (a) Do you agree to limit the mandate period to not more than 3 years?

☐ Yes

☒ No

If your answer is "No", please give reasons for your views.

We consider that three years could be an indicator under normal circumstance. The Exchange should be open and flexible in considering an issuer's request, supported by reasonable grounds and justifications, for a longer mandate period, taking into consideration the nature of the issuer's industry and the subject of the transaction. For instance, we suggest that capital intensive types of transactions could allow for a longer mandate period, which could, say, take account of the life of the asset for depreciation purposes.

(b) Do you agree with the waiver conditions described in paragraph 151 of the Consultation Paper?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

F(2) Annual cap

18. Do you support the proposal to allow the cap for a CCT of a revenue nature be expressed a percentage of the issuer's annual revenue or other financial items in its published audited accounts?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

F(3) Auditors' confirmation letter

19. Do you support the proposal described in paragraph 161 of the Consultation Paper to modify the Rules relating to auditors' confirmation on CCTs in line with PN 740?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

G. Requirements for connected transactions involving option arrangements

G(1) Transfer or non-exercise of option

20. Do you agree with the proposed alternative classification Rules for any transfer or non-exercise of an option?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

G(2) Termination of option

21. For any termination of an option involving a connected person:

- (a) Do you agree with the proposal described in paragraph 170 of the Consultation Paper to classify the termination as if the option is exercised unless the issuer has no discretion over the termination?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

- (b) Do you agree that the proposed alternative classification Rules described in paragraph 166 of the Consultation Paper should also apply to the termination?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

H. Minor changes to clarify the requirements relating to independent advice on connected transactions

22. Do you agree with the proposed Rule change to clarify that the independent board committee also needs to advise whether the connected transaction is on normal commercial terms and in the issuer's ordinary and usual course of business?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

Chapter VI: Exemptions for Connected Transactions

I. De minimis exemptions

23. Do you agree that we should retain the monetary limit of HK\$1 million for fully exempt connected transactions?

☐ Yes

☒ No

If your answer is "No", do you think that the limit should be increased to HK\$2 million, HK\$3 million, HK\$4 million, HK\$5 million, or some other amount (*please specify with reasons*)?

☒ HK\$2 million

☐ HK\$3 million

☐ HK\$4 million

☐ HK\$5 million

☐ Other amount (*please specify*):

Please give reasons for your views.

We consider that it is not unreasonable to increase the monetary limit from HK\$1 million to HK\$2 million, in view of the fact that the former amount has been in place for more than 10 years.

24. Do you agree that we should retain the monetary limit of HK\$10 million for connected transactions exempt from the shareholder approval requirements?

☒ Yes

☐ No. The appropriate limit should be (*please specify*):

Please give reasons for your views.

J. Exemption for provision of consumer goods or services

25. Do you support the proposal described in paragraph 181 of the Consultation Paper to remove the 1% cap on transaction value for the exemption for provision or receipt of consumer goods or services?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

K. Exemption for provision of director's indemnity

26. Do you agree with the proposal described in paragraph 183 of the Consultation Paper to exempt an issuer granting indemnity to a director against liabilities that may be incurred in the course of the director performing his duties, if it does not contravene any law of the issuer's place of incorporation?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

27. Do you agree with the proposal described in paragraph 186 of the Consultation Paper to exempt an issuer purchasing and maintaining insurance for a director against liabilities to third parties that may be incurred in the course of performing his duties, if it does not contravene any law of the issuer's place of incorporation?

☒ Yes

☐ No

If your answer is "No", please give reasons for your views.

--

28. Do you have any other comments or suggestions relating to the connected transaction Rules?

☐ Yes

☒ No

If your answer is "Yes", please elaborate your views.

--

- End -