

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 -- *We agree to this proposal. However we would like to point out our observation that in the drafting of the rule 14A.101A, the amendment that transactions with persons connected only at the subsidiary level can be approved by the issuer’s board and disclosure in lieu of independent shareholder approval is not properly spelled out. We suggest this this amendment be clearly addressed in the drafting of the rule.*

☐

No

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

- (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.

We are of the view that exemptions should also be applied to transactions between a subsidiary (or any subsidiary below it) and the person connected with that subsidiary. As indicated in the Consultation Paper, we do not have a large number of such transactions and most of them are conducted on normal commercial terms and are part of the concerned entity's normal business. As such, these transactions shall only need the approval of the issuer's board members and proper disclosure, instead of the shareholders' approval.

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 – *We do not oppose to having principal-based tests for the deeming provisions but thought that whom it will cover need further clarification as what would cause someone to be a "de facto" controlling shareholder is not clear to us. The consultation paper gives one example and that is "holder of a substantial amount of convertible bonds". But apart from this, we see few other cases where one is neither legally nor beneficially interested but still could be deemed connected. More guidance should be provided in this respect rather than leaving it vague. At the same time, we noted that under the Takeovers Code, convertible bonds are not counted as interested shares. Note 10 to Rule 26.1 says "In general, the acquisition of convertible securities, warrants or options does not give rise to an obligation under this Rule 26 to make an offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of voting rights for the purpose of this Rule 26." This is apparently different from the concept for the convertible holders as stated in the consultation paper. This might result in inconsistencies in interpretation.*

☐ No

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

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 - *We agree to retain the requirements as proposed but would like to make one point. In paragraph 123 of the consultation paper, the diagram there illustrates a "commonly held entity" as a company in which the issuer holds "any shareholding" and a connected person at the issuer level controlling more than 10% of the voting power. We think that "any shareholding" is too strict and suggest adopting the common 10% shareholding threshold for a company to be regarded as a "commonly held entity".*

☐ 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.

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 -- *We think the current framework agreement provides sufficient information. As the written agreements carry a duration of up to 3 years, having information that is too much or too specific is impractical as the terms of the actual transactions may vary according to changes in market conditions.*

☐ 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.

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 -- *Under the framework agreement, individual transactions still require shareholders' approval and the review and confirmation of its fairness by independent directors and independent auditors. The possibility of abuse is limited.*

☐ No

Please give reasons for your views.

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.

(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 -- *Separately, we suggest to amend Rule 14A.70(3) to follow the arrangement under Rule 14.75 so that non-exercise of a right of first refusal under a non-competition agreement between a listed holding company and a spin-off listed subsidiary ("New Co") will not be treated as if an option was exercised by the New Co.*

In some instances where a listed holding company spin-off a New Co, a non-competition agreement will be entered into between the two listed companies such that the holding company would undertake to offer a right of first refusal to the New Co before it engages or takes up certain type of business opportunity. It may be too onerous to treat this type of pre-emptive rights as 'option' under Chapter 14A and requires the New Co to comply with the disclosure requirements (including seeking shareholders' approval) in every event when its board of directors for commercial reasons does not consider the business opportunity attractive and decides not to exercise such right of first refusal under the non-competition agreement. In an extreme case where a holding company offers ten business opportunities to the New Co in a year pursuant to the non-competition agreement, all of which are of a size exceeding the New Co's financial availability and the board of the New Co decides not to take up the opportunities, the New Co may still have to seek independent shareholders' approval at general meetings for all the ten occasions in a year under the current Rule 14A.70(3). This could be very onerous, costly and may not be to the

benefit of the shareholders of the New Co as a whole. We request the Exchange to consider making certain provisions or exemptions for this kind of non-compete business options and have them carved out from the Connected Transactions rules or to synchronize Rule 14A.70 with Rule 14.75 .

☐ 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.

The \$1 million threshold was fixed a long time ago and has not been reviewed ever since. Considering the expansion of our scale of economy and increased complexities of transactions, adjusting it upwards is only fair.

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*): **HK\$50 million**

Please give reasons for your views.

This would be in proportion to the raising to HK\$5 million for fully exempt connected transactions.

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 -