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Dear Sirs

- (1) **Consultation Paper on Review of Connected Transaction Rules (CT Consultation Paper)**
- (2) **Consultation Paper on Proposed Changes to Align the Definitions of Connected Person and Associate in the Listing Rules (CT Definition Consultation Paper)**

1. Overview

We refer to the CT Consultation Paper and CT Definition Consultation Paper issued by The Stock Exchange of Hong Kong Limited (**Stock Exchange**) in April 2013. We consider that the proposals are good and useful initiatives and we appreciate the effort of the Stock Exchange to improve the connected transactions regulatory framework. Please see below our specific comments on some of the proposals for your consideration.

2. CT CONSULTATION PAPER

Subject to our comments below, we generally agree with the proposals contained in the CT Consultation Paper to simplify and refine the connected transactions rules and address irregularities.

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2.1 Specific Comments to the Consultation Questions

2.1.1 Our comments regarding principle-based approach to “connected person” (Questions 5, 6 and 7):

We agree with the Stock Exchange’s proposal to relax the rules so that compliance requirement regarding transaction with connected person solely at subsidiary level can be simplified. We believe that in most cases this category of persons is not able to exert influence on listed issuers. On the other hand, the rules must provide a framework where the Stock Exchange will have the residual right to make deeming decision in specific situations.

In any given situation, the most frequently asked question regarding the deeming provision, however, is this: will the Stock Exchange invoke the deeming provision and should the listed issuer consult the Stock Exchange? If it is preferred to do so, when and how this should be done? This brings us to our comments below.

Since connected transactions always involve facts-centric analysis and no rules can claim to cover all factual circumstances, we believe that principle-based tests are the preferred regulatory approach. We believe that for a principle-based approach to work effectively and in a credible manner, it would be helpful if the Stock Exchange could state expressly that listed issuers should always consult it in advance in case of doubt to clarify the basis on which they may proceed with the transactions and thus reducing the risk of taking actions which might constitute a breach of the Rules Governing the Listing of Securities on the Stock Exchange (**Listing Rules or LR**). Besides providing consultation services, the Stock Exchange should also hand down rulings as often as possible regarding when and how does it exercise the deeming provision in actual situations.

2.1.2 Our comments regarding framework agreements (Questions 14 to 16):

In many cases, framework agreements appear to have been created only for the sake of complying with the requirements under the Listing Rules for written agreements. However, the purpose of the rules has to be that continuing connected transactions should not be used as a disguise to unfairly benefit connected persons. The key focus of the regulation therefore should be what needs to be disclosed to the shareholders to form a view as to whether unfair benefit has been so transferred, instead of the form and contents of the framework agreements. Therefore, we support the mandate approach.

We believe that any terms of transaction actually transacted should be reviewed by auditors and independent non-executive directors (as they are now and/or as proposed to be amended by the Stock Exchange) and any transactions which are actually transacted beyond the scope of a mandate would require shareholders’ validation at a general meeting, failing which the transaction could be unwound.

We believe that this could strike a balance between those who claim (rightly) that management should have the right to operate its business on normal course while providing a real sanction for those who fail to meet the corporate governance standard expected. If required, the Stock Exchange could consider introducing mandatory provisions in the Articles of Association to achieve these results.

2.2 Specific comments to the Proposed New Listing Rules

2.2.1 Our comments regarding new LR 14A.07:

Would the Stock Exchange expect to vet whether a particular government entity is “PRC Government Body”? It would be helpful if the Listing Rules can set out the expectation.

2.2.2 Our comments regarding new LR 14A.09(1)(a):

Does “spouse” include “husband-and-wife” relationship only?

2.2.3 Our comments regarding new LR 14A.12:

Substantive comment - Has the Stock Exchange also taken this opportunity to review if the kind of relationship referred to therein should be confined to “PRC issuers only” or should it be applicable despite the place of incorporation of the issuer?

Drafting comment - If it is considered that the rules shall apply to “PRC issuers only”, would the Stock Exchange consider clarifying that new LR 14A.09 to 14A.11 apply to PRC issuers as well and new LR14A.12 applies to PRC issuers in addition to those earlier rules.

2.3 Our comments regarding financial assistance

While a listed banking company extends financial assistance in the ordinary course of its banking business is exempt, is it possible for the Stock Exchange to accept that a listed issuer conducting normal banking transactions (e.g. a bank deposit or obtaining a secured loan) with a connected banking company is also exempt?

3. CT DEFINITION CONSULTATION PAPER

We agree in principle with the proposed re-naming and the proposed re-alignment. Constitutional documents of listed issuers may have adopted definitions of “associate” and “connected person” (as they are defined in Chapter 1 of the Listing Rules). Listed issuers should be reminded to review the implication of these proposed changes on their constitutional documents and the Stock Exchange should allow sufficient time for listed issuers to implement these changes.

If you have any queries, please do not hesitate to contact our [REDACTED].

Yours faithfully

Mayer Brown JSM