

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 (Save and except the proposals to amend certain aspects of the connected transaction Rules as noted in the Consultation Paper.)

☐ 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 also propose some drafting amendments for your consideration in enclosure A.)

☐ 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 (We also propose some drafting amendments for your consideration in enclosure A.)

☐

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.

It is difficult to define the scope of shadow director, de facto controlling shareholder and person who is accustomed to acting according to connected person's directions or instructions. This will unnecessarily widen the scope of connected persons and cause administrative inconvenience on the part of the issuer in identifying the connected persons.

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.

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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.

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Chapter IV: Scope of Connected Persons and Connected Transactions

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 (In addition to retaining the current connected transaction requirements, we believe there should be an exemption for financial assistance provided by the group to a commonly held entity if, notwithstanding that the financial assistance appears to be disproportionate to the equity interest held by the group, such financial assistance corresponds to the de facto interest held by the group in the 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

☐ 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.

Information provided to shareholders includes, among others, pricing guidelines, a range of parameters and proposed annual caps. This provides sufficient specificity so as to allow shareholders to consider whether the transactions are on normal commercial terms.

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.

With respect to current Rules governing CCTs

Current disclosure requirements (which includes disclosure of information including, among others, the basis of calculation of payments to be made, the period of each CCT and the maximum aggregate annual value) are sufficient for shareholders to make an informed decision as to whether the CCTs are on normal commercial terms.

In addition, CCTs are subject to independent shareholders' approval requirements and/or annual review by the independent non-executive directors and the auditors. This will further protect the interests of independent shareholders.

With respect to current market practice

It is suggested to maintain the current market practice of describing pricing guidelines in generic terms since it is easier for shareholders to comprehend.

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.

The mandate period should depend on the nature of contract and be subject to the approval from the independent shareholders or the board (which will include independent non-executive directors), as the case may be. In certain cases, a term longer than 3 years may be reasonable if that is the market standard for such types of contracts.

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

☒ Yes (Save and except the waiver condition in relation to mandate period as explained in the answer to Question 17(a) above.)

☐ 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 (It is suggested that issuers shall be allowed to disclose the cap either in monetary terms or as a percentage of the issuer's annual revenue or other financial items in its published audited accounts, whichever is higher.)

☐ 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.

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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.

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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.

Inflation in Hong Kong should be taken into account. Furthermore, the proposed monetary limit will enable more issuers to benefit from the full exemption.

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\$20 million

Please give reasons for your views.

The proposed monetary limit will enable more issuers to benefit from the exemption from the shareholder approval requirements while maintaining sufficient corporate governance with respect to transactions with materiality.

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 (We also propose some drafting amendments for your consideration in enclosure A.)

☐ 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.

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- End -

Enclosure A

Comments on (and marked up against) the draft rule amendments to Chapter 14A as provided in Appendix II of the Consultation Paper

14A.101A (in response to Question 5(a))

A connected transaction between ~~the group and~~ a connected person at the subsidiary level and the subsidiary (or any of its subsidiaries) which is on normal commercial terms is exempt from the circular (including independent financial advice) and shareholders' approval requirements.

14A.101B (in response to Question 5(b))

A connected transaction between the group and a connected person at the subsidiary level on normal commercial terms is fully exempt if:

~~(1) the transaction is a connected transaction only because of the person's relationship with the issuer's subsidiary/ subsidiaries; and~~

~~(2)~~

~~(1)~~ the subsidiary (or any of its subsidiaries) in which the person is connected is not a party to the transaction.

14A.74 (in response to Question 26)

Exemptions from the connected transaction requirements are available for the following types of transactions:

...

- (6) directors' indemnities, service contracts and insurances (rules 14A.91A, 14A.95 and 14A.95A);
