

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.

We support the proposal but have drafting comments as follows:

While rule 14A.101A of the proposed new Chapter 14A reflects the proposed exemption from the circular (including IFA) and shareholders’ approval requirements, it however does not seem to have set out any express provisions for the new replacement requirements for announcement and board approval from issuer level.

(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 support the proposal as long as the new Rules could provide clear definition on the meaning of “shadow director” and “de facto controlling shareholder”. To assist the issuers to understand and comply with the proposed new Rules, perhaps more guidance could be provided in the new Rules rather than leaving the terms vague and open.

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.

We support the proposal but would suggest the Exchange to fine tune the Rules regarding “pro rata exemption” to clarify that in situation where the commonly held entity is a listed company, all the shares that are held by the public shall be excluded when determining whether the issuer is providing financial assistance to such “listed” commonly held company on a pro rata basis.

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.

Framework agreements aim to set out the basic framework terms within which a series of CCTs, together with the detailed terms to be agreed on a per transaction basis, are to be conducted over a period of time.

Given the nature of such agreements, it is therefore logical to note that practically it may not be possible or appropriate for the parties to agree any detailed pricing policy on day one when they signed the agreement.

In addition, we consider that the existing regulatory framework has, via the following checks and balances, provided sufficient protection to the investors:

- 1. IFA opinion has to be provided at the circular stage to support that the transaction is on normal commercial terms, in the ordinary course of business, fair and reasonable and in the interests of the listed issuer and its shareholders as a whole;***
- 2. annual review by the INEDs on CCTs; and***
- 3. annual report by auditor on CCTs.***

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.

Please see our response to Question 14.

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

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 limit was set some time ago and so should be raised to reflect inflation and general business needs.

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.

Please see our responses to Question 23.

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 -