



3 July 2013

By email < [response@hkex.com.hk](mailto:response@hkex.com.hk) > and by post

Our Ref.: C/CFC, M89774

Corporate and Investor Communications Department  
Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street, Central  
Hong Kong

Dear Sirs,

### Responses to Consultations on Connected Transactions and Persons

--- Please find attached completed questionnaires from the Hong Kong Institute of Certified Public Accountants in response to the consultation papers on the following:

- (i) [Review of Connected Transaction Rules](#)
- (ii) [Proposed Changes to Align the Definitions of Connected Person and Associate in the Listing Rules](#)

If you have any questions on the responses, please contact Ms. Mary Lam, deputy director, specialist practices at the Institute at 2287 7086 or [mary@hki CPA.org.hk](mailto:mary@hki CPA.org.hk)

Yours faithfully,

Peter Tisman  
Director, Specialist Practices

PMT/ML/ay  
Encls.

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# QUESTIONNAIRE ON REVIEW OF CONNECTED TRANSACTION RULES

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We invite interested parties to respond to the Consultation Paper on Review of Connected Transaction Rules (**Consultation Paper**), which can be downloaded from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201304.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEx both Part A and Part B of this Questionnaire no later than **26 June 2013** by one of the following methods:

By mail or  
hand delivery to: Corporate and Investor Communications  
Hong Kong Exchanges and Clearing Limited  
12th Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

**Re: Consultation Paper on Review of Connected  
Transaction Rules**

By fax to: (852) 2524-0149

By e-mail to: [response@hkex.com.hk](mailto:response@hkex.com.hk)

Please mark in the subject line:

**Re: Consultation Paper on Review of Connected  
Transaction Rules**

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

# Privacy Policy Statement

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We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEx website, continued use by you of the HKEx website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

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Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

## **Purpose**

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEx and any company of which HKEx is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

## **Direct marketing**

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEx or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEx and/or any of our affiliates in Hong Kong or elsewhere.

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If you access our information or services through the HKEx website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEx website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEx website:

***Session Cookies:*** temporary cookies that only remain in your browser until the time you leave the HKEx website, which are used to obtain and store configuration information and administer the HKEx website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEx website.

***Persistent Cookies:*** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEx website or to track and record user preferences.

The cookies used in connection with the HKEx website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEx website.

## **Compliance with laws and regulations**

You agree that HKEx and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEx and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Corporate reorganisation**

As HKEx continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether HKEx holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEx to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data (“**Privacy Commissioner**”) which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEx should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEx’s administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12/F., One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

By Email:  
[pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)

## Part A General Information of the Respondent

(1) Please state whether your response represents your personal or your company's view by checking (☑) the boxes below and filling in the information as appropriate:

Company view

Company name*:	Hong Kong Institute of Certified Public Accountants		
Company type*:	<i>HKEx Participant</i> :- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE <input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC <input type="checkbox"/> Listed company <input checked="" type="checkbox"/> Professional body / Industry association <input type="checkbox"/> Market practitioner <input type="checkbox"/> None of the above		
Contact person*:	Mr/ <del>Ms</del> / <del>Mrs</del> Peter Tisman		
Title:	Director, Specialist Practices		
Phone no.*:	2287 7084	Email address:	peter@hkicpa.org.hk

Personal view

Respondent's full name*:	Mr / Ms / Mrs _____		
Phone no.*:	_____	Email address:	_____
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEx participant staff	<input type="checkbox"/> Retail investor	
<input type="checkbox"/> Institutional investor	<input type="checkbox"/> None of the above		

**Important note: All fields marked with an asterisk (\*) are mandatory. HKEx may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.**

(2) Disclosure of identity

HKEx may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should check the box below:

I/We do not wish to disclose my/our identity to the members of the public.

\_\_\_\_\_  
Signature (with Company Chop if the response represents company view)

## 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 -