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# CONNECTED TRANSACTIONS

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## A. INTRODUCTION

The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the “**Listing Rules**” or “**Rules**”) on connected transactions are set out in Chapter 14A of the Listing Rules. Their objectives are to:

- \* ensure that a listed company takes into account the interests of shareholders as a whole when it enters connected transactions; and
- \* provide safeguards against the directors, chief executive and substantial shareholders (or their associates) taking advantage of their positions. This is achieved by the general requirement for connected transactions to be disclosed and subject to independent shareholders’ approval.

A connected transaction can also be a notifiable transaction, in which case the issuer must comply with Chapters 14 and 14A.

Under the Listing Rules, a connected transaction is generally a transaction between a listed issuer (which includes the listed company and its subsidiaries for the purposes of connected transactions) and a connected person, including associates of connected persons. “**Connected person**” and “**associates**” are defined below. Under the Listing Rules, the Stock Exchange of Hong Kong (the “**Exchange**”) has the specific power to deem a person to be connected.

In addition, a connected transaction also includes certain transactions between a listed issuer and a person who is not a connected person. A connected transaction can be any kind of transaction, whether or not it is of a revenue nature in the ordinary and usual course of business and it also includes financial assistance and options.

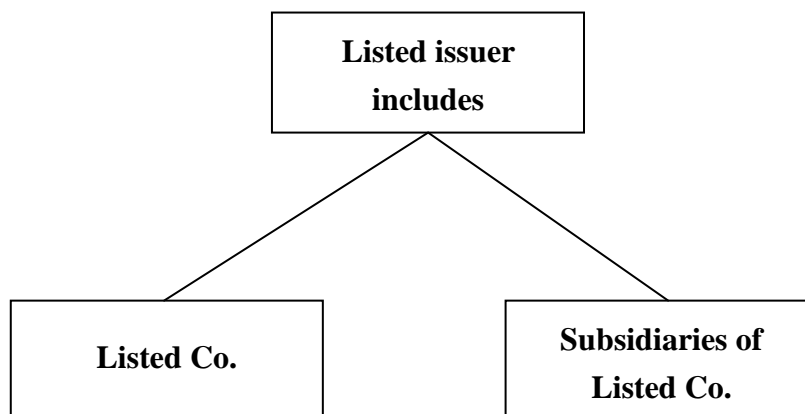
A connected transaction may be a one-off or a continuing transaction. Continuing connected transactions involve the provision of goods or services on a continuing basis over a period of time. There is a different set of Rules applying to continuing connected transactions.

A connected transaction or continuing connected transactions may be subject to the Listing Rules’ reporting, announcement and independent shareholders’ approval requirements. There are however exemptions that partially or wholly exempt certain connected transactions and continuing connected transactions from the Listing Rules requirements. However, the Exchange has the power to specify that an exemption will not apply to a particular transaction.

Moreover, the Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related (Rule 14A.25). A listed issuer must consult the Exchange before it enters into any proposed connected transaction(s) in the situations specified in Rule 14A.27A.

There are also specific Rules governing financial assistance, options and qualified property acquisitions of a listed issuer.

It is important to note that the term “**listed issuer**” as used in Chapter 14A and in this note, refers to both the listed issuer itself and its subsidiaries.



## **B. DEFINITIONS OF CONNECTED PERSON AND ASSOCIATE**

### **1. Definition of connected person**

Under Rule 14A.11 (1) to (6) of the Listing Rules, the meaning of connected person includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer (substantial shareholder refers to a person who can exercise or control 10% or more of the voting power at a general meeting) (Rule 14A.11(1));
- (2) any person who was a director of the listed issuer within the preceding 12 months (Rule 14A.11(2));
- (3) a supervisor of a PRC issuer (Rule 14A.11(3));
- (4) any associate of a person referred to in items (1) to (3) above (Rule 14A.11(4));
  - (i) A company which is an “associate” of a person referred to in Rules 14A.11(1), (2) or (3) only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.
- (5) any non wholly-owned subsidiary of the listed issuer where any connected person(s) (referred to in items (1) to (4) above) of the listed issuer (other than at the level of its subsidiaries) is/are (individually or together) entitled, otherwise than through the issuer, to exercise or control the exercise of 10% or more of the voting power at any general meeting of that non wholly-owned subsidiary (Rule 14A.11(5));
- (6) any subsidiary of a non wholly-owned subsidiary referred to in item (5) above (Rule 14A.11(6)).

### Non wholly-owned subsidiaries

Rule 14A.12A provides that for the purpose of Chapter 14A, a non wholly-owned subsidiary will not be regarded as a connected person by virtue of being:

- (a) a substantial shareholder of another subsidiary; or
- (b) an associate of any connected persons (at the level of the issuer's subsidiaries only) as defined in Rules 14A.11(1) to (3).

### Wholly-owned subsidiaries

A wholly-owned subsidiary of a listed issuer is not its connected person (Rule 14A.12).

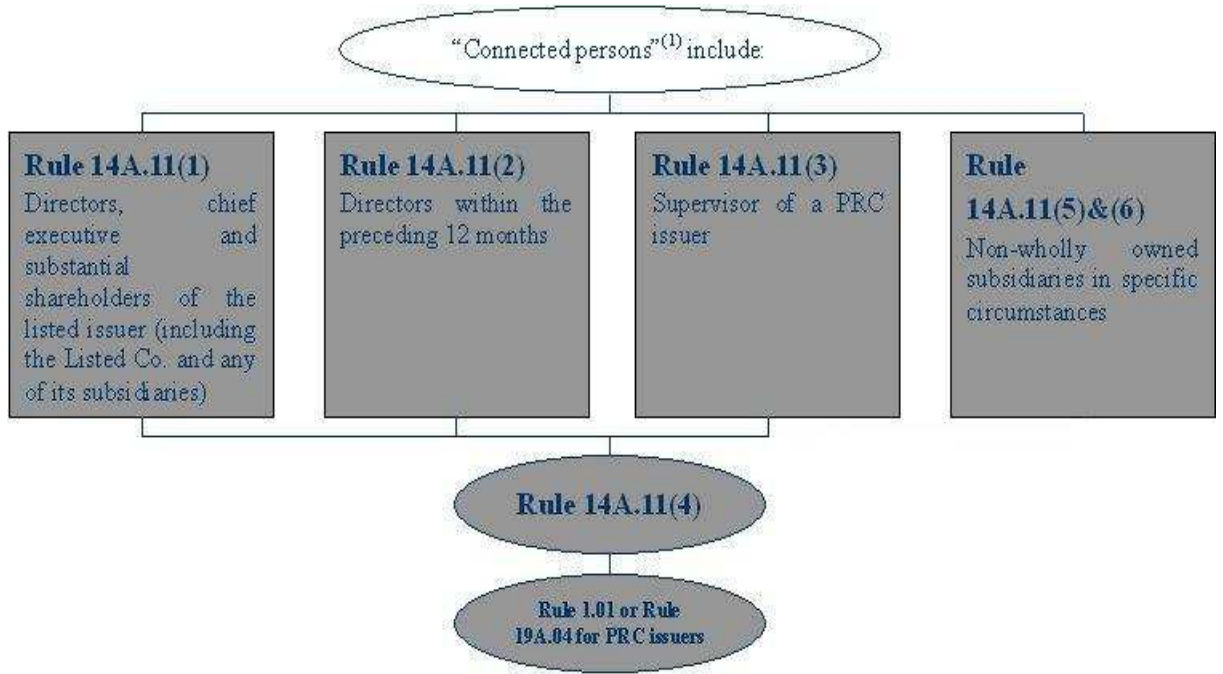
### PRC Governmental Bodies

The Exchange will not normally treat a PRC Governmental Body (see definition in Rule 19A.04) as a connected person of a listed issuer. If requested by the Exchange the issuer must make written representations to the Exchange explaining its legal, commercial or other relationships with the PRC Governmental Body and must satisfy the Exchange that it should not be treated as a connected person, or if the Exchange determines that it should be treated as a connected person, the issuer must agree to comply with any additional obligations arising from such treatment as may be requested by the Exchange (Rule 14A.12A(2)).

Rule 19A.04 defines the term “**PRC Governmental Body**” as including (but not limited to): (a) the PRC Central Government, including the State Council of the PRC, State Ministries and Commissions, Bureaus and Administrations directly under the State Council, State Council Offices and Institutions, Bureaus supervised by the State Ministries and Commissions; (b) PRC Provincial-led Governments, including Provincial Governments, Municipalities directly under the Central Government and Autonomous Regions, together with their respective administrative arms, agencies and institutions; and (c) PRC local governments immediately under the PRC Provincial-level Governments, including prefectures, municipalities and counties, together with their respective administrative arms, agencies and institutions. However, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.

The following diagrams illustrate Rule 14A.11(1) to (6) above.

**Diagram (1) Category 1 of connected persons**



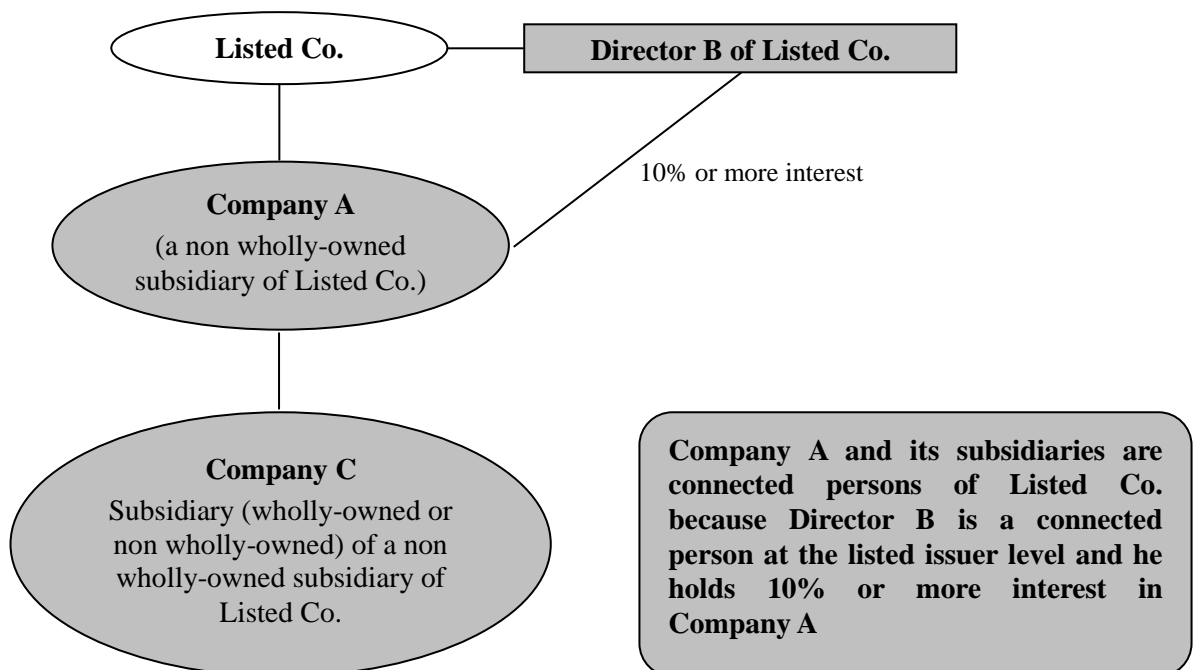
1. Connected persons normally exclude a **“PRC Governmental Body”** (as defined in Rule 19A.04) for both PRC and non-PRC issuers (Rule 14A.12A(2))



**Diagram (2) Category 2 of connected persons**

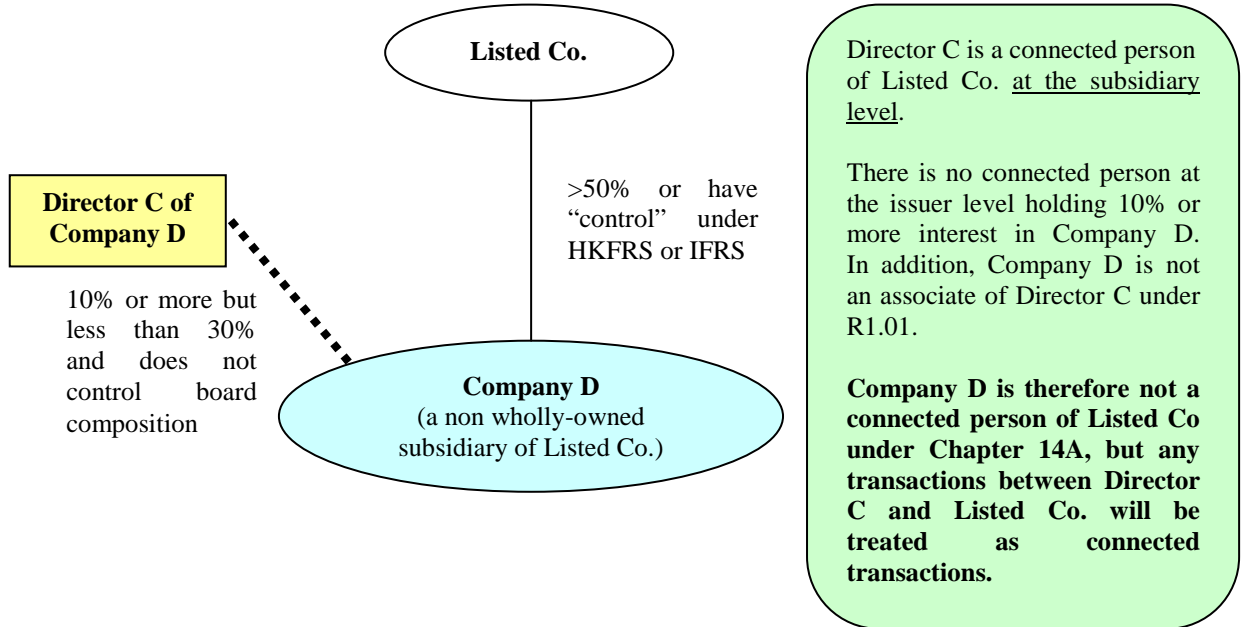
**Category 2A : Non wholly-owned subsidiaries**

- Any non wholly-owned subsidiary of the listed issuer in which the connected person(s) (at the listed issuer's level) hold(s) 10% or more interest (**R14A.11(5)**)
- Any subsidiary of such non wholly-owned subsidiary (**R14A.11(6)**)



**Diagram (3)**

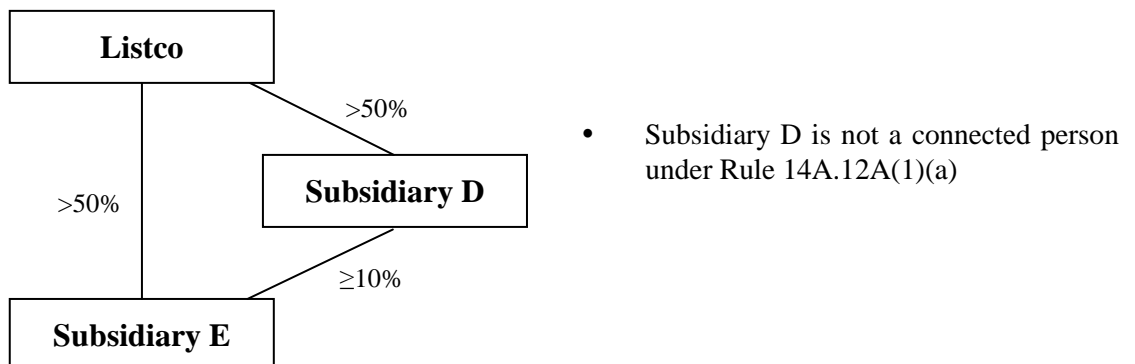
**Non wholly-owned subsidiary - not a connected person under R14A.11(5)**



**Diagram (4)**

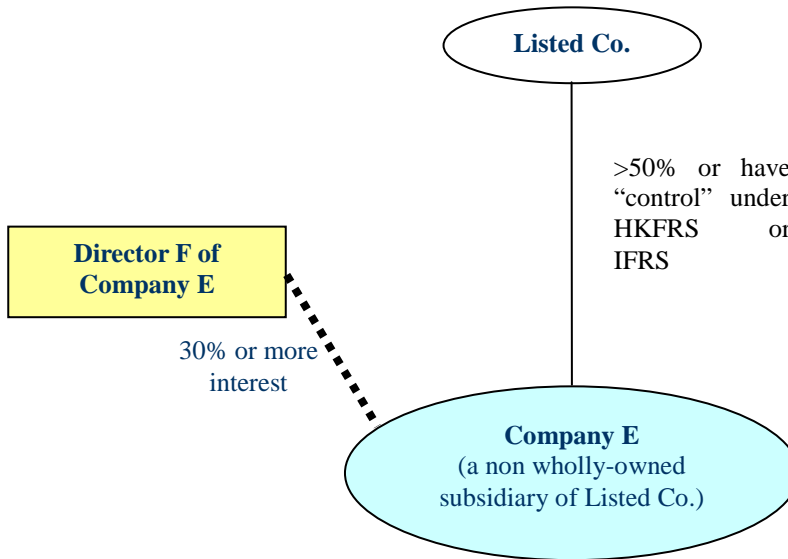
**Non wholly-owned subsidiary not a connected person under Rule 14A.12A(1)(a)**

Rule 14A.12A(1)(a): Excludes a non-wholly owned subsidiary which is connected only because it is a substantial shareholder of another subsidiary under R14A.11(1)



**Diagram (5)**

**Non wholly-owned subsidiary not a connected person under Rule 14A.12A(1)(b)**



Director F is a connected person of Listed Co. at the subsidiary level.

Company E is an associate of Director F as a company in which Director F has an interest of  $\geq 30\%$  (R1.01). Company E would be a connected person of Listed Co. (R14A.11(4)).

**BUT, under Rule 14A.12A(1)(b) Company E is not regarded as a connected person of Listed Co. only because it is an associate of a connected person at the subsidiary level (i.e. because it is an associate of Director F).**

## 2. Definition of associate

### (a) “Associate” in relation to an individual

The term **“associate”** is defined separately for individuals and companies. In relation to an individual, the term “associate” is defined in Rule 1.01 or, in relation to PRC issuers, in Rule 19A.04 to include the following persons:

- (i) the person’s spouse;
- (ii) any children or step-children under the age of 18 (together with (i) above the **“family interests”**);
- (iii) the trustees of any trust of which the individual or any of his family interests is a beneficiary;
- (iv) any company (including, in the case of a PRC issuer, an equity joint venture established under PRC law) in the equity capital of which the individual, his family interests, any of the trustees referred to in (iii) above taken together are directly or indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings or control the composition of a majority of the board of directors, and any other company which is its subsidiary; and
- (v) in the case of a PRC issuer only, any company with which or individual with whom he, his family interests, and/or any of the trustees referred to in (iii) above taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where he, his family interests and/or any of the trustees referred to in (iii) above taken together directly or indirectly have 30% or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture.

### (b) “Associate” in relation to a company

The definition of associate in relation to a company under Rule 1.01 or, in relation to PRC issuers, Rule 19A.04 is similar and includes:

- (i) a subsidiary or holding company of the company, or a fellow subsidiary of any such holding company;
- (ii) the trustees of any trust of which the company is a beneficiary;
- (iii) any other company (including, in the case of a PRC issuer, an equity joint venture established under PRC law) in the equity capital of which the company, such other companies referred to in (i), and/or any of the trustees referred to in (ii) taken together are directly or indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings

or control the composition of a majority of the board of directors and any other company which is its subsidiary; and

- (iv) in the case of a PRC issuer only, any other company with which or any individual with whom the company, such other companies referred to in (i) above, and/or any of the trustees referred to in (ii) above taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where it, such other companies and/or any of the trustees referred to in (ii) above taken together directly or indirectly have 30% or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture.

Rule 19A.19 also provides for the Exchange to determine that a particular person or entity should be treated as a connected person of a PRC issuer.

In the context of connected transactions, the “associates” of a connected person also include (by virtue of the expanded definition in Main Board Rule 14A.11(4)):

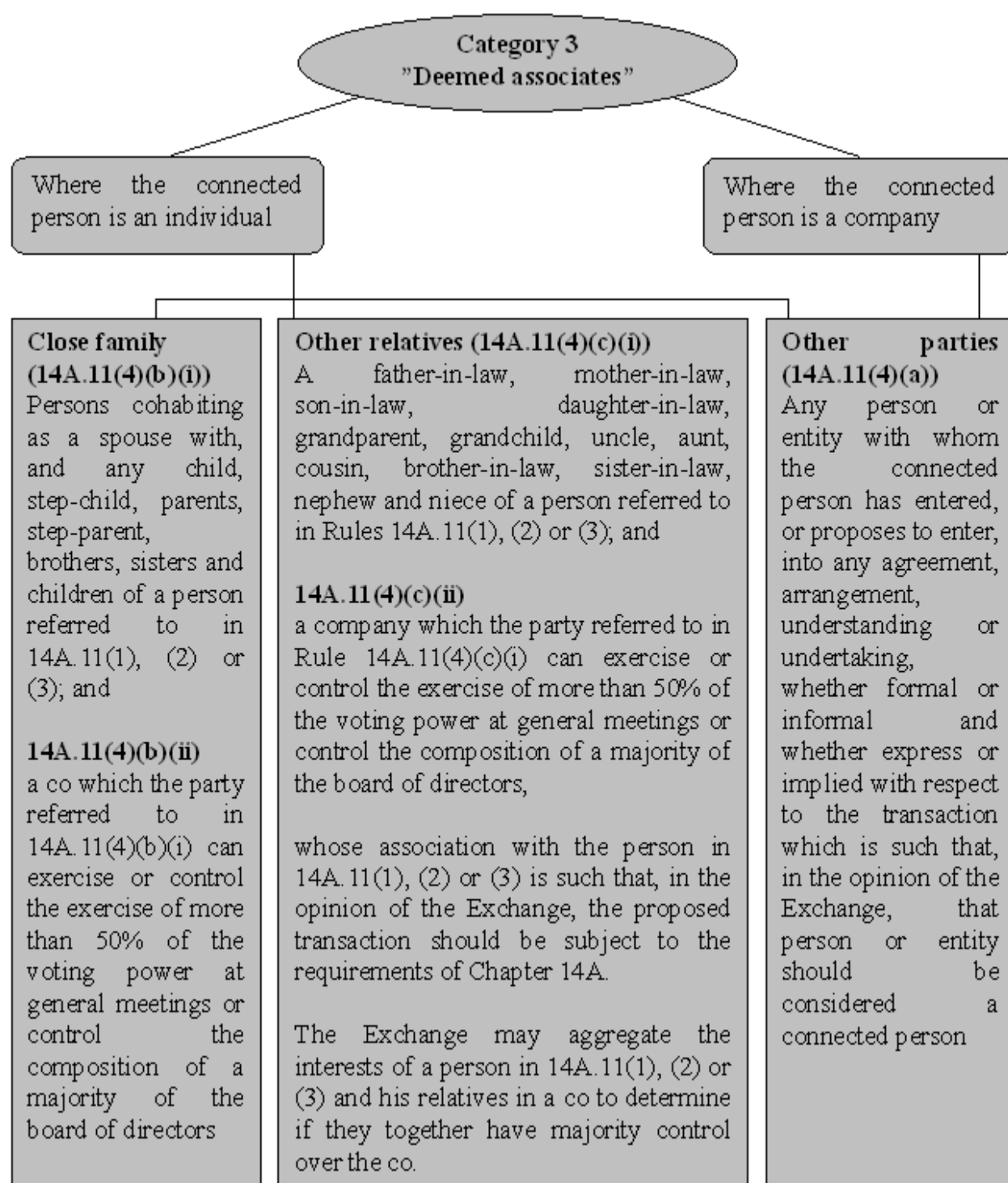
- (a) any person or entity who has entered, or proposes to enter, into any arrangement with a connected person referred to in Rules 14A.11(1), (2) or (3) in relation to the transaction, which is such that the Exchange considers that that person or entity should be treated as a connected person;
- (b)
  - (i) any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of a connected person referred to in Rules 14A.11(1), (2) or (3);
  - (ii) a company which the party referred to in (b)(i) above can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors; and
- (c)
  - (i) any father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a person referred to in Rules 14A.11(1), (2) or (3); and
  - (ii) a company which the party referred to in (c)(i) above can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors,

whose association with the person referred to in Rules 14A.11(1), (2) or (3) is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of this Chapter. Listed issuers must notify the Exchange of any proposed

transaction with these parties unless the transaction is exempt under Rules 14A.31 or 14A.33. Listed issuers must also provide information to the Exchange to demonstrate whether or not these parties should be regarded as associates of the person referred to in Rules 14A.11(1), (2) or (3).

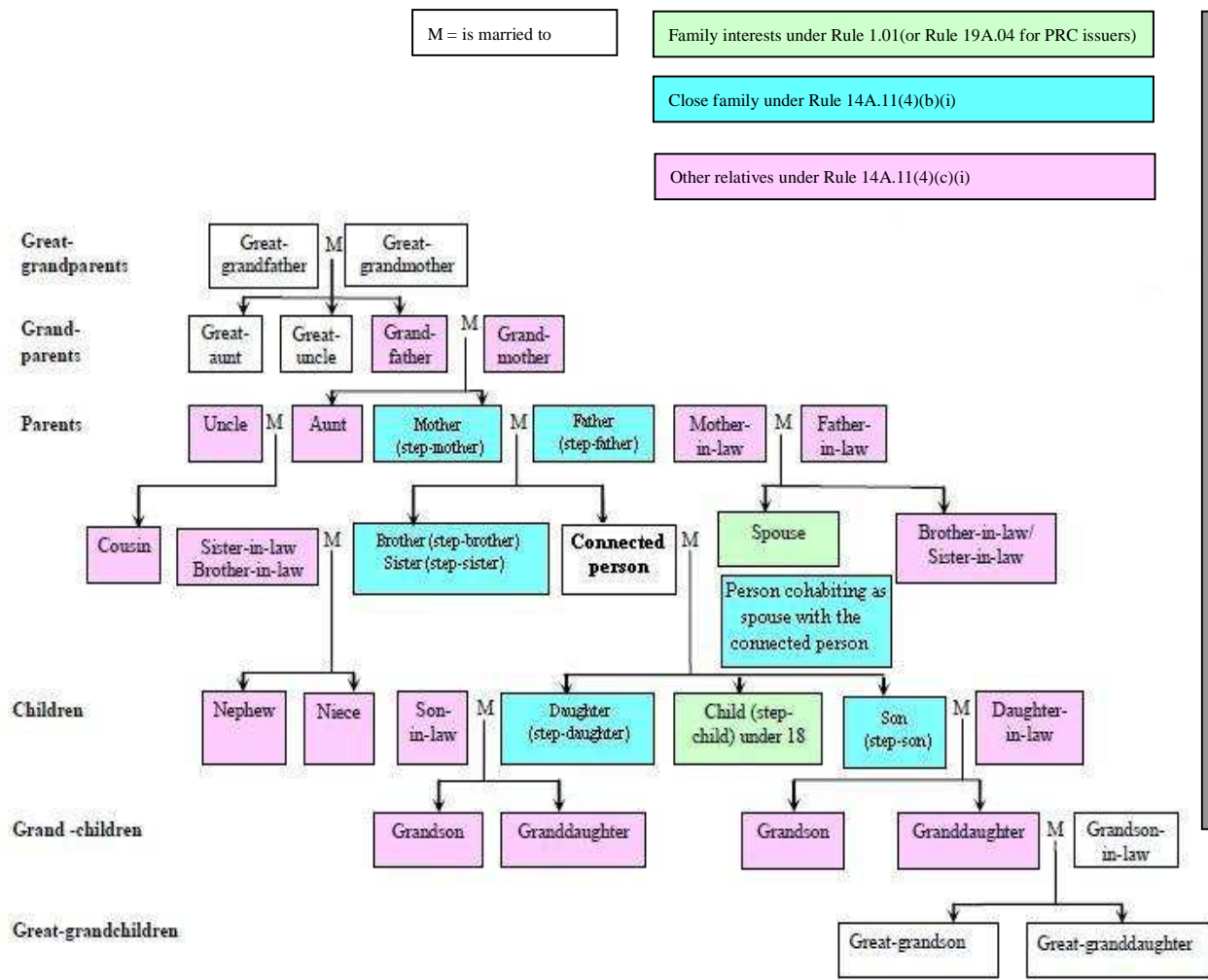
For the purpose of (b)(ii) and (c)(ii) above, the Exchange may aggregate the interests of a person referred to in Rule 14A.11(1), (2) or (3) and his relatives in a company to determine whether they together have a majority control over the company.

**Diagram (6) Deemed associates**



**Diagram (7)**

“Associates” of an individual connected person under Rule 1.01(or Rule 19A.04 for PRC issuers), Rule 14A.11(4)(b)(i) and Rule 14A.11(4)(c)(i)



“Associate” under Rule 1.01 (or Rule 19A.04 for PRC issuers) also include:

- (i) the trustees of any trust of which the connected person or any of his family interests is a beneficiary;
- (ii) any company (including, in the case of a PRC issuer, an equity joint venture established under PRC law) in which the connected person, his family interests and/or the trustees referred to (i) above taken together, are directly or indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings or control the composition of a majority of the board of directors, and any of its subsidiaries; and
- (iii) in the case of a PRC issuer only, the company with which or individual with whom the connected person, his family interests, and/ or any of the trustees referred to (i) above, taken together, directly or indirectly have 30% or more interest either in the capital and /or assets contributions to or in the contractual share of profits or other income from a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law.

“Deemed associates” under Rule 14A.11(4)(b) and (c) can also include:

- (i) a company which the party referred to in Rule 14A.11(4)(b)(i) (i.e. the close family of the connected person) can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors (Rule 14A.11(4)(b)(ii); and
- (ii) a company which the party referred to in Rule 14A.11(4)(c)(i) (i.e. other relatives of the connected person) can exercise or control the exercise of more than 50% of the voting power at general meetings or control the composition of a majority of the board of directors (Rule 14A.11(4)(c)(ii))

where their association with the connected person is such that, in the Exchange’s opinion, the transaction should be subject to the connected transaction provisions.



## C. DEFINITION OF CONNECTED TRANSACTION

A connected transaction includes the following transactions:

1. Transaction between a listed issuer and a connected person
2. Acquisition or disposal of interest in a company
3. Financial assistance
4. Options
5. Joint ventures

### 1. Transaction between a listed issuer and a connected person

A connected transaction broadly refers to a transaction between a listed issuer (which includes the listed company and its subsidiaries) and a connected person (which includes associates of certain persons) (Rule 14A.13(1)(a)).

The term “**transaction**”, whether or not it is of a revenue nature in the ordinary and usual course of business, as defined in Rule 14A.10(13), includes:

- (a) the acquisition or disposal of assets including deemed disposals set out in Rule 14.29;
- (b) any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating (in the manner described in Rule 14A.68) an option to acquire or dispose of assets or to subscribe for securities;
- (c) entering into or terminating finance leases;
- (d) entering into or terminating operating leases or sub-leases, including those of properties;
- (e) granting an indemnity or a guarantee or providing financial assistance;
- (f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form; such as a partnership or a company, or any other form of joint arrangement;
- (g) issuing new securities;
- (h) the provision of or receipt of services;
- (i) sharing of services; and
- (j) providing or acquiring raw material, intermediate products and finished goods.

(Rule 14A.10(13))

However, a connected transaction also includes the transactions set out in section 2 below between a listed issuer and a person who is not a connected person.

## 2. Acquisition or disposal of interest in a company

### (1) Where a controller is a substantial shareholder of the target

A transaction between a listed issuer and a person who is not a connected person will be a connected transaction if it involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller of the listed issuer. (Rule 14A.13(1)(b)(i))

- (a) A “**controller**” is defined as a director, chief executive or controlling shareholder of the listed issuer (Rule 14A.10(3)).
- (b) The Exchange may aggregate the interests of any person and his associates in determining whether together they are a substantial shareholder of any company. (Rule 14A.13(1)(b)(i))
- (c) Where assets (as opposed to businesses) account for 90% or more of a company’s net assets or total assets, the Exchange will treat an acquisition or disposal of such assets (rather than an interest in the company itself) as a connected transaction and an acquisition or disposal of an interest in that company. (Rule 14A.13(1)(b)(i))

It should be noted however that:

- (a) A listed issuer itself will not be considered an “associate” of a controller when the listed issuer is acquiring or disposing of an interest in a company of which it is already a substantial shareholder.
- (b) A controller whose only interest in a company is through its interest in the listed issuer will not be taken to be a “substantial shareholder” of that company.
- (c) Rule 14A.13(1)(b)(i) does not apply where all the following conditions are met:
  - the listed issuer acquires an interest in a company;
  - the substantial shareholder of the company being acquired is a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) immediately prior to the acquisition;
  - it is proposed that the substantial shareholder will remain a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director,

chief executive or controlling shareholder) following the acquisition; and

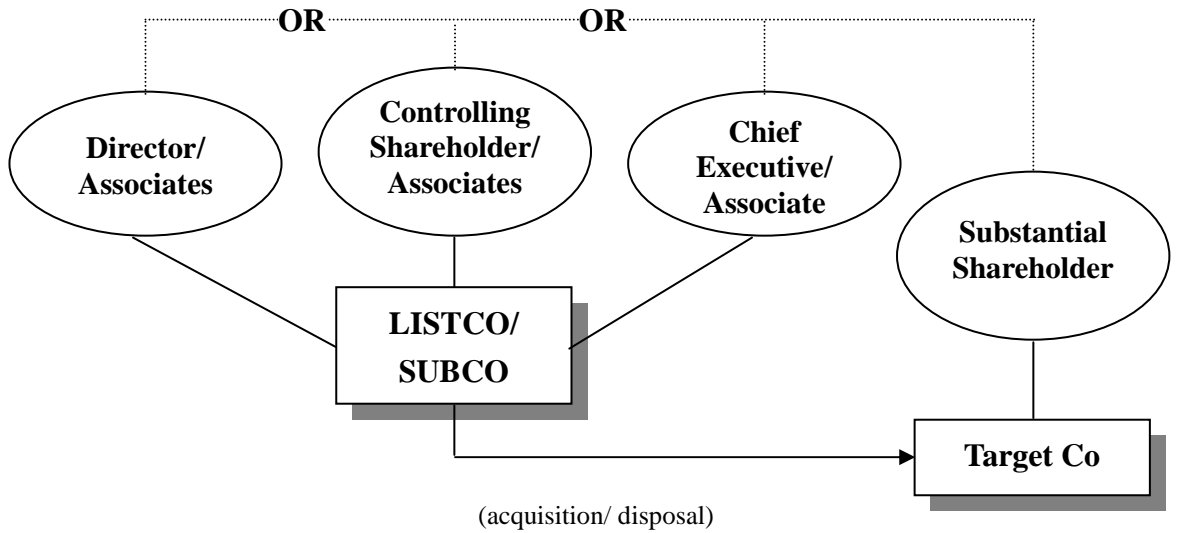
- following the acquisition, the only reason why he is still a controller is that he remains a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder), as the case may be. Where he remains a controlling shareholder, there must not be any increase in his interest in such company as a result of the acquisition. (Rule 14A.13(1)(b)(i) Note 3)

In 2010, the following Note 4 to 14A.13(1)(b)(i) was included:

- For a disposal of interest in a company, this Rule does not apply if (i) the disposal falls within this Rule only because the substantial shareholder of the company being disposed of is a director, chief executive or controlling shareholder of this company (or an associate of such director, chief executive or controlling shareholder) immediately prior to the disposal; and (ii) there is no change in the substantial shareholder's interest in such company as a result of the disposal or any related arrangement.

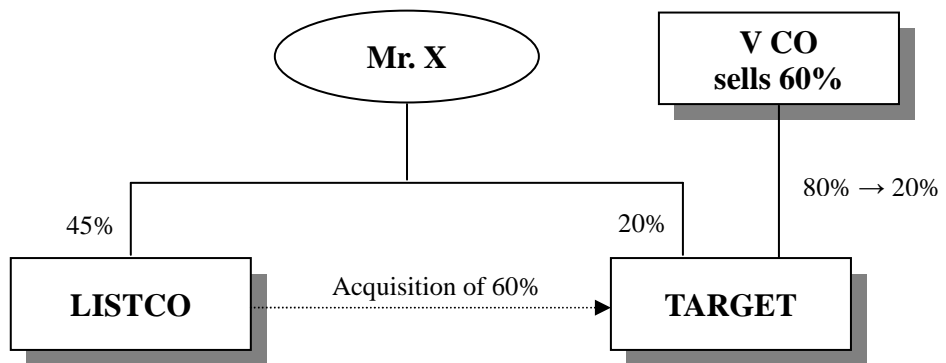
**Diagram (8)**

Example of a connected transaction under Rule 14A.13(1)(b)(i)



**Diagram (9)**

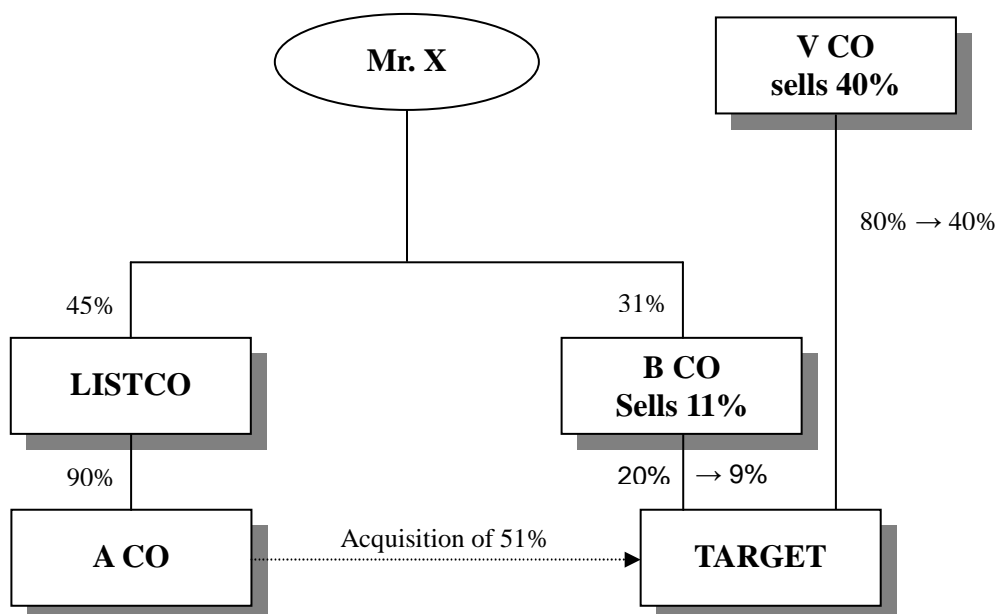
Example of connected transaction under Rule 14A.13(1)(b)(i)



- *The acquisition of 60% interest in Target by Listed Co is a connected transaction.*
- *Reason: Mr. X is a substantial shareholder of Target as he holds more than 10% interest in Target. He is also a controlling shareholder of Listed Co. The transaction is a connected transaction under Rule 14A.13(1)(b)(i) as an acquisition by Listed Co of an interest in a company of which a substantial shareholder (Mr. X) is also a controller of Listed Co (as its controlling shareholder).*

### Diagram (10)

Example of a connected transaction under Rule 14A.13(1)(b)(i)



- *The acquisition of an interest in Target by A Co is a connected transaction.*
- *Reason: B Co is a substantial shareholder of Target before selling 11% interest in target. B Co is an associate of Mr. X as he controls more than 30% of B Co. Mr. X is a controlling shareholder and therefore a controller of Listed Co. The transaction therefore involves an acquisition by a subsidiary of Listed Co of an interest in a company of which a substantial shareholder is an associate of a controller of Listed Co. Rule 14A.13(1)(b)(i) applies.*

#### (2) Where a controller is otherwise interested

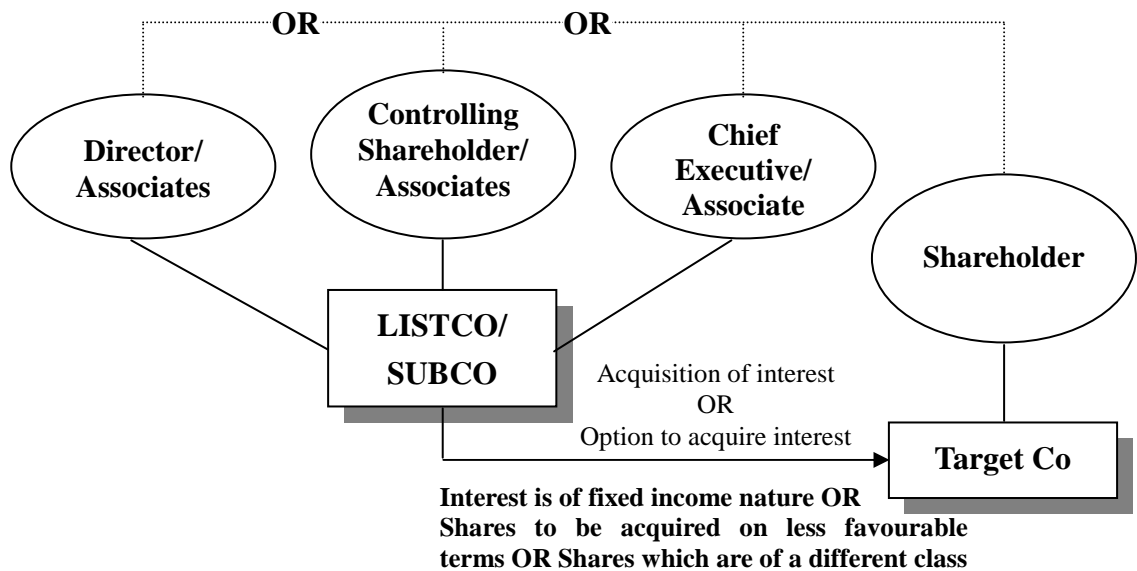
A transaction between a listed issuer and a person who is not a connected person will be a connected transaction if it involves the listed issuer acquiring an interest in a company (or an option to acquire such interest) of which a controller (or an associate of a controller) is, or will become, a shareholder where the interest being acquired is:

- of a fixed income nature;
- shares to be acquired on less favourable terms than those granted to the controller or its associate; or
- shares which are of a different class from those held by, or to be granted to, the controller or its associate. (Rule 14A.13(1)(b)(ii))

Rule 14A.13(1)(b)(ii) does not apply where the acquisition is pursuant to the terms of a subscription of shares in the company by the listed issuer

and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirement of Chapter 14A of the Listing Rules. (Rule 14A.13(1)(b)(ii) Note)

**Diagram (11) Rule 14A.13(1)(b)(ii)**



(3) Subscription on favourable terms

A transaction between a listed issuer and a person who is not a connected person will be a connected transaction if it involves a controller (or an associate of a controller) subscribing on especially favourable terms shares in a company in which the listed issuer is a shareholder. (Rule 14A.13(1)(b)(iii))

This Rule does not apply where the subscription is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of Chapter 14A of the Listing Rules. (Rule 14A.13(1)(b)(iii) Note)

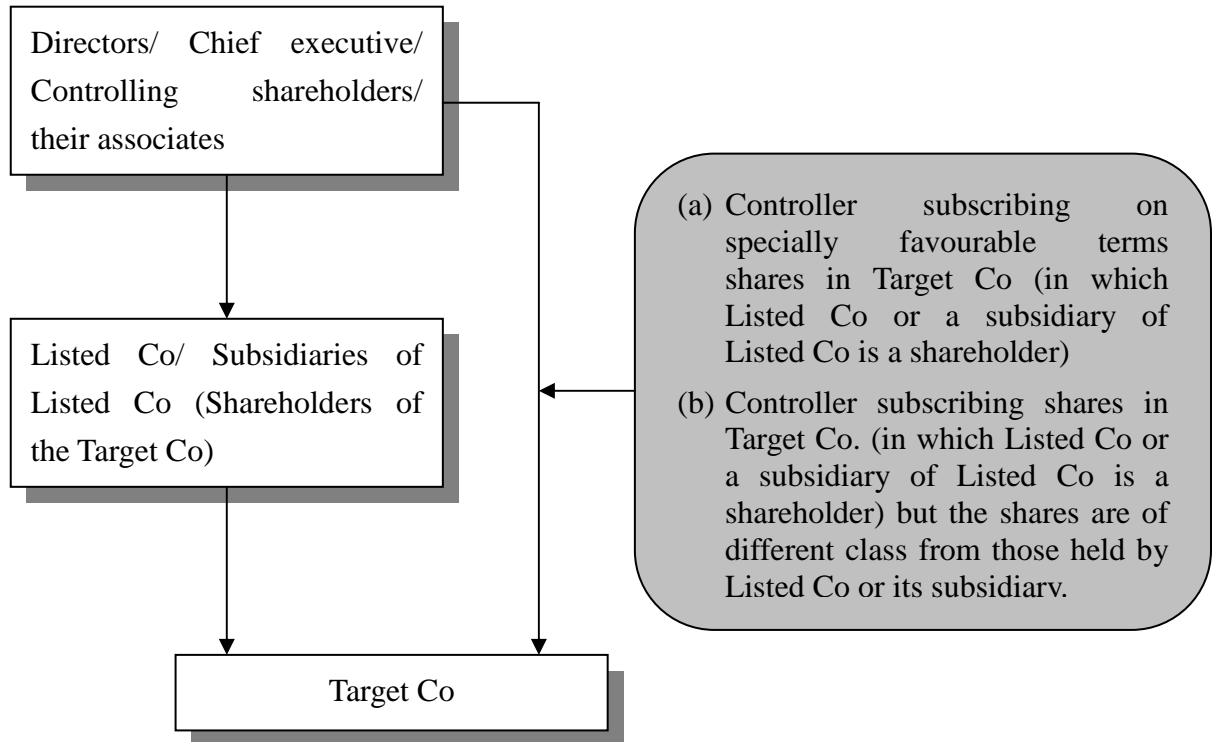
(4) Subscription of different class of shares

A transaction between a listed issuer and a person who is not a connected person will be a connected transaction if it involves a controller (or an associate of a controller) subscribing shares in a company in which the listed issuer is a shareholder but which are of a different class from those held by the listed issuer. (Rule 14A.13(1)(b)(iv))

This Rule does not apply where the subscription is pursuant to the terms

of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of Chapter 14A of the Listing Rules. (Rule 14A.13(1)(b)(iv) Note)

**Diagram (12) Rule 14A.13(1)(b)(iii) and (iv)**



### **3. Financial assistance**

“Financial assistance” is defined to include granting credit, lending money, providing security for, or guaranteeing a loan (Rule 14A.10(4)). The Listing Rules provide that the following financial assistance transactions constitute connected transactions.

#### **(a) Provision of financial assistance by a listed issuer**

The provision of financial assistance by a listed issuer will constitute a connected transaction if it is provided to:

- (i) a connected person (Rule 14A.13(2)(a)(i)); or
- (ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (at the issuer level but not at the subsidiary level) (as

defined under Rules 14A.11(1) to (4)) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company (a “**Commonly Held Entity**”) (Rule 14A.13(2)(a)(ii)).

However, an interest of a connected person of the listed issuer in the company which is held through the listed issuer is to be excluded from the 10% referred to in this Rule. (Rule 14A.13(2)(a)(ii) Note)

(b) Provision of financial assistance to a listed issuer

The provision of financial assistance to a listed issuer will be a connected transaction if it is provided by:

- (i) a connected person; (Rule 14A.13(2)(b)(i)); or
- (ii) a Commonly Held Entity. (Rule 14A.13(2)(b)(ii)).

However, an interest of a connected person of the listed issuer in the company which is held through the listed issuer is to be excluded from the 10% referred to in this Rule. (Rule 14A.13(2)(b)(ii) Note)

(c) Financial assistance for the benefit of connected interests

It will be a connected transaction if a listed issuer grants an indemnity or guarantee or provides financial assistance to and/or for the benefit of a connected person or any Commonly Held Entity (as defined above). (Rule 14A.13(3))

(d) Granting security to connected interests

It will be a connected transaction if a listed issuer grants security over its assets in respect of any financial assistance made to the listed issuer by a connected person or any Commonly Held Entity. (Rule 14A.13(4))

**4. Options**

The writing, acceptance, transfer, exercise or non-exercise of an option (as defined in Rule 14.72) involving a listed issuer and a connected person constitutes a connected transaction. (Rule 14A.13(5))

**5. Joint Ventures**

The entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement by a listed issuer and a connected person constitutes a connected transaction. (Rule 14A.13(6))

**D. DEFINITION OF CONTINUING CONNECTED TRANSACTION**

Continuing connected transactions are connected transactions involving the provision of goods or services or financial assistance, which are carried out on a continuing or recurring basis and are expected to extend over a period of time. They are usually



transactions in the ordinary and usual course of business of the issuer. (Rule 14A.14)

### **Classification of Connected Transactions**

The connected transaction provisions apply to both one-off connected transactions and continuing connected transactions. Both fall into 3 categories:

1. Transactions which are exempt from the listing Rules' announcement, reporting and independent shareholders' approval requirements (i.e. fully exempt transactions);
2. Transactions which are subject only to the independent shareholders' approval requirement (i.e. partially exempt transactions); and
3. Non-exempt transactions.

In the case of transactions subject to independent shareholders' approval, the issuer is required to establish an independent board committee (“**IBC**”) comprising INEDs only. It must also appoint an independent financial adviser to advise the IBC and the shareholders as to whether the terms of the transaction are fair and reasonable and in the interests of the issuer and its shareholders as a whole.

## **E. LISTING RULES REQUIREMENTS**

A listed issuer entering into a connected transaction or continuing connected transactions is required to comply with written agreement, reporting, announcement and independent shareholders' approval and board minutes requirements under the Listing Rules unless the transaction is partially exempt or wholly exempt. The details of the exemptions will be discussed shortly in section G “Exemptions from the Listing Rules requirements for connected transactions”.

### **1. Written agreement requirement**

In respect of all connected transactions including continuing connected transactions, a listed issuer must enter into a written agreement with the relevant parties. (Rule 14A.04)

### **2. Reporting requirements**

A listed issuer must include the following details of the connected transaction in its next published annual report and accounts:

- the transaction date;
- the parties to the transaction and a description of their connected relationship;
- a brief description of the transaction and its purpose;
- the total consideration and terms (including, where relevant, interest rates, length of repayment and security); and

- the nature and extent of the connected person's interest in the transaction.

(Rule 14A.45)

A listed issuer which has entered into a non-exempt continuing connected transaction must disclose the above information in its annual report and accounts for each subsequent financial year during which the listed issuer undertakes the transaction. (Rule 14A.46)

### 3. Announcement requirements

A listed issuer proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements must:

- notify the Exchange as soon as possible after the terms of the transaction have been agreed; and

*Note : Under Rule 13.09, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.*

- publish an announcement as soon as possible. (Rule 14A.47)

*Note : Where the connected transaction is also a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the requirement for short suspension of dealings under Rule 14.37 also applies.*

### 4. Independent shareholders' approval requirements

When a listed issuer enters into a connected transaction, the transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders. (Rule 14A.52).

Written independent shareholders' approval is acceptable in lieu of a physical general meeting provided that: (i) no shareholder would be required to abstain from voting if the listed issuer were to convene a general meeting; and (ii) the written independent shareholders' approval is obtained from a shareholder or closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at general meeting (Rule 14A.43 and Rule 14A.53).

The issuer must send a circular to shareholders:

- within 15 business days after the publication of the announcement if the connected transaction is to be approved by way of written shareholders' approval; or
- if the transaction is to be approved by shareholders at general meeting, at the same time as or before the issuer gives notice of the general meeting to approve the transaction.

The listed issuer is also required to establish an independent board committee (consisting only of independent non-executive directors who have no material interest in the relevant transaction) to advise shareholders as to whether the terms of the relevant transaction are fair and reasonable and whether the transaction is in the interests of the issuer and the shareholders as a whole and to advise shareholders as to how to vote. The issuer must also appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee in relation to these matters. (Rule 13.39(6)). The letters from the independent board committee and the independent financial adviser must be included in the circular to shareholders (Rule 13.39(7)).

Voting on the relevant transaction must be by way of poll. The following persons are required to abstain from voting on resolution(s) approving the relevant transactions:

- (i) any connected person with a material interest in the transaction; and
- (ii) any person falling within Rules 14A.13(1)(b)(i) to (iv) that has a material interest in the transaction and its associates. (Rule 14A.18).

#### **F. REQUIREMENTS FOR CONTINUING CONNECTED TRANSACTIONS**

When a listed issuer enters into a non-exempt continuing connected transaction:

- i. in respect of each continuing connected transaction, the listed issuer must enter into written agreement(s) with the connected person. The agreement must be on normal commercial terms and must be for a fixed period which, except in special circumstances, must not exceed 3 years. The agreement must also set out the basis of the calculation of the payments to be made. Special circumstances are limited to cases where the nature of the transaction requires the contract to be of a duration longer than 3 years. In such cases, the independent financial adviser will need to explain why a longer period for the agreement is required and confirm that it is normal business practice for contracts of this type to be of such duration; (Rule 14A.35(1))

*Note: Examples of bases of calculation of the payments to be made include the sharing of costs, price per unit for on-going purchases, annual rental for a lease, and percentage of total construction cost for a management fee. (Rule 14A.35(1) Note)*

- ii. in respect of each connected transaction, the listed issuer must set a maximum aggregate annual value (“**cap**”), the basis of which must be disclosed. This annual cap must be expressed in terms of monetary value rather than a percentage of the issuer’s annual revenue as derived from its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts. The cap must be determined by reference to previous transactions and figures which are readily ascertainable from published information of the issuer. If there are no previous transactions, the cap must be made based on reasonable assumptions, details of which must be disclosed; (Rule 14A.35(2))

*Note: Reference to annual revenue and other bases may help to determine the*

*monetary value of the cap. (Rule 14A.35(2) Note)*

- iii. the listed issuer must comply with the reporting and announcement requirements; (Rule 14A.35(3))
- iv. The listed issuer must comply with the independent shareholders' approval requirements, where applicable; (Rule 14A.35(4)) and
- v. The issuer must comply with the annual review requirements described in Rules 14A.37 to 14A.40.

Exceeding cap

The listed issuer must re-comply with the reporting, announcement and independent shareholders' approval requirements (Rule 14A.35(3) and (4)) in the following circumstances:

1. if the cap is exceeded; or
2. when the relevant agreement is renewed or there is a material change to the terms of the agreement. (Rule 14A.36)

Annual review of continuing connected transactions

1. When an issuer enters into a continuing connected transaction not falling under Rule 14A.33, each year the independent non-executive directors of the listed issuer must review the continuing connected transactions and confirm in the annual report and accounts that the transactions have been entered into:
  - (1) in the ordinary and usual course of business of the listed issuer;
  - (2) either on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the listed issuer than terms available to or from (as appropriate) independent third parties; and
  - (3) in accordance with the relevant agreement governing them on terms that are fair and reasonable and in the interests of the shareholders of the listed issuer as a whole. (Rule 14A.37)
2. When an issuer enters into a continuing connected transaction not falling under Rule 14A.33, each year the auditors must provide a letter to the listed issuer's board of directors (with a copy provided to the Exchange at least 10 business days prior to the bulk printing of the listed issuer's annual report), confirming that the continuing connected transactions:
  - (1) have received the approval of the issuer's board of directors;
  - (2) are in accordance with the pricing policies of the listed issuer if the transactions involve provision of goods or services by the listed issuer;
  - (3) have been entered into in accordance with the relevant agreement governing the transactions; and

- (4) have not exceeded the cap disclosed in previous announcement(s). (Rule 14A.38)
3. The listed issuer is required to allow, and to procure that the counterparty to the continuing connected transactions will allow, the auditors sufficient access to their records for the purpose of reporting on the transactions as set out in the Listing Rules. The listed issuer's board of directors must state in the annual report whether its auditors have confirmed the matters stated in item 2 above, i.e. Rule 14A.38. (Rule 14A.39)
4. A listed issuer must promptly notify the Exchange and publish an announcement if it knows or has reason to believe that the independent non-executive directors and/or the auditors will not be able to confirm the matters set out in item 1 and/or 2 above respectively. The listed issuer may have to re-comply with the reporting, announcement and independent shareholders' approval requirements and any other conditions the Exchange considers appropriate. (Rule 14A.40)
5. Where a listed issuer has entered into an agreement involving continuing transactions and such transactions subsequently become continuing connected transactions for whatever reason (e.g. due to a party becoming a director of the listed issuer), the listed issuer must, immediately upon it becoming aware of this fact, comply with all applicable reporting, annual review and disclosure requirements in respect of all such continuing connected transactions. (In practice, shareholders approval and the imposition of caps are not required.) (Rule 14A.41)

Upon any variation or renewal of the agreement, the listed issuer must comply in full with all applicable reporting, annual review, disclosure and independent shareholders' approval requirements in respect of all continuing connected transactions effected after such variation or renewal. (Rule 14A.41)

#### **G. EXEMPTIONS FROM LISTING RULES REQUIREMENTS FOR CONNECTED TRANSACTIONS**

##### **1. Wholly exempt connected transactions (other than those involving financial assistance or the granting of options)**

The following connected transactions are exempt from all reporting, announcement and independent shareholders' approval requirements:

- (1) Intra-group transactions
- (2) *De minimis* transactions
- (3) Issues of new securities
- (4) Stock Exchange dealings
- (5) Purchases of own securities
- (6) Directors' service contracts

- (7) Consumer goods or consumer services
- (8) Sharing of administrative services
- (9) Transactions with a person connected at the level of an “insignificant” subsidiary
- (10) Transactions with associates of a passive investor

(1) Intra-group transactions

Intra-group transactions are connected transactions between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries where no connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under Rules 14A.11(1) to (4), is/are entitled to exercise, or control the exercise of 10% or more of the voting power at any general meeting of any of the subsidiaries concerned and none of the subsidiaries concerned is itself a connected person under Rule 14A.11 or Rule 1.01.

*Note: An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this Rule. (Rule 14A.31(1) Note)*

According to Rule 14A.31(1A) which was added in 2010, a transaction between a listed issuer’s non wholly-owned subsidiary referred to in Rule 14A.11(5) and any of its subsidiaries which are connected persons only by virtue of being the subsidiaries of the non wholly-owned subsidiary or a transaction between any of these subsidiaries, is also exempt;

(2) De minimis transactions

*De minimis* transactions are connected transactions on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:

- (a) less than 0.1%;
- (b) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the listed issuer by virtue of its/his relationship(s) with the issuer’s subsidiary or subsidiaries; or
- (c) less than 5% and the total consideration is less than HK\$1,000,000;

(Rule 14A.31(2))

*Note : This exemption does not apply to the issue of new securities by a listed issuer (other than its subsidiaries) to a connected person, which is governed by Rule 14A.31(3). (Rule 14A.31(2) Note)*

(3) Issue of new securities

Where a listed issuer issues new securities to a connected person and:

- (a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder; or
- (b) securities are issued under a share option scheme which complies with Chapter 17 or securities that are issued under a share option scheme in existence before the securities of the listed issuer first commenced dealing on the Exchange for which approval for listing was granted at the time such dealing first commenced; or
- (c) the connected person is acting as underwriter or sub-underwriter of an issue of securities by the listed issuer, provided that Rules 7.21(2) and 7.26A(2) have been complied with; or

(Rule 14A.31(3)(a) to (c))

*Notes:*

- (1) *The entity whose issue of securities is being underwritten or sub-underwritten by a connected person must make full disclosure of the terms and conditions of the underwriting in the listing document.*
- (2) *Excess application and the taking up of pro rata entitlements in respect of a rights issue or open offer are not connected transactions. Rules 7.21(1) and 7.26A(1) provide that, where securities not subscribed by allottees are to be disposed of by means of excess application forms, such securities must be available for subscription by all shareholders and allocated on a fair basis. An intention to so offer such securities must be fully disclosed in the rights issue or open offer announcement, listing document and any circular.*
- (3) *If a listed issuer which is a holding company acts as underwriter or sub-underwriter of an issue of securities by its subsidiary that is also a listed issuer, such transaction is also connected for the listed holding company if the listed subsidiary is a connected person under Rules 14A.11(5) or 14A.11(6). In this case, the listed issuer which is a holding company is subject to connected transaction requirements unless exempted under Rules 14A.31(1) or 14A.31(2). The exemption under this Rule is applicable to the listed subsidiary but not the listed holding company.*
- (d) securities are issued to a connected person within 14 days after such connected person has executed an agreement to reduce its holding in that class of securities by placing securities to a third person who is not its associate. The securities must be issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing. The number of securities issued to the connected person must not exceed the number of securities placed by it (Rule 14A.31(d));

*Note: Under Rule 13.28, the listed issuer is required to make an announcement containing details of the placing and subscription of shares by the connected person. (Rule 14A.31(d) Note)*

(4) Stock exchange dealings

Stock exchange dealings are transactions falling within Rule 14A.13(1)(b)(i), which comprises a dealing in securities listed on the Exchange or a recognised stock exchange by a listed issuer in the ordinary and usual course of its business. If the transaction is not carried out on the Exchange or a recognised stock exchange, this exemption will still apply if no consideration passes to or from a connected person. This exemption will not apply if the purpose is to confer a direct or indirect benefit upon a controller(s) or associate of a controller who is also a substantial shareholder in the relevant company (Rule 14A.31(4));

(5) Purchase of own securities

Purchase of own securities is any purchase by a listed issuer of its own securities from a connected person on the Exchange or a recognised stock exchange or under a general offer made in accordance with the Code on Share Repurchases. Where the purchase is on the Exchange or a recognised stock exchange, this exemption will not apply if the connected person knowingly sells its securities to the listed issuer (Rule 14A.31(5)).

(6) Directors' service contracts

Directors' service contracts are the entering into of a service contract by a director of the listed issuer with the listed issuer (Rule 14A.31(6)).

(7) Consumer goods or consumer services

This is the acquisition as consumer or realisation in the ordinary and usual course of business of consumer goods or consumer services by a listed issuer from or to a connected person of the listed issuer on normal commercial terms. Such goods and services:

- (a) must be of a type ordinarily supplied for private use or consumption;
- (b) must be for the acquirer's own consumption or use, and not be
  - (i) processed into products of the acquirer or for resale; or
  - (ii) otherwise for the purpose of or in connection with any business or contemplated business of the acquirer (whether for consideration or otherwise), except for the case where the issuer is the acquirer and there is an open market and transparency in the pricing of these goods or services;

*Note: Examples include utilities provided by a listed issuer to a connected person, meals consumed by a connected person at a restaurant owned by the listed issuer, the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing of groceries, and utilities provided by a connected person to a listed issuer where the prices are published or publicly quoted and apply to other independent consumers.*



- (c) must be consumed or used by the acquirer in the same state as when they were acquired;
- (d) must be of a total consideration or value that is or represents less than 1% of the total revenue or total purchases, as the case may be, of the listed issuer as shown in its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts; and
- (e) the transactions concerned must be on terms no more favourable to the connected person than those available to independent third parties or no less favourable to the listed issuer than those available from independent third parties (as the case may be);

*Note: Listed issuers are encouraged to consult the Exchange at an early stage to determine whether a transaction falls within the scope of this Rule.  
(Rule 14A.31(7))*

(8) Sharing of administrative services

This is the sharing of administrative services between a listed issuer and a connected person on a cost basis. The cost of the services must be identifiable and allocated to the parties involved on a fair and equitable basis. Examples include company secretarial services, legal services and staff training services.  
(Rule 14A.31(8))

(9) Transactions with a person connected at the level of an “insignificant” subsidiary

A connected transaction on normal commercial terms where:

- (a) the transaction is a connected transaction only because it involves a person who is a connected person of the listed issuer by virtue of its/his relationship(s) with the issuer’s subsidiary or subsidiaries;
- (b) the value of the relevant subsidiary’s total assets, profits and revenue (or the aggregate value of the relevant subsidiaries’ total assets, profits and revenue) represents:
  - (i) less than 10% under the relevant percentage ratios as defined under Rule 14.04(9) for each of the latest three financial years (or if less, the period since the incorporation or establishment of the subsidiary or subsidiaries); or
  - (ii) less than 5% under the relevant percentage ratios as defined under Rule 14.04(9) for the latest financial year.

For this purpose, 100% of the subsidiary’s or subsidiaries’ total assets, profits and revenue will be used to calculate the relevant percentage ratios. Where any of the calculations of the percentage ratios produces an anomalous result, the Exchange may disregard the calculation and the listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration; and

- (c) if any relevant subsidiary (or any of its subsidiaries) is a party to the transaction or if the securities or assets of the relevant subsidiary (or any of its subsidiaries) are the subject of the transaction, the consideration ratio is less than 10%. This requirement will not apply if the transaction is of a revenue nature in the issuer's ordinary and usual course of business; and (Rule 14A.31(9))

(10) Transactions with associates of a passive investor

A connected transaction of a revenue nature in the ordinary and usual course of the listed issuer's business and on normal commercial terms where:

- (a) the transaction is a connected transaction only because it involves an associate (the "Relevant Associate") of a substantial shareholder of the listed issuer; and
- (b) the substantial shareholder is a passive investor in the listed issuer and meets the following criteria:
  - (i) it is a sovereign fund, or a unit trust or mutual fund authorised by the Commission or an appropriate overseas authority;
  - (ii) it has a wide spread of investments other than the securities of the listed issuer and the Relevant Associate;
  - (iii) it and the Relevant Associate are connected persons only because it is a substantial shareholder of the listed issuer;
  - (iv) it is not a controlling shareholder of the listed issuer;
  - (v) it does not have any representative on the board of directors of the listed issuer, and is not involved in the management of the listed issuer (including any influence over the listed issuer's management through negative control (e.g. its veto rights) on material matters of the listed issuer); and
  - (vi) it is independent of the directors, chief executive, controlling shareholder(s) and any other substantial shareholder(s) of the listed issuer.

(Rule 14A.31(10))

**2. Connected transactions exempt from the independent shareholders' approval requirements**

A connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are:

- (1) less than 5%; or
- (2) less than 25% and the total consideration is less than HK\$10,000,000,

is only subject to the reporting and announcement requirements set out in Rules

14A.45 to 14A.47 and is exempt from the independent shareholders' approval requirements.

*Note: This exemption does not apply to the issue of new securities by a listed issuer (other than its subsidiaries) to a connected person which is governed by Rule 14A.31(3).*

(Rule 14A.32)

## **H. CONTINUING CONNECTED TRANSACTIONS EXEMPT FROM THE REPORTING, ANNUAL REVIEW, ANNOUNCEMENT AND INDEPENDENT SHAREHOLDERS' APPROVAL REQUIREMENTS**

### **1. Wholly exempt continuing connected transactions**

The following continuing connected transactions will be exempt from the reporting, announcement and independent shareholders' approval requirements:

(1) Consumer goods or consumer services

This exemption is the same as the exemption for connected transactions in relation to consumer goods or consumer services set out above.

(Rule 14A.33(1))

(2) Sharing of administrative services

This exemption is the same as the exemption for connected transactions in relation to sharing of administrative services set out above.

(Rule 14A.33(2))

(3) De minimis transactions

A de minimis transaction is a continuing connected transaction on normal commercial terms where each of the percentage ratios (other than the profits ratio) is/are on an annual basis:

- (a) less than 0.1%;
- (b) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the issuer by virtue of its/his relationship(s) with the issuer's subsidiary or subsidiaries; or
- (c) less than 5% and the annual consideration is less than HK\$1,000,000;

(4) Transactions with a person connected at the level of an "insignificant" subsidiary

A continuing connected transaction that meets the requirements in Rule 14A.31(9); and

(5) Transactions with associates of a passive investor

A continuing connected transaction that meets the requirements in Rule 14A.31(10).

The following notes apply in respect of continuing connected transactions with persons connected at the level of an “insignificant” subsidiary or with an associate of a passive investor.

- Notes:
1. *When a connected person no longer meets the conditions under Rule 14A.33(4) or 14A.33(5), the issuer must, subject to Note 2 to Rule 14A.33, comply with all applicable reporting, annual review, announcement and independent shareholders’ approval requirements for its subsequent continuing connected transactions with the connected person.*
  2. *If the connected person no longer meets the conditions under Rule 14A.33(4) or 14A.33(5) during the term of an agreement for continuing connected transactions, the issuer is only required to comply with the applicable reporting, annual review and announcement requirements if:*
    - (a) *the agreement is for a fixed period with fixed terms; and*
    - (b) *the exemption under Rule 14A.33(4) or 14A.33(5) applies at the time of the agreement.*

*Issuers are encouraged to consult the Exchange on the application of this Note. (Rules 14A.33(4) and (5))*

**2. Continuing connected transactions exempt from the independent shareholders’ approval requirements**

A continuing connected transaction on normal commercial terms where each or all of the percentage ratios (other than the profits ratio) is/are on an annual basis:

- (1) less than 5%; or
- (2) less than 25% and the annual consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in Rules 14A.45 to 14A.47, the annual review requirements set out in Rules 14A.37 to 14A.40 and the requirements set out in Rules 14A.35(1) and 14A.35(2). It is exempt from the independent shareholders’ approval requirements of Chapter 14A. (Rule 14A.34)

**I. EXCHANGE’S DISCRETION ON EXEMPTIONS**

In relation to all the above exemptions for connected transactions and continuing connected transactions, the Exchange reserves the power to specify that an exemption will not apply to a particular transaction. The Exchange may also require, at its

discretion, that any other connected transaction be made conditional on independent shareholders' approval and that the requirements for seeking independent shareholders' approval and independent financial advice will apply. (Rule 14A.30)

## **J. EXEMPT FINANCIAL ASSISTANCE**

As mentioned above, the provision of financial assistance will constitute a connected transaction if it involves a listed issuer and either a connected person or a Commonly Held Entity.

### **1. Wholly exempt financial assistance provided by the listed issuer**

The extent of the exemptions available for financial assistance provided by a listed issuer depend upon whether or not the financial assistance is provided in the issuer's "ordinary and usual course of business" which is defined to mean financial assistance provided only by banking companies (Rule 14A.10(9)).

A "banking company" is a bank, restricted licence bank or deposit taking company as defined in the Banking Ordinance and overseas banks. Financial assistance provided by any other types of issuer is regarded as not being in the ordinary and usual course of business.

#### Financial Assistance Provided by a Listed Issuer

Financial assistance provided by a listed issuer for the benefit of a connected person or Commonly Held Entity is fully exempt (i.e. from all the reporting, announcement and independent shareholders' approval requirements) in the following situations:

- (1) it is provided by a banking company on normal commercial terms (or better to the listed issuer) (Rule 14A.65(1)); or
- (2) it is provided
  - (a) in the ordinary and usual course of business of the listed issuer (i.e. by a banking company) but not on normal commercial terms (or better to the listed issuer); or
  - (b) not in the ordinary and usual course of business (i.e. by an issuer that is not a banking company) but on normal commercial terms (or better to the listed issuer),

and where each or all of the percentage ratios (other than the profits ratio) is/are: (i) less than 0.1%; (ii) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the issuer by virtue of its/his relationship(s) with the issuer's subsidiary or subsidiaries; or (iii) less than 5% and the total value of the assistance plus any preferential benefit to the connected person, or Commonly Held Entity, is less than HK\$1,000,000; (Rule 14A.65(2)); or

- (3) it is provided by a listed issuer for the benefit of a connected person in which the listed issuer is a shareholder, or any Commonly Held Entity, not in the ordinary and usual course of business (i.e. by a non-banking

company) but on normal commercial terms (or better to the listed issuer), provided that the assistance being provided is in proportion to the listed issuer's equity interest in the connected person or the Commonly Held Entity. In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis (Rule 14A.65(3)).

## **2. Wholly exempt financial assistance provided to a listed issuer**

Financial assistance provided by a connected person or a Commonly Held Entity for the benefit of a listed issuer is fully exempt if it is on normal commercial terms (or better to the listed issuer) provided that no security over the assets of the listed issuer is granted in respect of the financial assistance (Rule 14A.65(4)).

## **3. Partially exempt financial assistance provided by a listed issuer**

### Financial assistance provided by a listed issuer which is a banking company

Financial assistance provided by a banking company for the benefit of a connected person or any Commonly Held Entity will be partially exempt (i.e. subject to the reporting and announcement requirements but exempt from the requirement for independent shareholders' approval) if it is not on normal commercial terms (or better to the listed issuer) and where each of the percentage ratios (other than the profits ratio) is/are:

- (i) less than 5%; or
- (ii) less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the Commonly Held Entity is less than HK\$10,000,000 (Rule 14A.66(1)).

### Financial assistance provided by a listed issuer which is not a banking company

Financial assistance provided by a listed issuer which is not a banking company for the benefit of a connected person or a Commonly Held Entity if the assistance is not in proportion to the listed issuer's interest in the Commonly Held Entity or guarantees given by the issuer are not on a several basis, will be exempt from the independent shareholders' approval requirement if:

- (a) it is provided on normal commercial terms (or better to the listed issuer); and
- (b) each of the percentage ratios (other than the profits ratio) is/are: (i) less than 5% or (ii) less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than HK\$10,000,000. (Rule 14A.66(2))

## **4. Options**

- (1) The grant, acquisition, transfer, or exercise of an option involving a listed issuer and its connected person will be treated as a connected transaction and classified by reference to the percentage ratios (other than the profits ratio). (Rule 14A.68)

- (2) The termination of an option by a listed issuer will also be treated as a connected transaction and classified by reference to the percentage ratio (other than the profits ratio), unless the termination is in accordance with the terms of the original agreement entered into by the listed issuer and does not involve payment of any amounts by way of penalty, damages or other compensation. The *de minimis* exemptions described above apply to options. The listed issuer must comply with the connected transaction requirements and the specific requirements of Rules 14A.69 to 14A.71 of the Listing Rules. (Rule 14A.68)

**K. AGGREGATION OF CONNECTED TRANSACTIONS AND CONTINUING CONNECTED TRANSACTIONS**

1. The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the connected transactions when aggregated. Where a series of acquisitions of assets over a longer period is being aggregated under Rule 14.06(6)(b) (i.e. they constitute a reverse takeover), the aggregation period for such acquisitions shall cover 24 rather than 12 months. (Rule 14A.25)
2. Factors which the Exchange may take into account in determining whether connected transactions will be aggregated include whether the transactions:-
  - (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
  - (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
  - (3) involve the acquisition or disposal of parts of one asset; or
  - (4) together lead to substantial involvement by the listed issuer in a business activity which did not previously form a part of the listed issuer's principal business activities.(Rule 14A.26)
3. The Exchange may consider aggregating all continuing connected transactions with a single connected person to determine in which category the aggregated transaction falls. (Rule 14A.27)
4. For the purposes of aggregating connected transactions, a listed issuer must consult the Exchange before it enters into any proposed connected transaction(s) if:
  - (1) any circumstances described in paragraphs 2 or 3 above exist in respect of such proposed connected transaction(s) and any other connected transaction(s) entered into by the listed issuer in the preceding 12-month period; or
  - (2) the proposed connected transaction(s) and any other transaction(s) entered

into by the listed issuer involve acquisitions of assets from a person or group of persons or any of his/their associates within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries). (Rule 14A.27A(1) and (2))

The listed issuer must provide details of the transactions to the Exchange to enable it to determine whether the transactions will be aggregated. (Rule 14A.27A)

*Note: This Rule serves to set out certain specific circumstances where the listed issuer must seek guidance from the Exchange before it enters into any proposed connected transaction(s). The Exchange may nevertheless aggregate connected transactions where no prior consultation was made by the listed issuer. (Rule 14A.27A Note)*

## **L. QUALIFIED PROPERTY ACQUISITIONS**

### **Definition of qualified property acquisition, qualified issuer and qualified connected person**

#### **1. Qualified property acquisition**

A qualified property acquisition means an acquisition of land or property development project in Hong Kong from Government or Government-controlled entities through a public auction or tender; or an acquisition of governmental land in the Mainland from a PRC Government Body (as defined in Rule 19A.04) through a tender, auction, or listing-for-sale governed by the PRC law, subject to the discretion of relaxation of requirement by the Exchange set out in Rule 14.04(10C). (Rule 14.04(10C) and Rule 14A.10(10C))

#### **2. Qualified issuer**

A qualified issuer means an issuer actively engaged in property development as a principal business activity. (Rule 14.04(10B) and Rule 14A.10(10B))

#### **3. Qualified connected person**

A qualified connected person means a connected person of the qualified issuer solely because he/it is a substantial shareholder (or its associate) in one or more of the qualified issuer's non wholly-owned subsidiaries formed to participate in property projects, each of which is single purpose and project specific. This connected person may or may not have representation on the board of the subsidiary/ subsidiaries. (Rule 14A.10(10A))

### **Exemption from shareholders' approval requirements**

The Exchange exempts the formation of a joint venture by a qualified issuer and a qualified connected person to make a qualified property acquisition from shareholders' approval requirements provided that:

- (1) the project will be single purchase, relating to the acquisition and/or development of a specific property, and consistent with the purpose specified in



- the auction or tender document;
- (2) the joint venture arrangement is on an arm's length basis and on normal commercial terms;
  - (3) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners' unanimous consent:
    - (a) change the nature or scope of its business, and, if there are changes, they must be consistent with the scope or purpose specified in the auction or tender document; or
    - (b) enter into any transactions which are not on an arm's length basis; and
  - (4) the independent board committee and independent financial adviser have confirmed that:
    - (a) the acquisition is in the group's ordinary and usual course of business; and
    - (b) the acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, are fair and reasonable and in the interests of the issuer and its shareholders as a whole. (Rule 14A.72)

A qualified issuer is required to announce the transaction as soon as possible after receiving notification of the success of the bid by the joint venture. If any details of the acquisitions or the joint venture required to be disclosed are not available when the qualified issuer publishes the initial announcement, subsequent announcement(s) must be published to disclose the details as soon as practicable after they have been agreed or finalized. (Rule 14A.73(1) and (2))

## **M. WAIVERS**

The Exchange may grant a waiver from any requirements under Chapter 14A in individual cases where it thinks appropriate, subject to any conditions that it may impose. (Rule 14A.07 and Rule 14A.44). In particular, the Exchange will consider granting waivers for the following transactions (Rule 14A.42):

### **1. Transaction relating to non-executive directors**

The Exchange may waive the circular and shareholders' approval requirements for a connected transaction with a non-executive director of the issuer or its subsidiaries if the Exchange is satisfied that:

- (1) The transaction is connected only because of the interest of a non-executive director;
- (2) such director does not control the issuer and his principal business interest is not the issuer; and
- (3) the issuer's auditor or an acceptable financial adviser has given the opinion that the transaction is fair and reasonable to the shareholders as a

whole.

**2. Provision of guarantees to connected persons or Commonly Held Entities for public sector contracts awarded by tender**

The Exchange may also consider granting waiver for a joint and several guarantee or indemnity provided by the issuer to a third party creditor for the obligations of a non wholly-owned subsidiary under Rule 14A.11(5) and (6) or a Commonly Held Entity if:

- (1) the guarantee or indemnity is required in connection with a government or public sector contract awarded by tender;
- (2) each of the other shareholders of the non wholly-owned subsidiary or Commonly Held Entity has given a similar joint and several guarantee or indemnity to the third party creditor; and
- (3) each of the other shareholders of the non wholly-owned or Commonly Held Entity has agreed to indemnify the issuer for the liability guaranteed, or indemnified at least in proportion to its equity interest in the subsidiary or entity. The issuer must also satisfy the Exchange that such shareholder indemnity is sufficient.

**3. Continuing connected transactions of new applicants**

The Exchange may grant a waiver from the announcement and independent shareholders' approval requirements for continuing connected transactions entered into by a new applicant or its subsidiaries. General waivers will not be granted. The new applicant must disclose in the listing document its sponsor's opinion on whether the transactions are in the issuer's ordinary and usual course of business, on normal commercial terms, are fair and reasonable and in the interests of the shareholders as a whole.

*This note contains a summary only of certain requirements of the Hong Kong Listing Rules in relation to connected transactions. Its contents do not constitute legal advice and it should not be relied upon as such. Specific advice should be sought in relation to any particular situation.*