

Hong Kong Capital Markets Update

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HKEX's consultation on Treasury Shares

On 27 October 2023, the Stock Exchange of Hong Kong Limited (the "Exchange") published a [consultation paper](#) ("Consultation") seeking market feedback on proposals to introduce a new treasury share regime. The deadline for submissions is 27 December 2023.

Key Proposals

Remove the requirement to cancel repurchased shares

- To allow issuers to hold repurchased shares in treasury subject to the laws of their places of incorporation and their constitutional documents.

Govern the resale of treasury shares in the same manner as the issue of new shares

- To apply the current requirements for an issuance of new shares to a resale of treasury shares by an issuer.

Add requirements to mitigate the risks of market manipulation and insider dealing

- To ensure a fair and orderly market in the trading of repurchased shares and to afford fair and equal treatment for shareholders.

Background

The Listing Rules requirement to automatically cancel the listing of all repurchased shares was established to safeguard against the risk of market manipulation by issuers repeatedly repurchasing and reselling their own shares on the market. It prevents insiders from trading in the shares to benefit from non-public information about the share repurchases and the resales of treasury shares. The Securities and Futures Ordinance ("SFO") also provides the primary safeguards against stock market manipulation and insider dealing. Any dealings by an issuer in its treasury shares which amount to stock market manipulation and insider dealing are restricted by the SFO.

On the other hand, if the repurchased shares can be held in treasury for future resale, it will give the issuers more flexibility in managing their capital structure. They can react promptly to market conditions and resell treasury shares in small lots on the market at market prices, which offers an alternative means to raise fund compared to a placing of new shares which typically involves a discount to market prices. Treasury shares can also be transferred as consideration, for satisfying employees' share schemes or upon conversion of convertible securities.

With currently most of the issuers listed on the Exchange incorporated in jurisdictions that allow holding of treasury shares, the Exchange considers it appropriate to consult the public on the removal of the Listing Rules requirement to cancel repurchased shares and the adoption of a framework in the Listing Rules to govern the resale of treasury shares.

Key proposals

The proposed removal of the Listing Rules requirement to cancel repurchased shares will be accompanied by a framework to ensure a fair and orderly market in the trading of repurchased shares and to afford fair and equal treatment for shareholders. The key proposals are summarised below.

Requirement to cancel repurchased shares removed

Issuers may hold repurchased shares in treasury subject to the laws of their places of incorporation and their constitutional documents.

Resale of treasury shares by an issuer governed in the same manner as the Listing Rules that currently apply to an issue of new shares, including:

- The resale of treasury shares should be conducted on a pre-emptive basis or with shareholders' mandate;
- The share scheme using treasury shares to satisfy share grants would be treated as a share scheme funded by new shares;
- Any resale of treasury shares to a connected person would be subject to the same connected transaction requirements as an issue of new shares; and
- The resale of treasury shares should follow certain disclosure and documentary requirements which are applicable to an issuance of new shares.

Fair market maintained, mitigating the risk of stock market manipulation and insider dealing by:

- A 30-day moratorium period will be imposed to restrict (i) a resale of treasury shares (whether on or off-market) after a share repurchase; and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares;
- A resale of treasury shares on the Exchange will be prohibited (i) when there is undisclosed inside information; (ii) during the one-month period preceding results announcement; or (iii) if it is knowingly made with a core connected person; and
- The issuer should procure its broker appointed to repurchase its shares to disclose to the Exchange information concerning its resale of treasury shares on the Exchange.

Consequential rule amendments made as follows:

- New listing applicants are allowed to retain their treasury shares upon listing, with any resale of these shares subject to the same six months lock-up requirement as an issue of new shares;
- Issuers (being holders of treasury shares) are required to abstain from voting on matters that require shareholders' approval under the Listing Rules;
- Treasury shares are excluded from an issuer's issued or voting shares under various parts of the Listing Rules (e.g. public float and size test calculations);
- An issuer is required to disclose in the explanatory statement its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares; and
- It is clarified that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees.

[Guidance Letter on automatic share buy-back programs](#)

The Exchange also published [HKEX-GL117-23](#) on a framework for granting waivers to allow issuers' automatic share buy-back programs conducted on the Exchange, which highlights the criteria that the Exchange will apply in assessing an issuer's share buy-back program and waiver application.

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