

Hong Kong Capital Markets Update

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HKEX's consultation conclusion on Treasury Shares

On 12 April 2024, the Stock Exchange of Hong Kong Limited (the "Exchange") published the [conclusion](#) to its consultation (the "Conclusion") on proposed amendments to the Listing Rules in relation to treasury shares. The key amendments are summarised as below:

Key Amendments

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 safeguards 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.

Effective date

- The revised Listing Rules will become effective on **11 June 2024**.

Background

To give issuers greater flexibility in managing their capital structure, the Exchange published a [consultation paper](#) (the "Consultation Paper") on 27 October 2023 which set out the proposed amendments to the Listing Rules to remove the requirement to cancel repurchased shares and to adopt a framework in the Listing Rules to govern the resale of treasury shares (for a summary, please refer to our [Capital Markets Update Issue 2023-8](#)). The consultation period ended on 27 December 2023.

Having carefully considered the responses received, the Exchange concluded that the proposals outlined in the Consultation Paper should be implemented with minor modifications in response to market comments (as detailed in Appendix I).

Key Amendments

The removal of the Listing Rules requirement to cancel repurchased shares will be accompanied by a framework to ensure a fair and equal treatment of all shareholders on the resale of treasury shares and maintain a fair and orderly market in the trading of issuer's shares. The key amendments are summarised below.

Removed the requirement to cancel repurchased shares

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 to follow 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
- Additional disclosure requirements for on-market resale of treasury shares, on top of adhering to disclosure and documentary requirements applicable to an issuance of new shares.

Maintain fair and orderly market, by mitigating the risk of stock market manipulation and insider dealing, through:

- Imposing a 30-day moratorium period to restrict (i) a resale of treasury shares (whether on or off-market) after a share repurchase (subject to certain carve-out provisions); and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares;
- Prohibiting a resale of treasury shares on the Exchange: (i) when there is undisclosed inside information; (ii) during the 30-day period preceding results announcement; or (iii) if it is knowingly made with a core connected person; and
- Requiring the issuer to procure its broker appointed to repurchase its shares to disclose to the Exchange information in respect of its resale of treasury shares on the Exchange.

Consequential rule amendments made as follows:

- Allowing new listing applicants 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;
- Requiring issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules;
- Excluding treasury shares from an issuer's issued or voting shares under various parts of the Listing Rules (e.g. public float and size tests for transactions);
- Requiring an issuer 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
- Clarifying that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees.

Additional guidance

The Exchange has also published (i) a [new guidance letter](#) on the arrangements for issuers to hold or deposit treasury shares in CCASS; and (ii) [frequently asked questions](#) relating to treasury shares.

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If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners.

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Appendix 1: Key proposals from the Consultation Paper and final implementation

Consultation Proposal on:	Final implementation:
Removing the requirement to cancel repurchased shares	
<ul style="list-style-type: none"> remove the requirement to cancel repurchased shares 	Adopt
Treating a resale of treasury shares as new shares	
<ul style="list-style-type: none"> govern resale of treasury shares by an issuer in the same manner as the Listing Rules that currently apply to an issue of new shares 	Adopt, with modifications to require additional disclosure for on-market resale of treasury shares
Mitigating risks of market manipulation and insider dealing	
<ul style="list-style-type: none"> impose a 30-day moratorium period to restrict <ol style="list-style-type: none"> a resale of treasury shares (whether on or off-market) after a share repurchase; and an on-Exchange share repurchase after an on-Exchange resale of treasury shares 	Adopt, with modifications to exclude capitalization issues, share grants under a share scheme that complies with Chapter 17 of the Listing Rules and any issue of new shares or transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme
<ul style="list-style-type: none"> prohibit a resale of treasury shares on the Exchange (i) where there is undisclosed inside information; (ii) during the one-month period preceding the results announcement; or (iii) if it is knowingly made with a core connected person 	Adopt, with modification to adjust the restricted period for on-Exchange share repurchases and on-Exchange resales of treasury shares from one month to 30 days preceding results announcement
<ul style="list-style-type: none"> allow new listing applicants to retain their treasury shares upon listing, with any resale of these shares subject to the same lock-up requirement as an issue of new shares 	Adopt
Consequential amendments	
<ul style="list-style-type: none"> require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules 	Adopt
<ul style="list-style-type: none"> exclude treasury shares from an issuer's issued or voting shares under various parts of the Listing Rules (e.g. public float and size test calculations) 	Adopt
<ul style="list-style-type: none"> require an issuer to disclose in the explanatory statement its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares 	Adopt, with modifications to require an issuer to disclose in the next day disclosure return after each share repurchase (a) whether repurchased shares are to be cancelled or held in treasury; and (b) where applicable, the reasons for any deviation from the intention statement previously disclosed by the issuer in the explanatory statement
<ul style="list-style-type: none"> clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees 	Adopt