



Proposed Amendments to Listing Rules Relating to Treasury Shares

Under the current Listing Rules by the Hong Kong stock exchange, if listed issuers repurchase its own shares, the listing of such repurchased shares is automatically cancelled. Following settlement of any such repurchase, the documents of titles are cancelled and destroyed. The latest amendment (the “**New Listing Rules**”), which is to be effective on 11 June 2024, will remove the requirement to cancel repurchased shares and to adopt a framework to govern the resale of treasury shares in the Listing Rules. Transitional arrangements will be provided to issuers to comply with the new Listing Rule requirements by their second annual general meeting after the effective date of the proposed amendments on the condition that such issuers are required to comply with the relevant requirements in the event of changes to the Listing Rules in relation to treasury shares.

Over 90% of overseas issuers listed on the Exchange are incorporated in jurisdictions which allow holding of treasury shares including Bermuda, the Cayman Islands, the British Virgin Islands, the PRC, Canada (BC), Jersey, Japan, Singapore, Luxembourg, Italy, the UK and the US. The removal of this requirement will give these issuers more flexibility in managing their capital structure.

Reasons for the Repurchase of Shares

Companies might repurchase back shares for many different reasons. These include giving cash back to shareholders, adjusting the debt-to-equity ratio, increasing metrics like earnings per share, helping shareholders exit the company, or indicating to the market that their shares are underestimated.

Reasons for the Treasury Shares

If listed issuers retain repurchased shares in treasury for potential resale when market conditions permit, it grants them enhanced flexibility to promptly adjust their share capital. This adjustment could potentially decrease their cost of capital. For instance, these treasury shares could be sold in small increments on the market at prevailing market prices, offering an alternative fundraising avenue compared to traditional placings, where new shares are usually sold at a discount.

Moreover, treasury shares can serve various purposes, such as satisfying employees' share schemes or converting convertible securities, subject to compliance with the relevant company laws of the issuers' jurisdictions of incorporation.

A. Remove the requirement to cancel repurchased shares

The current Listing Rule requirement to cancel repurchased shares are cancelled.

Under the New Listing Rule 1.10, treasury shares are defined as shares repurchased and held by an issuer in treasury, as authorised by the laws of the issuer's place of incorporation and its articles of association or equivalent constitutional documents.



Jurisdictions

Laws under the jurisdiction

Action to be taken

Bermuda, the Cayman Islands

Shares repurchased by an issuer will need to be held in its own name in order to be classified as treasury shares under the company laws, and the rights (such as voting, dividend and distribution) attached to those shares will be suspended.

An issuer wishing to hold repurchased shares in treasury should, upon completion of the share repurchase, withdraw the repurchased shares from CCASS and register the treasury shares in its own name. When the issuer re-deposits the treasury shares into CCASS for resale on the Exchange, the shares will cease to be classified as treasury shares under the laws of Bermuda or the Cayman Islands as the legal titles of the shares are transferred to HKSCC Nominees and the shareholders' rights attached to the shares would resume.

Yet for the purpose of the Listing Rules, these repurchased shares held in CCASS should continue to be treated in the same way as treasury shares registered in the issuer's own name as they are both beneficially owned by the issuer.

Jurisdictions

Laws under the jurisdiction

Action to be taken

PRC

Treasury H shares are not required to be held in the name of the issuer.

The issuer shall, upon completion of the share repurchase, instruct its share registrar to update the record to clearly indicate the shares that are held in CCASS as treasury shares.

Repurchased H shares may continue to be held in CCASS as treasury shares, and the shareholders' rights attached to those shares will be suspended under the PRC laws.

Treasury shares are allowed to retain the listing status. The issuer shall ensure that treasury shares are appropriately identified and segregated.

B. Treating a resale of treasury shares as new shares

Since a resale of treasury shares affects existing shareholders in a similar manner as an issue of new shares, it is appropriate to apply the framework for an issue of new shares to govern a resale of treasury shares.

(a) Resale of treasury shares to be conducted on a pre-emptive basis or with a shareholders' mandate

A resale of treasury shares shall be subject to pre-emption similar to an issue of new shares under the current Listing Rule 13.36 and be offered to all shareholders on a pro-rata basis. Alternatively, it shall be approved by shareholders under a specific mandate or a general mandate approved in advance by shareholders.

An on-market resale of treasury shares under the general mandate shall be subject to a maximum price discount of 20% of the higher of (i) the closing price on the trading day immediately prior to the resale; and (ii) the average closing price in the 5 trading days immediately prior to the resale. An off-market resale of treasury shares under general mandate for cash consideration shall be subject to the same 20% price discount limit as an issue of new shares.



The Exchange shall require an issuer to:

- a) include additional information of its on-market resales of treasury shares in the next day disclosure return, including the highest and lowest selling price, the amount of funds raised and the details of the general mandate used, all in line with the disclosure required for on-market share repurchases;
- b) disclose its on-market resales of treasury shares by way of an announcement if they, individually or together with previous on-market resales of treasury shares in a 12-month period that have not yet been announced under this rule (New Listing Rule 10.06B(2)), amount to 5% or more of the issuer's issued shares, including the reasons for these transactions, the use of proceeds and other information (if applicable) required under New Listing Rule 13.28; and
- c) disclose in its annual report:
 - (i) a monthly breakdown of the on-market resales of treasury shares during the year, the total funds raised and the use of proceeds; and
 - (ii) any treasury shares held by the issuer as at the year end date and their intended use.

The announcement under New Listing Rule 13.28 does not apply to a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed. The same exception relating to on-market resale of treasury shares applies to the New Listing Rule 9.23(2) in relation to the submission of placee information.

(b) Share Scheme

A share scheme using treasury shares to satisfy share grants would be categorised as a share scheme financed by new shares under Chapter 17 of the Listing Rules. Consequently, the grant of shares under the scheme would be subject to the scheme mandate limit approved by shareholders under Chapter 17 of the Listing Rules.

(c) Other requirements relating to a resale of treasury shares

(i) Connected transactions

Any resale of treasury shares to a connected person would be subject to the same connected transaction requirements as an issue of new shares under Chapter 14A. This means a resale of treasury shares to a connected person would be subject to independent shareholders' approval, unless it is exempted under the New Listing Rule 14A.92.

(ii) Certain Listing Rule requirements currently applicable to an issue of new shares being extended to a resale of treasury shares

Applicable Listing Rule requirements extended to a resale of treasury shares include disclosure requirements under the New Listing Rule 13.28 (announcement), the New Listing Rule 11.04 (listing document), the New Listing Rule 13.25A (next day disclosure return), the New Listing Rule 13.25B (monthly return) and Paragraphs 11 and 11A of Appendix D2 (annual report); and documentary requirements under the New Listing Rules 9.18 to 9.23.



C. Mitigation of risks of market manipulation and insider dealing

(a) Moratorium periods for share repurchases and resales of treasury shares

Listing Rule 10.06(3) restricts the issue of new shares by a listed issuer for a 30-day period (moratorium period) after any share repurchase. The New Listing Rule 10.06(3) shall also impose the moratorium period on:

- a) a resale of treasury shares (whether on-market or off-market) after a share repurchase, with a modification to the carve-out described below; and
- b) a share repurchase on the Exchange after a resale of treasury shares on the Exchange.

The moratorium period seeks to ensure that an issue of new shares or resale of treasury shares does not take place at a price that has been affected by the issuer's previous share repurchase.

The moratorium shall not apply to the following: (i) capitalisation issues (e.g. bonus issues and scrip dividends) and (ii) grants of share awards or options under a share scheme that complies with Chapter 17 or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme. Price manipulation is unlikely in the above two situations as the purposes of these issues of new shares or resales of treasury shares are to distribute shares to shareholders on a pro-rata basis or to incentivise employees, but not to raise funds for the issuer.

(b) Dealing restrictions for resale of treasury shares on the Exchange

Dealing restrictions applicable to on-Exchange share repurchase shall be extended to on-Exchange resale of treasury shares:

- a) The restriction on undertaking share repurchases while there is undisclosed inside information or during the period of 30 days preceding any results announcement will also apply to resales of treasury shares.
- b) An issuer is prohibited from knowingly purchasing its shares from a core connected person and a core connected person shall not knowingly sell shares to the issuer on the Exchange. This will be extended to a resale of treasury shares on the Exchange. On-market resale of treasury shares to a connected person without knowledge would be fully exempt from the connected transaction rules. This is consistent with the exemption currently available for on-market share repurchase.
- c) An issuer is required to procure its broker appointed to repurchase its shares to disclose to the Exchange information in respect of the purchase if so requested. This will be extended to a resale of treasury shares on the Exchange.



D. New listing applicants

The New Listing Rules allow the listing applicants to retain their treasury shares upon listing and require new listing applicants to disclose details of treasury shares held in prospectus. The New Listing Rules also restrict new listing applicants from reselling treasury shares within six months after listing as the Listing Rules currently applicable to an issue of new shares.

E. Consequential Rule amendments

Other consequential rule amendments are as follows:

- a) Requiring issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the New Listing Rules;
- b) Excluding treasury shares from an issuer's issued or voting shares under various parts of the New Listing Rules (e.g. public float and size test calculations);
- c) 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;
- d) Clarifying that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees; and
- e) Amending Rule 19C.11 to exempt issuers with secondary listings on the Exchange from the New Listing Rules 10.06A(1), 10.06A(3) and 10.06B, in line with the exemptions from the requirements of share repurchases currently applicable to these issuers.

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