

HKEX News Update: Consultation Conclusions on New Treasury Share Regime

On 12 April 2024, the Stock Exchange published [Consultation Conclusions](#) to its [Consultation Paper](#) regarding proposed amendments to the Listing Rules relating to Treasury Shares.

The key proposals adopted include:

(a) **Abolish the requirement to cancel repurchased shares**

- Remove the requirement to cancel repurchased shares so that issuers may hold these shares in treasury, subject to the laws of their places of incorporation ^(Note) and their constitutional documents, and the listing of shares held as treasury shares will be retained;
- Treasury shares may be held by an issuer or its subsidiary, or an agent or a nominee on behalf of the issuer or its subsidiary, and to be used for purposes permitted under the laws of the issuer's place of incorporation and its constitutional document;
- Issuers should ensure that treasury shares are appropriately identified and segregated; and
- Issuers should consider if their constitutional documents contain any restriction on the holding and use of treasury shares and amend their constitutional documents if necessary.

(b) **Resale of treasury shares treated as new shares**

- Resale of treasury shares to be conducted on a pre-emptive basis similar to an issuance of new shares and offered to all shareholders on a pro-rata basis, or under a specific mandate or a general mandate approved in advance by shareholders;
- A share scheme using treasury shares to satisfy share grants would be treated as a share scheme funded by new shares under Chapter 17 of the Main Board Listing Rules (Chapter 23 of the GEM Listing Rules). The rules of the issuer's share scheme should specifically allow the use of treasury shares to satisfy share grants;
- Resale of treasury shares to connected persons will be subject to the same connected transaction requirements as an issue of new shares under Chapter 14A of the Main Board Listing Rules (Chapter 20 of the GEM Listing Rules); and
- Issuers shall disclose the resale of, and movement in the number of, treasury shares in announcements, listing documents, next day disclosure returns, monthly returns and annual reports.

(c) **Requirements to mitigate the risk of market manipulation and insider dealing**

- Impose a 30-day moratorium period to restrict (i) a resale of treasury shares after an on- or off-market share repurchase; and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares;
- The moratorium will be subject to a carve-out for (i) resale of shares under capitalization issues (e.g. bonus issues and scrip dividends); (ii) grants of share awards or options under a share scheme that complies with Chapter 17 of the Main Board Listing Rules (Chapter 23 of the GEM Listing Rules) and a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme; and (iii) the issuance of new shares and transfer of treasury shares by an issuer upon conversion of convertible securities, which were issued with subscription monies fully settled before the share repurchase;

- Prohibit a resale of treasury shares on the Exchange (i) when there is undisclosed inside information; (ii) during the 30-day period preceding the results announcement; and (iii) if it is knowingly made with a core connected person; and
 - Adjust the restricted period for on-Exchange share repurchase from one month to 30 days preceding results announcement.
- (d) **Requirements relating to new listing applicants**
- New listing applicants may retain their treasury shares upon listing and disclosed details in their prospectus;
 - If a new listing applicant has a plan or intention to repurchase a material part of its shares shortly after listing, this must be adequately explained and disclosed in the applicant's prospectus and its cash flow forecasts submitted to the Exchange; and
 - Resale of treasury sales (or agreeing to resell) is not allowed within six months of a new listing, except for companies that have transferred their listing from GEM to the Main Board.
- (e) Consequential **Rule amendments** to address the **treatment of treasury shares**
- Holders of treasury shares must abstain from voting on matters that require shareholders' approval under the Listing Rules;
 - The definition of "shareholder" for the purpose of Main Board Listing Rules 14.44 and 14A.37 (GEM Listing Rules 19.44 and 20.35) refers to a "shareholder other than the holder of treasury shares";
 - The definition of "voting rights" under the Codes on Takeovers and Mergers and Share Buy-backs excludes the voting rights attached to treasury shares (if any);
 - Treasury shares will be excluded from the calculation of issuers' issued shares or voting shares under various parts of the Rules (e.g. public float, market capitalization, mandate limits and size tests for transactions); and
 - Require an issuer to disclose in the explanatory statement for the share repurchase mandate its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares.
- (f) Housekeeping **Rule amendments** relating to **share schemes**
- Clarify that the reporting requirements for issues of securities for cash consideration under Appendix D2 (Disclosure of Financial Information) of the Main Board Listing Rules (Chapter 18 (Financial Information) of the GEM Listing Rules) do not apply to new shares issued or treasury shares resold under share schemes;
 - Require an issuer to file a next day disclosure return for the new shares issued or treasury shares transferred to grantees (other than directors) under its share scheme when the relevant threshold under Main Board Listing Rule 13.25A(3) (GEM Listing Rule 17.27A(3)) is reached (instead of filing a return for each issue of new shares or transfer of treasury shares upon vesting of share awards); and
 - Adjust the restricted period for grants of options / awards under share schemes from one month to 30 days preceding results announcement.

Note:

- *Currently, over 90 per cent of the issuers listed on the Stock Exchange are incorporated in jurisdictions that allow holding of treasury shares. For listed issuers incorporated in Hong Kong, the Government is proposing amendments to the Companies Ordinance (Chapter 622 of Laws of Hong Kong) to enable them to also benefit from the treasury share regime as other overseas issuers.*

The related amended Main Board and GEM Listing Rules will come into effect on 11 June 2024.

To view the full details of HKEX's news, please click [HERE](#).

To view details in respect of the following:

- New guidance letter HKEX-GL119-24 on arrangements for listed issuers to hold or deposit treasury shares in CCASS: please click [HERE](#); and
- FAQs relating to treasury shares: please click [HERE](#).