

Submitted via Qualtrics

Company/Organisation view

Question 1

Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares?

Yes

Please provide reasons for your views.

We welcome this proposed amendment to align Hong Kong's repurchase regime with major international markets and laws of most jurisdictions in which companies listed on the Exchange are incorporated. With a proper governance framework, the treasury share regime can provide greater flexibility for listed issuers to manage their capital structure while minimising concerns of market manipulation or misconduct.

Question 2

Do you agree with the proposal to require a resale of treasury shares to be subject to the same requirements as an issue of new shares as described in Proposal (1)(a) to (c) above?

Yes

Please provide reasons for your views.

Given shareholders' rights (in particular rights on voting and dividend distribution) of treasury shares are generally suspended until resold, from the perspective of an existing shareholder or a potential investor, there is essentially no difference between a resale of treasury shares and an issuance of new shares. As such, we agree that a resale of treasury shares should be subject to the same fundamental requirements.

Separately, it is noted that the proposed Listing Rule amendments contain references to the "bulk printing of listing documents". In line with the Exchange's proposals to expand the paperless listing regime which will come into effect on 31 December 2023, we would suggest replacing them with references to the "finalisation of listing documents for publication".

Question 3

Do you agree with the proposal to require a resale of treasury shares (whether on-market or off-market) to be subject to a moratorium period after a share repurchase?

Yes

Please provide reasons for your views.

Rule 10.06(3) of the Listing Rules restricts a listed issuer from issuing new shares for a 30-day period after a share repurchase. Given that a resale of treasury shares will have substantially the same effect as an issuance of new shares, it would be appropriate to impose the same restriction to both scenarios.

Question 4

Do you agree with the proposal to require an on-Exchange share repurchase to be subject to a moratorium period after an on Exchange resale of treasury shares?

Yes

Please provide reasons for your views.

We agree that it would not be appropriate for issuers to repeatedly repurchase and resell its own shares on market. To prohibit issuers from using share repurchase and resale as means to manipulate its share price or conducting speculative trading on its own shares, a suitable moratorium period would be appropriate.

See also our comments in Q5 below.

Question 5

Do you consider that the moratorium periods (in either direction) should be shorter than 30 days? If so, please share with us your views on the appropriate duration of the moratorium periods and the reason for your suggestion including your views on how the considerations in paragraph 68 should be addressed.

Yes

Question 6

Do you agree with the proposal that dealing restrictions described in paragraph 69 under Proposal (2)(b) above shall be imposed on a resale of treasury shares on the Exchange?

Yes

Please provide reasons for your views.

To mitigate risks of market manipulation and insider dealing, it is imperative to apply the same standard to all dealings by an issuer which should include both share repurchases or resale.

See our response in Q5.

Question 7

Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 under Proposal (2)(b) above?

Yes

Please provide reasons for your views.

The key information required under rules 13.28 and 9.23(2) are either already contained in a next day disclosure return (for example, the number and price of treasury shares resold) or not applicable (for example, identities of the placees/purchasers) in the case of an on-market resale. As such, disclosure of the same through next day disclosure return only should provide investors with sufficient information.

Question 8

Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above?

Yes

Please provide reasons for your views.

These proposals are in line with the proposed regime where a resale of treasury shares is to be treated along the lines of an issuance of new shares.

Question 9

Do you agree with the proposal to require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules as described in Proposal (4)(a) above?

Yes

Please provide reasons for your views.

To allow issuers to vote on matters that require shareholders' approval would undermine the innate protection available to shareholders. The consultation paper does not propose a limit to the number of treasury shares a listed issuer may hold. In an extreme circumstance where a large number of issued shares of an issuer is held in the treasury, the board of directors of the issuer may exert undue influence on the outcome of a resolution of the company.

For the reasons set out above, we would ask the Exchange to consider expanding the scope of this requirement to cover not just matters requiring shareholders' approval under the Listing Rules, but all matters submitted to voting by shareholders (irrespective of whether the voting of treasury shares is permitted or prohibited under local law or the company's constitutional documents), so as to minimise the risk of abuse by the directors of an issuer to use treasury shares to influence shareholders' voting. This would also align more cleanly with the proposal to disregard treasury shares from calculations relating to voting rights under the Rules (where, for example, the consultation paper proposes that treasury shares would be excluded when considering the threshold for convening general meetings and varying shareholders' rights under the Core Shareholder Protection Standards).

By way of an example, a Hong Kong incorporated company is required to seek authority from its members for an off-market buyback of shares other than via a general offer (section 240 of the Companies Ordinance). Irrespective of the outcome of legislation changes, it is submitted that in the interest of the shareholders of a listed company as a whole that treasury shares should not be entitled to vote on such a resolution. It is noted that the Takeovers Codes have not clearly addressed the status of treasury shares with reference to "disinterested shares".

Question 10

Do you agree with the proposal to disregard treasury shares for calculating an issuer's issued shares and voting shares under the Rules as described in Proposal (4)(b) above?

Yes

Please provide reasons for your views.

Given that a resale of treasury shares is generally treated the same as an issuance of new shares, it would be appropriate for treasury shares to be treated generally as unissued shares for purposes of relevant calculations.

Question 11

Do you have any comments regarding the different treatment of treasury shares when calculating an issuer's issued voting shares under the proposed Rules and Part XV of the SFO as described in paragraph 77 above?

We agree that if the proposals are implemented as-is, on a strict interpretation of Part XV of the SFO, treasury shares would remain part of an issuer's "issued voting shares" and "voting shares". However, we submit that it would be beneficial to align the regimes as the differential treatment has the potential to create confusion and uncertainty and may undermine the spirit of the SFO in mandating that the investing public be informed of the identities of substantial shareholders in a listed company. To include an issuer's treasury shares in the denominator for purposes of calculations under Part XV of the SFO will essentially raise the current threshold of discloseable interests of a shareholder – whereas previously all investors will be aware of all substantial shareholders having actual voting rights of 5% or more in a matter requiring shareholder approval under the Rules, such substantial shareholders may no longer be required to disclose their interests as calculations of their discloseable interests may be "diluted" by treasury shares which may be unable to vote.

In addition, given there is no limit under the Rules on how many treasury shares an issuer can hold, it is possible, though unlikely, for a shareholder to not hold sufficient interest to warrant disclosure under Part XV of the SFO, but be considered as a substantial shareholder under the Listing Rules. This may lead to issues where an issuer may not be able to fully identify its substantial shareholders and connected persons.

In this connection, it may again be worth considering whether it is preferable to expand the scope of the voting restriction of treasury shares to all matters submitted to voting by shareholders, since this approach may provide room for the SFC to consider whether it can take the view that treasury shares held by issuers no longer have voting rights and therefore may be excluded from the definitions of "voting shares" or "issued voting shares" for purposes of Part XV of the SFO, thus aligning the different approaches. We would also like to point out that if this approach is adopted, although issuers will not be required to make disclosure under Part XV of the SFO, the public may find the relevant information in an issuer's next day disclosure return/monthly return, which would in fact be a more accurate and timely source of information.

Question 12

Do you agree with the proposal to require an issuer to disclose in the explanatory statement its intention as to whether the repurchased shares will be cancelled or kept as treasury shares as described in Proposal (4)(c) above?

Yes

Please provide reasons for your views.

This will allow shareholders to make a more informed decision. However, we would like to confirm whether it is the Exchange's position that if any repurchased shares are kept in treasury, the making of this statement would not preclude an issuer from subsequently cancelling them (whether due to a change in circumstance or a requirement under law, e.g. in the case of PRC issuers). We submit that notwithstanding this requirement, issuers should have the flexibility to subsequently cancel their shares without having to issue a separate announcement as any such cancellation will be disclosed in a next day disclosure return.

Question 13

Do you agree with the proposal to clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees as described in Proposal (4)(d) above?

Yes

Please provide reasons for your views.

This will prevent an issuer from circumventing any Listing Rule requirements by reselling treasury shares through their agents or nominees.