

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 agree with the proposal to remove the requirement to cancel repurchased shares to allow shares to be held in treasury where this is permitted under applicable laws and the issuers' constitutional documents. This would allow issuers to manage their capital structure more flexibly, thereby leading to a reduction in the cost of capital.

We understand that the consultation conclusions are expected to be published in 1Q 2024. We would suggest that the Stock Exchange publish the consultation conclusions in the early part of 1Q 2024 (if possible) as this will allow issuers (who need to amend their constitutional documents to permit them to hold treasury shares) sufficient time to propose such amendments for shareholders' approval at their 2024 AGM and to update the share buyback mandate and the explanatory statement on the share buyback mandate to be included in the AGM circular. See also our response to Q12.

In addition, if the treasury share proposal is adopted and there is a transitional period prior to the proposal becoming effective, we suggest that the Exchange allow shares repurchased during the transitional period not to be cancelled. This is particularly relevant for dual primary listed issuers as there are cost implications for the issuers. For US/HK dual primarily listed issuers who repurchase ADSs in the US markets, they will first need to convert the ADSs repurchased into ordinary shares before cancellation of such ordinary shares and a material amount of fees will be incurred in such conversion process. For example, the issuers may need to pay up to US\$5.00 per 100 ADSs for each cancellation of ADSs.

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.

We agree with the proposal to require a resale of treasury shares to be subject to the same requirements as an issue of new shares.

In relation to the use of treasury shares to satisfy share grants under share schemes, we would be grateful if the Stock Exchange could clarify whether it will require issuers to amend their existing share scheme rules to allow for the use of treasury shares, and if so, whether these changes would be regarded as material amendments thereby requiring shareholders' approval under Note 1 to Rule 17.03(18) of the Listing Rules. We are of the view that this clarificatory amendment should not be regarded as a material amendment which would require shareholders' approval.

In addition, for US/HK dual primarily listed issuers which are incorporated in the Cayman Islands, the ADSs repurchased by those issuers will be registered under the names of the relevant depository banks. Before converting the ADSs into ordinary shares and holding the ordinary shares in the name of the issuers or HKSCCN, while the corresponding shares represented by the relevant ADSs repurchased may be treated and recorded as treasury shares under the relevant accounting standards, those underlying shares do not constitute treasury shares under Cayman Islands law. As this is purely a technical point, considering the amount of expenses involved in converting the ADSs into ordinary shares, we would be grateful if the Stock Exchange could clarify that Cayman-incorporated US/HK dual primarily listed issuers are not required to convert the ADSs repurchased into ordinary shares for so long as the underlying shares represented by the relevant ADSs repurchased are treated in the same way as treasury shares for Hong Kong Listing Rules purposes.

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.

Yes, as this will ensure consistency with the proposed general approach to apply the framework for an issue of new shares to govern a resale of treasury shares. However, the carve-out to the moratorium should be extended to apply to share awards and share grants made under a share scheme.

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?

No

Please provide reasons for your views.

We submit that:

(a) to ensure consistency with the proposed general approach to apply the framework for an issue of new shares to govern a resale of treasury shares, a moratorium should not be imposed as the Listing Rules do not prescribe a moratorium period on a share repurchase after an issue of new shares; and

(b) there are already sufficient safeguards in place to mitigate the risk of market manipulation and insider dealing, for example, (i) the dealing restrictions under Rule 10.06(2)(e) of the Listing Rules while in possession of inside information and during the one-month period before the publication of financial results; and (ii) civil and criminal liability for market manipulation and insider dealing under Parts XIII and XIV of the SFO.

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.

We agree with the dealing restrictions described in paragraph 69 but would like to clarify that such dealing restrictions should only be imposed on an on-market resale of treasury shares on the Exchange. For example, issuing new shares out of the treasury shares pool to a trustee established in relation to a share scheme or to satisfy a share grant or share award should not be subject to such restriction. We are of the view that: (a) on-market resale of treasury shares should not be conducted during the Restricted Period as there is greater risk of trading on inside information during that period; and (b) resale of treasury shares knowingly to a core connected person should be restricted as these transactions should be subject to the connected transaction rules.

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.

We agree that an issuer should not be required to publish an announcement for its on-market resale of treasury shares under Rule 13.28 as this information will already be provided in the next day disclosure return. We further agree that the issuer should not be required to submit placee information since the on-market resale would be conducted under the auto-matching trading system.

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.

We welcome the proposal allowing new listing applicants to retain treasury shares after listing to provide flexibility for the applicants. We agree that an issuer should be required to disclose details of treasury shares in its prospectus and that the treasury shares should be subject to the six-month lock-up, consistent with the treatment of an issue of new shares after listing.

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.

We agree that issuers holding treasury shares should not exercise any voting rights in respect of those shares, as the rights attaching to those shares are normally suspended by law.

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.

We agree that treasury shares should be disregarded when calculating an issuer's issued shares or voting shares for the purposes of determining public float, market capitalisation and other matters mentioned in Proposal (4)(b), as the rights attaching to those shares are normally suspended by law.

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 with the different treatment of treasury shares for the purposes of Part XV of the SFO. Under section 308(2) of the SFO, the temporary suspension of voting rights in respect of shares comprised in a class of issued shares does not affect the application of Part XV in relation to interests in those or any other shares comprised in that class. This would also be beneficial to shareholders in practice as the shareholders (other than the issuer itself and its shareholders entitled to control the exercise of one-third or more of its voting power) would not be required to continuously monitor the shares being transferred into and out of treasury for the purposes of its disclosure of interests obligations.

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.

We agree with the proposal (with minor clarification added) 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 and for the avoidance of doubt, the issuer is allowed to adopt either approach subject to clear disclosure of such intention in the explanatory statement), as this is information that is relevant to shareholders for them to make an informed decision on whether to approve a repurchase mandate.

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.

We agree with the proposal that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees, as those agents or nominees would be acting on behalf of the issuer or its subsidiary.