

**Submitted via Qualtrics**

**Personal 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.**

I agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares, provided that (1) revisions to the Hong Kong Companies Ordinance occur simultaneously with amendments to the Listing Rules, and (2) directors of listed issuers retain the authority to cancel some or all of treasury shares as needed. This aligns with the approach in the UK.

**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.**

1 The term "issued shares" is sometimes used interchangeably with "outstanding shares". The term "outstanding shares" may be used in finance sector in the U.S. to mean shares that are outstanding (that's excluding treasury shares). However, this is not a fixed legal meaning that it known to the whole world. Hence, it is better not to presume that the term "outstanding shares" carries a universally recognised meaning and the use of "issued shares" and "outstanding shares" should come with clarification whether they include or exclude treasury shares.

2 The meaning of "off market resale of treasury shares" is not clear. The current Rule 13.36 applies to a placing or open offer of securities for cash consideration. It is not clear if the same Rule also applies to a direct one-on-one subscription or purchase of treasury shares because "placing" or "open offer" arguably does not cover such an one-on-one subscription or purchase of new shares. If the interpretation is that it does so cover, the current Rule 13.36 has to be amended in the context of issue of new shares as well.

3 When a listed company seeks a general or specific mandate from its shareholders to authorise share repurchases, the explanatory statement required under the current Listing Rules must specify whether the listed company intends to cancel the repurchased shares or hold them as treasury shares. However, the Consultation Paper does not clearly outline if the listed company can alter this intention post-shareholder approval or if it can disclose

an intention for the directors to decide on each occasion of share repurchases. In the UK, companies can decide to cancel treasury shares at any time. If Hong Kong does not adopt a similar approach, listed companies should evaluate the worth of holding repurchased shares as treasury shares, considering that if treasury shares cannot be resold, subsequent cancellation may pose challenges which should be considered how such treasury shares can be "removed" at the end.

In addition, share scheme document outlining the specifics of the share scheme rules in accordance with Chapter 17 of the Listing Rules must include a statement indicating the listed company's intention to use treasury shares for the scheme, where applicable. I believe that listed companies should be allowed to state the intention is to allow flexibility to be decided by the directors.

In the announcement regarding the issuance of convertibles, the listed issuer must declare its intention, if any, to transfer treasury shares upon the exercise of conversion or subscription rights. In the circular to shareholders, seeking their approvals for the issuance of convertible securities, warrants, options, or similar rights to subscribe for shares, the listed company is obliged to disclose its intention, if any, to use treasury shares to fulfill its obligations upon the conversion or exercise of any such convertible securities, warrants, options, or similar rights. Much like the disclosure of intention in the explanatory statement mentioned earlier, it remains unclear whether the listed company can alter this intention after shareholder approval or after the announcement. Additionally, it is uncertain whether the listed company can disclose an intention for the directors to have the discretion to decide later if they will use new shares or treasury shares, or a combination of both, to meet the obligations upon the exercise of conversion or subscription rights for those convertibles. I believe that directors should be given such a discretion to decide if new shares or treasury shares, or a combination of both, can be used to meet the obligations under exercise of conversion or subscription rights.

### **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. While I acknowledge the need for a moratorium, I am uncertain about its applicability to off-market resale of treasury shares. If it extends to off-market resale, should the moratorium on on-market repurchases come into effect after any resale or transfer of treasury shares, not only on the Stock Exchange but also in off-market scenarios?

Furthermore, should this moratorium cover not just the resale but also the transfer of treasury shares? This consideration excludes transfers made to fulfill obligations established before the share repurchase.

#### **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.**

While I agree with the moratorium stipulating that on-Exchange share repurchases should be subject to a waiting period after an on-Exchange resale of treasury shares, I am uncertain about the exclusion of this moratorium for off-market resale or transfer of treasury shares.

Please note that the suggested amendments to the Listing Rules cover not only the resale but also the transfer of treasury shares. This distinction is noteworthy as the question specifically addresses the 'resale of treasury shares' without including transfers.

#### **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.**

No

#### **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.**

It is worth considering whether the one-month restriction period should be adjusted to 30 days to align with the moratorium applied to the resale or transfer of treasury shares, as well as the moratorium on share repurchases on the Exchange.

#### **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.**

It is unclear whether an off-market resale or transfer of treasury shares under a general or specific mandate needs to be announced. It appears that such transactions are not required to be announced, and it seems that no next-day disclosure returns must be filed

for an off-market resale or transfer of treasury shares under a general or specific mandate. If this is accurate, could it result in the market being less informed compared to an on-market resale of treasury shares?

**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.**

**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.**

Considering that the voting rights of treasury shares are legally suspended, it raises a conceptual question: is it still accurate to mandate holders of treasury shares to abstain from voting, given that they inherently lack voting rights? The feasibility of allowing nominees of listed issuers to hold treasury shares on behalf of the issuers is unclear. If such an arrangement is possible and provisions regarding abstaining from voting are implemented, these provisions should be comprehensive enough to require holders of treasury shares to ensure that their nominees abstain from voting.

**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.**

Kindly elucidate the implications under the Listing Rules for both listed issuer A (parent of listed issuer B) and listed issuer B when the latter resells treasury shares to third parties. Specifically, does this resale of treasury shares by listed issuer B qualify as an issue of new shares, thereby having no direct impact on listed issuer B unless the resale is made to a connected person? Meanwhile, for listed issuer A, the resale of treasury shares by listed issuer B might be deemed as a disposal by listed issuer A.

**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?**

Please clarify whether, for the disclosure of interests under Part XV of the SFO, the shareholder's percentage figure should exclude treasury shares from both the numerator and the denominator. Note 47 is somewhat legalistic, which does not explain clearly why the numerator and the denominator exclude treasury shares.

**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.**

Although I concur with this proposal, it is subject to the ability to change the intention subsequently. Please see response to Question 2. When a listed company seeks a general or specific mandate from its shareholders to authorise share repurchases, the explanatory statement required under the current Listing Rules must specify whether the listed company intends to cancel the repurchased shares or hold them as treasury shares. However, the Consultation Paper does not clearly outline if the listed company can alter this intention post-shareholder approval or if it can disclose an intention for the directors to decide on each occasion of share repurchases. In the UK, companies can decide to cancel treasury shares at any time. If Hong Kong does not adopt a similar approach, listed companies should evaluate the worth of holding repurchased shares as treasury shares, considering that if treasury shares cannot be resold, subsequent cancellation may pose challenges which should be considered how such treasury shares can be "removed" at the end.

**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.**

Should this cover "transfer" of treasury shares as well as resale of treasury shares?