

The Hong Kong Chartered Governance Institute

Online Submission

The Stock Exchange of Hong Kong Limited (Exchange)

Consultation Paper on Proposed Amendments to Listing Rules Relating to Treasury Shares

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[Unless the context requires otherwise, the terms and expressions used in this submission shall have the meanings set out under the Consultation Paper.]

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries, is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with about 40,000 members and students worldwide. The Institute is one of the fastest growing divisions of CGI, with a current membership of over 7,000, 300 graduates and 2,600 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

Overview

Hong Kong's Companies Ordinance mandates the automatic cancellation of repurchased shares for locally incorporated firms, creating limitations not applicable to many HKEX-listed overseas companies. 92% of Hong Kong listed issuers operate in jurisdictions permitting treasury shares, yet Listing Rules restrict overseas issuers from exercising this option. We agree that the proposed treasury share regime aims to provide flexibility for listed issuers in managing share capital, potentially reducing the cost of capital, providing alternative fundraising methods and additional options for overseas issuers, and aligning with practices in various jurisdictions. Further, existing regulatory frameworks effectively address market manipulation and insider dealing concerns, with specific Listing Rules serving as safeguards against potential abuses.

Q1. Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares? Please provide reasons for your views.
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Yes. We agree that listed companies should be able to engage in share repurchases for various strategic reasons, including returning cash to shareholders, adjusting the debt-to-equity ratio, improving earnings per share, facilitating shareholder exits, and signalling undervaluation to the

market. Allowing listed issuers to hold repurchased shares in treasury provides greater flexibility in adjusting share capital promptly, potentially leading to a reduction in the cost of capital, and can be resold for cash in small lots on the market at full market price, offering an alternative fundraising means compared to issuing new shares en bloc, which typically involves selling at a discount. Further, treasury shares can be transferred as consideration, supporting various corporate actions like satisfying employees' share schemes or converting convertible securities, subject to the company laws of their places of incorporation.

Q2: 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? Please provide reasons for your views.

Yes. The proposal aligns with the practices of major markets, including the UK, NYSE, and TSX, ensuring consistency in regulatory approaches. This consistency enhances the ease of understanding and compliance for issuers across different jurisdictions. Subjecting the resale of treasury shares to pre-emption rights or shareholder approval ensures fair treatment and protection of existing shareholders. We agree that the proposed framework, particularly the limits on discounts for on-market resale, prevents prolonged market overhang and potential disorderly market conditions. This contributes to maintaining market stability and investor confidence.

Applying the same disclosure and documentary requirements for the resale of treasury shares and new share issuances enhances transparency. This transparency is crucial for regulatory oversight and allows market participants to make informed decisions. The proposal to subject the resale of treasury shares to connected transaction requirements, including independent shareholders' approval safeguards against connected persons taking advantage of their positions for personal gain, adds an extra layer of protection for minority shareholders.

Q3. 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? Please provide reasons for your views.

Yes. The proposal to introduce a moratorium period after a share repurchase for both on and off-market resale treasury shares is prudent. It helps prevent potential market manipulation and ensures a fair and orderly market by allowing sufficient time to disseminate relevant information about share repurchase activities. This safeguards the market's integrity and aligns to prevent undue influence on share prices.

Q4. 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? Please provide reasons for your views.

Yes. After an on-Exchange resale of treasury shares following a share repurchase, the moratorium period adds a layer of control. This restriction discourages issuers from repetitive repurchasing and reselling activities on the market, contributing to market stability. It aligns to

allow treasury shares for capital management while preventing potential abuses of this flexibility.

Q5. 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. While the 30-day moratorium period provides a reasonable timeframe for market information dissemination, there could be merit in considering a slightly shorter duration for increased flexibility in capital management. For example, 21 days might balance ensuring adequate market transparency and allowing issuers more agility. The exact duration should be carefully determined, considering market dynamics and ensuring it provides enough time for market information dissemination, as outlined in paragraph 68.

Q6. 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? Please provide reasons for your views.

Yes. The restrictions for the resale of treasury shares on the Exchange, as outlined in paragraph 69, are important to mitigating the risks of market manipulation and insider dealing. This ensures that such transactions adhere to fairness, transparency, and integrity principles. The proposed extensions to dealing restrictions are consistent with maintaining a level playing field for all market participants.

Q7. Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 under Proposal (2)(b) above? Please provide reasons for your views.

Yes. Exempting on-market resale of treasury shares from certain requirements applicable to new share issuances is appropriate, as it recognises the distinct nature of these transactions. The proposed exemptions appropriately balance regulatory requirements with the practicalities of on-market transactions, ensuring that issuers remain compliant while facilitating efficient market operations.

Q8. Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above? Please provide reasons for your views.

Yes. Proposal (3) extending the application of Rule 10.08 to include a resale of treasury shares for new listing applicants is a prudent measure. This aligns with the principles of preventing dilution of investors' interests and ensuring the commitment of controlling shareholders, as established by Rule 10.08. Consistency in treating new share issuances and resale of treasury shares within the initial six months after listing provides clarity and transparency and safeguards investors' interests and the market's integrity.

Q9. 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? Please provide reasons for your views.

Yes. We agree with the proposal requiring issuers with treasury shares to abstain from voting on matters that demand shareholders' approval. This aligns with the principle of ensuring fairness and transparency and preventing potential misuse of treasury shares to consolidate control. This measure maintains the integrity of the voting process and prevents any undue influence by issuers in matters that independent shareholders should solely determine.

Q10. 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? Please provide reasons for your views.

Yes. We agree that disregarding treasury shares when calculating issued and voting shares is a logical approach. Since treasury shares do not carry voting rights and their rights are normally suspended by law, excluding them from these calculations ensures accuracy in determining metrics such as public float, market capitalisation, equity capital ratio, and others. This adjustment maintains consistency with established practices and promotes a more accurate reflection of an issuer's true market position.

Q11. 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?

The proposed treatment of treasury shares under the Rules, excluding them when calculating issued voting shares, is consistent with industry norms and aligns with voting rights principles. However, the distinction in treatment between the proposed Rules and Part XV of the SFO should be carefully considered to ensure regulatory coherence. Any disparities should be justified, and efforts should be made to harmonise these treatments unless there are compelling reasons for differentiation.

Q12. 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? Please provide reasons for your views.

Yes. We agree with the proposal requiring issuers to disclose their intention regarding the treatment of repurchased shares in the explanatory statement, which enhances transparency. This disclosure enables shareholders to make informed decisions and understand the potential impact of share repurchases on the company's capital structure. It promotes good corporate governance and aligns with principles of open communication between issuers and shareholders.

Q13. 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? Please provide reasons for your views.

Yes. We agree with the proposal clarifying that the resale of treasury shares includes transactions through agents or nominees, ensures consistency and prevents potential loopholes in the Rules. This clarification aligns to subject all transactions involving treasury shares to the proposed regulations to promote a comprehensive and robust regulatory framework.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute



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