



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

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "Exchange") issued the "Consultation Paper on Proposed Amendments to Listing Rules Relating to Treasury Shares" on 27 October 2023 ("Consultation Paper").

In response, the Law Society provides the following submissions. The same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

GENERAL OBSERVATIONS

The Law Society welcomes the proposal amendments which will align Hong Kong with certain relevant markets or jurisdictions.

Part III of the Consultation Paper refers to consequential implications of the proposals on other regulatory requirements. It is important to clarify or confirm such consequential implications as soon as possible before the Listing Rules are amended. For example, it is important to confirm or clarify the treatment of treasury shares in a Hong Kong takeover situation, such as whether an offer will need to be made for those shares, whether the offer price will be the same, and whether such shares will count towards the 50% threshold for an offer to become unconditional. Similar confirmations or clarifications will be required in respect of the disclosure of interest requirements under the SFO, such as whether treasury shares will be treated as a different class of shares.

RESPONSES TO CONSULTATION QUESTIONS

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.*

Law Society's response:

Agree. We welcome the flexibility which will align Hong Kong with certain relevant markets or jurisdictions.

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.*

Law Society's response:

Agree.

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.*

Law Society's response:

Agree.

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.*

Law Society's response:

Agree.

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.

Law Society's response:

Rule 10.06(3) has been long established in the market. A moratorium period of 30 days is a logical extension of Rule 10.06(3) by treating a resale as akin to a new issue. A resale following a repurchase should be subject to a 30-day moratorium period.

However, a further repurchase after a resale entails different considerations and should not be subject to the same moratorium. Issuers should be given flexibility to repurchase shares in order to react to market situations (such as a further unexpected sharp decline in share price), given that the SFO already governs insider dealing and other unlawful market activities.

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.

Law Society's response:

Agree. The relevant existing rules are well established, and the proposal is a logical extension.

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.

Law Society's response:

Agree.

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

Law Society's response:

Agree. The 6-month ban on issuing new shares immediately following an IPO is well established, and the proposal is a logical extension.

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.

Law Society's response:

Agree. This helps to prevent unintended consolidation or inflation of voting rights of certain issuers where the controlling or substantial shareholders have majority seats in the board of directors.

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.

Law Society's response:

Agree.

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?

Law Society's response:

Agree, but it is worthwhile considering whether potential confusion arising from the different treatment could be avoided or reduced by designating treasury shares as a separate class for disclosure of interests purposes, so that such interests will not be aggregated with voting shares.

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.

Law Society's response:

Agree.

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.

Law Society's response:

Agree.

**The Law Society of Hong Kong
5 December 2023**