

A wide-angle photograph of the Hong Kong skyline at night, featuring numerous illuminated skyscrapers and buildings against a dark blue sky. The lights from the buildings create a vibrant, colorful scene.

# HONG KONG CAPITAL MARKET UPDATES

MAY 2024

## HKEX New Treasury Share Regime

On 12 April 2024, The Stock Exchange of Hong Kong Limited (HKEX) adopted its proposal to introduce a new treasury share regime (the New Treasury Share Regime) to the Listing Rules. The New Treasury Share Regime will give listed issuers greater flexibility in managing their capital structure through the resale of treasury shares and will take effect on 11 June 2024.

### Key changes

#### 1. Removes the requirement to cancel repurchased shares

The New Treasury Share Regime removes the existing requirement to cancel repurchased shares. Once the requirement has been removed, listed issuers may hold repurchased shares in treasury, subject to the laws of their places of incorporation and their articles of association or equivalent constitutional documents.

#### 2. Governs the resale of treasury shares in the same manner as the existing Listing Rules for issuance of new shares

Given that reselling treasury shares and issuing new shares impact existing shareholders in a similar manner, the New Treasury Share Regime takes certain requirements for an issuance of new shares and applies them to a resale of treasury shares by a listed issuer. These requirements include:

- the resale of treasury shares: (a) will be subject to pre-emption (similar to an issuance of new shares under the Listing Rules) and must be offered to all shareholders on a pro-rata basis; or (b) must be approved by shareholders under a specific mandate or (in advance) under a general mandate;
- a share scheme using treasury shares to satisfy share grants will be treated as a share scheme funded by new shares under Main Board Rule Chapter 17 (GEM Rule Chapter 23) and, accordingly, such a share grant will be subject to the scheme mandate limit approved by shareholders;
- the resale of treasury shares to a connected person will be subject to the connected transaction requirements for issuance of new shares under Main Board Rule Chapter 14A (GEM Rule Chapter 20) and, accordingly, such resale will be subject to independent shareholders' approval, unless it is exempted under Main Board Rule Chapter 14A (GEM Rule Chapter 20);

### Highlights of the New Treasury Share Regime

- ▶ Removes the requirement to cancel repurchased shares so that listed issuers may hold them in treasury, subject to the laws of their places of incorporation and their constitutional documents
- ▶ Governs the resale of treasury shares in the same manner as the existing Listing Rules for issuance of new shares
- ▶ Introduces additional requirements (eg 30-day moratorium periods for share repurchases and resales of treasury shares, dealing restrictions for the resale of treasury shares on the HKEX) to mitigate the risks of stock market manipulation and insider dealing



- listed issuers will have to disclose their resale of treasury shares and any movement in the number of treasury shares under different parts of the Listing Rules in relation to the announcement, listing document, next day disclosure return, monthly return and annual report; and
- listed issuers will have to comply with the documentary requirements under Rules 9.18 to 9.23 for the resale of treasury shares (except for the requirement to submit a listing application for the treasury shares), as if it were an application for listing of the newly issued shares.

In addition, to improve transparency, enhanced disclosure requirements will be imposed on listed issuers for on-market resales of treasury shares. These include the requirements to disclose:

- the highest and lowest selling price, the funds raised, and the general mandate used in the next day disclosure return;
- the reasons for the on-market resale(s), and the total funds raised by way of announcement if the on-market resale(s) of treasury shares – individually or together with the resales in a 12-month period – represent 5% or more of issuers' issued shares; and
- a monthly breakdown of on-market resales during the year, the total funds raised, and the use of proceeds in the annual reports.

### **3. Introduces additional requirements to mitigate the risk of stock market manipulation and insider dealing**

In addition to the provisions against stock market manipulation and insider dealing under the Securities and Futures Ordinance (Cap. 571), the following requirements will be introduced to ensure that a fair and orderly market is maintained after the relaxation of the Listing Rules relating to treasury shares:

- the requirement to impose a 30-day moratorium period to restrict: (i) resales of treasury shares (whether on-or off-market) after a share repurchase (subject to certain carve-out provisions); and (ii) a share repurchase on the HKEX after any resale of treasury shares on the HKEX; and
- the requirement to prohibit a resale of treasury shares on the HKEX: (i) when there is undisclosed inside information; (ii) during the period of 30 days immediately preceding the announcement of results; or (iii) if it is knowingly made with a core connected person.

### **4. Consequential amendments to the Listing Rules**

Certain consequential amendments to the Listing Rules have also been made to address the treatment of treasury shares in other parts of the Listing Rules. These amendments include, amongst others:

- to allow new listing applicants to retain their treasury shares upon listing, with any resale of these shares subject to the same lock-up requirement as an issuance of new shares;
- to require listed issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules;
- to exclude treasury shares from a listed issuer's issued or voting shares under various parts of the Listing Rules (eg public float and equity capital ratio for size test calculations); and
- to require a listed issuer to disclose in the explanatory statement its intention regarding whether any shares to be repurchased will be cancelled or kept as treasury shares.





## Effective date and implementation of the amended Listing Rules

The amended Listing Rules relating to the New Treasury Share Regime will become effective on 11 June 2024.

For non-Hong Kong incorporated listed issuers that were granted waivers from the Listing Rules requirement to cancel repurchased shares, transitional arrangements will be provided so they can comply with the amended Listing Rules by their second annual general meeting after the effective date of the amended Listing Rules.

For more details, please see the conclusions on the consultation:

[Link](#)

## Speak to a BDO professional

If you have any questions or need further assistance on the New Treasury Share Regime or any other issues related to the capital markets, please feel free to contact us for a discussion or to find out how we can help you by providing a tailored solution.

## Contact for BDO's support and assistance

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