



HKEX Listing Rule Amendments Allowing Treasury Shares Effective 11 June 2024

The Stock Exchange of Hong Kong Limited (**HKEX**) has published amendments to the Main Board (**MB Rules**) and GEM Listing Rules (**GEM Rules**) which will allow HKEX-listed companies to issue and hold treasury shares, provided this is allowed by the laws of their country of incorporation and their constitutional documents. The Listing Rule amendments will take effect on 11 June 2024 and are set out in Appendix IV (Main Board) and Appendix V (GEM) of the HKEX's [Consultation Conclusions – Proposed Amendments to Listing Rules Relating to Treasury Shares, published on 12 April 2024](#). HKEX-listed companies that are incorporated overseas that have been granted waivers from compliance with the requirement to cancel repurchased shares will be allowed a transition period from 11 June 2024 until their second annual general meeting after 11 June 2024. The HKEX is implementing all its proposed Listing Rule amendments with some changes to reflect comments received from respondents to the consultation.

The HKEX also published a new [Guidance Letter HKEX-GL119-24 \(GL119-24\)](#) explaining the treasury share arrangements on the Central Clearing and Settlement System (**CCASS**) and [frequently asked questions](#) about treasury shares. For a summary of the original [Consultation Paper's](#) proposals, please see [Charltons' November 2023 newsletter](#).

Key Listing Rule Amendments

The following amendments will be made to the Listing Rules to implement the treasury share regime.

1. Removal of the requirement to cancel repurchased shares

The requirement to cancel repurchased shares will be removed and listed companies will be able to hold repurchased shares in treasury; the shares will retain their status as listed shares. Respondents to the consultation generally supported this change since it will give listed companies greater flexibility to adjust their capital structure, although some expressed concerns about increased risks of market manipulation, insider dealing, and the dilution impact. The HKEX reminds companies to make any necessary amendments to their constitutional documents to allow them to hold treasury shares, e.g. to remove any restriction on the holding and use of treasury shares.

Some of the key amendments to the Listing Rules to implement the treasury share regime are as follows:

Relevant Rules or requirements	Listing Rule Amendments
<p>“treasury shares” definition (MB Rule 1.01¹)</p>	<p>The definition of treasury shares under Rule 1.01 will be:</p> <p><i>“shares repurchased and held by an issuer in treasury, as authorised by the laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on the Exchange</i></p> <p>Notes: (1) For the purpose of the Rules, a holder of treasury shares shall abstain from voting on matters that require shareholders’ approval under the Rules. (2) Treasury shares may be held by an issuer’s subsidiary or an agent or nominee on behalf of the issuer or its subsidiary, if this is permitted by the laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents. References to sales or transfers of treasury shares include sales or transfers by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.”</p> <p>The above definition modifies the definition proposed in the Consultation Paper to clarify that:</p> <ul style="list-style-type: none"> • treasury shares can be held by a listed company’s subsidiary, or an agent or nominee of the listed company or its subsidiary, if this is permitted by the laws of the company’s jurisdiction of incorporation and its constitutional documents. For example, under Bermuda or Cayman laws, repurchased shares must be held in the company’s own name in order to be classified as treasury shares. PRC laws, on the other hand, do not require treasury H shares to be held in the name of the listed company; although shareholders’ rights attached to shares repurchased by the listed company will be suspended, irrespective of whether they are held by the listed company or a nominee. • as regards ADSs of companies dual-listed on the HKEX and an overseas stock exchange, repurchased ADSs must be converted into ordinary shares before they can be held as treasury shares. • the use of treasury shares will not be restricted by the HKEX Listing Rules. However, listed companies must ensure that their treasury shares are used only for purposes allowed under the laws of their jurisdiction of incorporation and their constitutional documents.
<p>Removal of requirement to cancel repurchased shares (MB Rule 10.06(5), 19.16 and 19A.24²)</p>	<p>The amendments remove the requirement to cancel repurchased shares and allow listed companies to hold them as treasury shares; the repurchased shares will retain their status as listed shares.</p>
<p>MB Rule 10.06(5)³</p>	<p>Listed companies must ensure that treasury shares are clearly identified and segregated.⁴</p>

Holding Treasury Shares in CCASS

GL119-24 notes that listed companies can hold treasury shares that they intend to resell with CCASS registered in the name of HKSCC Nominees Limited (**HKSCCN**) as a common nominee. To enable treasury shares held in CCASS to be identified, listed companies are required to hold their treasury shares in a segregated CCASS account (which can be opened by a broker or custodian for the listed company).⁵

Jurisdictions requiring treasury shares to be held in listed companies’ own names

Where the listed company is incorporated in a jurisdiction which requires repurchased shares to be held in the listed company’s own name (such as Bermuda or the Cayman Islands), the company should withdraw the

repurchased shares from CCASS and register them in the company's own name in its register of members. The listed company can only re-deposit the treasury shares into CCASS if it plans to resell them on HKEX imminently.

Although repurchased shares will no longer be classified as treasury shares under the relevant laws once legal title is transferred to HKSCCN on deposit of the shares into CCASS, the repurchased shares will be treated in the same way as treasury shares under the HKEX Listing Rules because they are beneficially owned by the listed company. On depositing repurchased shares into CCASS, the listed company is required to give clear written instructions to its broker and share registrar that the repurchased shares are to be treated as treasury shares under the HKEX Listing Rules.⁶

Jurisdictions allowing treasury shares to be held by nominees

If the laws of the listed issuer's place of incorporation (e.g. the PRC) do not require treasury shares to be held in the listed company's name, shareholders' rights attached to the shares will be suspended under the relevant laws once the shares are repurchased by the listed company, regardless of whether they are held in its own name or that of a nominee. In this case, the listed company can choose to hold the repurchased shares as treasury shares in a segregated account in CCASS. After completing the share repurchase, the listed company must provide clear written instructions to its share registrar and the relevant broker to update the record and identify the repurchased shares held in CCASS as treasury shares.⁷

Pending resale of the treasury shares on the HKEX, listed companies need to have measures in place to ensure that they will not exercise any shareholders' rights or receive any entitlements as shareholders. Examples of these measures given by the HKEX are board approvals that:

- the listed company should procure its broker not to instruct Hong Kong Securities Clearing Company Limited (**HKSCC**) to vote at general meetings for the treasury shares deposited with CCASS; and
- in the case of dividends or distributions, the listed company should withdraw the treasury shares from CCASS, and either re-register them in its own name as treasury shares or cancel them, in each case before the record date for the dividends or distributions.

2. Resale of Treasury Shares Treated as New Share Issue

The HKEX will extend the requirements for the issue of new shares to the resale of treasury shares.

Relevant Rules or requirements	Listing Rule Amendments
Resale of Treasury shares	
MB Rules 2.03(6), 13.36(1A), 13.36(20(b) and 13.36(8) ⁸	The resale of treasury shares must be conducted on a pre-emptive basis and offered to all shareholders on a pro-rata basis, or be approved by a specific or general shareholder mandate. The number of shares repurchased in the year under a repurchase mandate is added to the general mandate limit. The general mandate limit and repurchase mandate limit are calculated based on the number of issued shares excluding treasury shares held by the listed company at the given time.
MB Rule 13.36(5A) ⁹	An on-market resale of treasury shares under the general mandate is subject to a maximum price discount of 20% of the higher of: <ul style="list-style-type: none"> • the closing price on the trading day immediately before the resale; and • the average closing price in the five trading days immediately before the resale.
MB Rules 13.36(1A) and 13.36(5) ¹⁰	All off-market resales of treasury shares under a general mandate for cash consideration are subject to the same price discount limit of 20% as new share issues.

PRC issuers	For listed companies incorporated in the PRC, Listing Rules 10.05 and 10.06 govern repurchases of shares listed on the HKEX. PRC issuers' repurchases of A shares are not therefore covered by Listing Rule 13.36. Under PRC law, A+H issuers do not need to cancel their treasury A shares and can hold and use repurchased A shares to satisfy employee share schemes, for the conversion of convertible securities or for resale in the open market to stabilise the share price. The holding and use of treasury A shares only requires board approval. The resale of treasury A shares will not be subject to the HKEX Listing Rules' shareholders' mandate requirement since A shares are not listed on the HKEX and should therefore only be subject to the listing requirements of their home jurisdiction.
Share Schemes	
MB Rules 17.01(4) and 17.02(2)	Share schemes can use treasury shares to satisfy share grants and will be treated as share schemes funded by new shares under Chapter 17 of the MB Listing Rules. Grants of shares under the scheme will be subject to the scheme mandate limit approved by shareholders under Chapter 17.
Other requirements applicable to the resale of treasury shares	
	Relevant sections will be amended to reflect application of the existing requirements for the issue of new shares to the treasury share regime: <ul style="list-style-type: none"> • Chapter 14 (connected transactions) • MB Rule 13.28 (announcement) • MB Rule 11.04 (listing document) • MB Rule 13.25A (next day disclosure return) • MB Rule 13.25B (monthly return) • Paragraphs 11 and 11A to Appendix D2 of the MB Rules (annual report), • MB Rules 9.18 to 9.23 (documentary requirements such as a working capital comfort letter for resales with a listing document)¹¹
Resale to connected persons	The resale of treasury shares to connected persons will be subject to the same connected transaction requirements as a new issue of shares under Chapter 14A. Resale will therefore require independent shareholders' approval unless exempted under MB Rule 14.92.
Disclosure	<p>Announcement: Listed companies will not be required to announce a resale of treasury shares and any movement in the number of their treasury shares under MB Rule 13.28. They will instead need to disclose the same in a next day disclosure return (MB Rule 13.25A) and their next monthly return (MB Rule 13.25B).</p> <p>Next day disclosure: In the next day disclosure return, listed companies must disclose the highest and lowest prices, total funds raised and the mandate used for an on-market sale of treasury shares.</p> <p>Annual return disclosure: Under paragraphs 11 and 11A to Appendix D2¹², listed companies must disclose details of their sales of treasury shares for cash in their annual reports. Annual reports must also include a monthly breakdown of all on-market sales, the amount of funds raised, use of proceeds, the current balance of treasury shares held and their intended use.</p>
Chapter 17 Share Schemes	The annual or interim report disclosure requirements under Paragraphs 11, 11A and 41A of Appendix D2 ¹³ to the MB Rules do not apply to the issue of equity securities or resale of treasury shares if the share scheme complies with Chapter 17.
Listing document requirement	Although listed issuers do not need to submit a listing application for the resale of treasury shares, they are subject to the documentary requirements of MB Rules 9.18 to 9.23 as if they were an application for the listing of the newly listed shares and will need to produce a listing document under MB Rule 11.04.

The HKEX also clarified in the Consultation Conclusions in relation to MB Rule 13.36 that:

- the maximum price discount allowed on a resale of treasury shares applies equally to dual-listed companies and the 20% discount price limit will be calculated based on the closing prices of the shares traded on the HKEX;
- the resale of treasury shares repurchased in other circumstances such as off-market share buy-backs are also subject to the general mandate limit;
- shareholders' approval is not required for the transfer of shares out of treasury for distributing scrip dividends or for satisfying share grants under share schemes; and
- the general mandate and share schemes must specifically state that the shares in question are treasury shares. However, if amendments to the share scheme are required, this will not constitute a material alteration that would require shareholders' approval under MB Chapter 17.

3. Proposals on mitigating market manipulation risks and insider dealing

(a) Moratorium periods for share repurchases and resales of treasury shares

The HKEX will impose a 30-day moratorium under MB Rule 10.6(3)(a)¹⁴ on:

- a resale of treasury shares after an on- or off-market share repurchase; and
- an on-Exchange share repurchase after an on-Exchange resale of treasury shares.

The moratorium on resales of treasury shares will be subject to a carve-out for:

- resales of shares under capitalisation issues (e.g. bonus issues and scrip dividends); and
- grants of share awards or options under a share scheme that complies with Chapter 17 and a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme.

The HKEX has also clarified that the carve-out applies to new share issues and transfers of treasury shares by a listed company on the conversion of convertible securities which were issued with subscription monies settled in full before the share repurchase.

The carve-out to this 30-day moratorium requirement is where the issue or resale is made to fulfill warrants, shares options or other instruments outstanding before the share repurchase. As suggested by various respondents, further amendments will be made to extend the above carve-out for issues or resales of shares to include the following situations:

- capitalisation issues, such as bonus issues and scrip dividends;
- grants of share awards or options under a share scheme under Chapter 17 or a new issue of shares or a transfer of treasury shares when vesting or exercising the share awards or options under the share scheme; or
- the issuance of new shares and transfer of treasury shares by an issuer upon conversion of convertible securities, if they were the subscription monies has been fully settled before the share repurchase.

The HKEX also clarified that the 30-day moratorium also applies to dual-listed companies. However, the moratorium requirement does not apply to the resale of treasury shares A by a PRC company with H and A shares listed on the HKEX and a PRC stock exchange, respectively.

(b) Dealing restrictions for on Exchange treasury share resales

The following dealing restrictions on on-market share repurchases and on-market resales of treasury shares will apply:

Relevant Rules or requirements	Listing Rule Amendments
MB Rules 10.06(2)(e) and 10.06A ¹⁵	The restriction on share repurchases when there is undisclosed inside information or during the 30-day period preceding any results announcement, will also apply to resales of treasury shares. <ul style="list-style-type: none"> The original proposal for the restriction period to be set at one month prior to any results announcement has been amended to 30 days to ensure that the same restriction period applies to all listed companies regardless of their financial year-end.
MB Rule 10.06A ¹⁶	Brokers appointed to effect the resale of treasury shares must inform the HKEX of the resale of treasury shares.
MB Rules 14A.73(3), 14A.92B and Note 1 to Rule 13.36(2)(b) ¹⁷	Under MB Chapter 14A, an on-market resale of treasury shares to a connected person is fully exempt from the connected transaction requirements if the connected person does not know that they are buying from the listed company.

(c) Other proposals for on-market resale

The disclosure and documentary requirements for resale of treasury shares also apply to on-market resales. In particular, the next day return should include key information and separate announcements would be required if the size of the resale exceeds the threshold of 5% of the listed company's shares. This requirement is subject to the exception that no announcement is required under MB Rule 13.28.¹⁸ and submission of placee information under MB Rule 9.23(2) is not required either.¹⁹ Nor are listed companies required to submit placee information under MB Rule 9.23(2).²⁰ Disclosure of listed companies' on-market resales must instead be disclosed in a next day disclosure return.

4. Proposals relating to new listing applicants

For new listing applicants who wish to keep their existing treasury shares after listing, the following amendments to the Listing Rules must be observed:

Relevant Rules or requirements	Listing Rule Amendments
MB Paragraph 23(1A) of Appendix D1A and Paragraph 23(1A) of Appendix D1E ²¹	Relevant disclosures on the treasury shares must be included in the prospectus: <ul style="list-style-type: none"> All intentions or plans to exercise a material repurchase must be fully explained and disclosed in the prospectus and cash flow forecasts to enable investors to make an informed assessment on the operations, management, financial position and future prospects of the new listing applicant
MB Rule 10.08 ²²	The resale of treasury shares (or agreeing to resell) is not allowed within six months of a new listing.
MB Rule 10.08(5)	An exception from the six-month lock-up on resales of treasury shares is available for companies that have transferred their listing from GEM to the Main Board.

Some respondents raised questions on whether a new listing applicant could issue new shares to a trust before listing and use these shares to satisfy any future share grants under its share scheme after listing. Referencing a [previous FAQ 091-2022](#) published by the HKEX subsequent to the amendments to the Listing Rules on share schemes in 2022, this will only be allowed if the arrangements benefit specified participants. If a new applicant proposes to issue new shares to the trustee before listing and use them to satisfy any future share grants after listing, this will be regarded as a non-compliant circumvention of Chapter 17 as no specified participants can be designated at the time the new shares are issued to the trustee.

(a) Voting rights attached to treasury shares

Amendments to MB Rule 1.01²³ clarify that listed companies that hold treasury shares must abstain from voting on matters that require shareholders' approval under the HKEX Listing Rules.

The HKEX will also amend MB Rules 14.44 and 14A.37²⁴ to clarify that for the purposes of these rules, the definition of “shareholder” refers to a “shareholder other than the holder of treasury shares”.

The HKEX also clarified that voting rights attached to treasury shares will not be “voting rights” under the Takeovers Code and Share Buy-backs Code (“**Codes**”).

(b) Excluding treasury shares when calculating issued shares

Shares held in treasury will be excluded when calculating the listed company's issued shares to determine matters such as public float, market capitalisation, mandate limits and size tests for transactions. The HKEX reminds listed companies to adhere to the public float requirement at all times and refrain from repurchasing their shares if the company will not meet the public float requirement after the share repurchase.

In response to concerns regarding weighted voting rights, the HKEX will modify the rules to clarify that MB Rule 8A.15, which requires weighted voting rights beneficiaries to reduce their weighted voting rights proportionately if the repurchase would otherwise increase the proportion of their weighted voting rights, will apply when the shares are either cancelled or held in treasury.

Regarding the difference in treatment of voting rights under the Listing Rules and the Securities and Futures Ordinance (Cap. 571) (**SFO**), after reviewing the responses, the Securities and Futures Commission (**SFC**) has decided to maintain the current position. As a result, treasury shares will remain part of an issuer's issued voting shares, according to the definition under section 308(1) of the SFO, on the basis that voting rights attached to treasury shares are temporarily suspended.

(c) Disclosure of the listed company's intention to hold treasury shares

MB Rule 10.06(1)(b)²⁵ will be amended to state that listed companies must include their intention to cancel the repurchased shares or hold them in treasury in the explanatory statement for the proposed repurchase mandate.

A majority of respondents opined that more flexibility should be given to listed companies to decide whether to cancel the repurchased shares or hold them in treasury depending on the actual circumstances at the time of the repurchase. The HKEX clarified in the consultation conclusions that disclosure of the intention statement would not preclude the listed company from subsequently changing its decision and the HKEX will make the following amendments to the proposed Listing Rule changes:

- under MB Rule 10.06(4)(a),²⁶ in the relevant disclosure in the next day disclosure return, the listed company will be required to disclose the respective number of shares to be cancelled or held in treasury after the repurchase. If applicable, listed companies should also disclose reasons for any discrepancies between the new arrangements and those already disclosed in the explanatory statement;
- amendments to MB Rule 13.25A(2)(b)(iv)²⁷ will oblige listed companies to report the cancellation of treasury shares in the next day disclosure return in certain situations; and
- the number of treasury shares held as of the year end date and their intended use must be disclosed in listed companies' annual reports.

(d) Resale of treasury shares through agents or nominees

The HKEX will amend MB Rule 1.01²⁸ to make clear that a resale of treasury shares by a listed company or its subsidiary includes resale of treasury shares through their agents or nominees, irrespective of whether they are aware of any material non-public information.

The HKEX has also clarified that this will not apply to a sale of shares by the trustee of a share scheme upon cancellation, expiry or lapse of a listed company's share scheme if the relevant shares are not treasury shares under the laws of the listed company's place of incorporation and its constitutional documents.

(e) Other consequential amendments to the Listing Rules

The HKEX will amend MB Rule 19C.11 to allow listed companies with secondary listings on the HKEX to be exempted from MB Rules 10.06A(1), 10.06A(3) and 10.06B in order to align with the existing exemptions.

The SFC will also issue further guidance on treasury units of real estate investment trusts authorised by the SFC under the Code on Real Estate Investment Trusts. Consequentially, the next day disclosure return and monthly return requirements to record the movement of the treasury units of real estate investment trusts under Paragraphs 7 and 8 of Appendix E3 to the MB Rules will be amended to cover treasury units of real estate investment trusts.

6. Other Housekeeping amendments

Other housekeeping amendments to the Listing Rules include:

- Paragraphs 11, 11A and 41A of Appendix D2 of the MB Rules²⁹ – clarifications that the reporting requirements for issues of securities for cash consideration do not apply to new shares issued or treasury shares resold under share schemes will be added. Rules 17.07 to 17.09³⁰ would apply instead;
- MB Rule 13.25A³¹ – listed companies will be allowed to file a next day disclosure return for the new shares issued or treasury shares transferred to grantees under a share scheme on passing the threshold under MB Rule 13.25A(3). Listed companies are not required to file separate returns upon vesting of these awards.
- MB Rule 17.05 – the restricted period for grants of options or awards under share schemes will be amended from one month to 30 days preceding the results announcement. This is to align with the restricted period amendments for on-Exchange share repurchases and on-Exchange resales of treasury shares as stated above.

Implications on other laws and regulations in Hong Kong

The Hong Kong Government is currently considering amending the Companies Ordinance to coincide with the amendments to the HKEX Listing Rules to allow companies incorporated in Hong Kong to also benefit from the treasury share regime in the same manner as overseas-incorporated companies.

Regarding the Codes, the voting rights attached to treasury shares are explicitly excluded from the definition of “voting rights”. This would impact the interpretation of disinterested shares in the calculation of certain thresholds such as the 30% trigger of a general mandatory offer, the 2% creeper or the acceptance threshold. Also, an offer is not required for treasury shares during a general offer or partial offer. The Takeovers Executive of the SFC will issue a practice note to clarify the implications of the treasury share regime on the Codes when the treasury share regime comes into effect.

As already noted, the treatment of treasury units of real estate investment trusts will largely mirror that of the resale of treasury shares by listed companies. Further guidance will be issued by the SFC specifically pertaining to real estate investment trusts.

Lastly, a resale of treasury shares in the secondary market will constitute a disposal of the shares for valuable consideration. Therefore, the contract notes must be stamped in accordance with the Stamp Duty Ordinance and are subject to ad valorem stamp duty.

[1] GEM Rule 1.01

[2] GEM Rules 13.14, 24.07 and 25.18

[3] GEM Rule 13.14

[4] HKEX GL119-24 at paragraph 1

[5] Ibid. at paragraph 8

[6] Ibid. at paragraph 10

[7] Ibid. at paragraph 14

[8] GEM Rules 2.06(6), 17.39A and 17.42E

[9] GEM Rule 17.42BB

[10] GEM Rules 17.39A and 17.42B

[11] GEM Rules Chapter 20, Rules 17.30, 14.06, 17.27A, 17.27B, 18.32 and 18.32A

[12] GEM Rules 18.32 and 18.32A

[13] GEM Rules 18.55A

[14] GEM Rule 13.12

[15] GEM Rule 13.11(4) and 13.14A

[16] GEM Rule 13.14A

[17] GEM Rules 20.71(3), 20.90B and Note 1 to Rule 17.41

- [18] MB Rule 13.27A, GEM Rule 17.29A
- [19] MB Rules 9.23(2), GEM Rules 12.27(6)
- [20] MB Rules 9.23(2), GEM Rules 12.27(6)
- [21] MB Paragraph 23(1A) of Appendix D1A and Paragraph 23(1A) of Appendix D1E / GEM Paragraph 23(1A) of Appendix D1A
- [22] GEM Rule 17.29
- [23] GEM Rule 1.01
- [24] GEM Rules 19.44 and 20.35
- [25] GEM Rule 13.08(12)
- [26] GEM Rule 13.13(1)
- [27] GEM Rule 17.27A(2)(b)(vi)
- [28] GEM Rule 1.01
- [29] GEM Rules 18.32, 18.32A and 18.55A
- [30] GEM Rules 23.07 and 23.09
- [31] GEM Rule 17.27A

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