

New Treasury Share Regime Under the Listing Rules



《上市規則》下的 新庫存股份機制

Under the Companies Ordinance, Cap. 622, a listed company is entitled to repurchase (or buy-back) its own shares either under general offer (section 238) or on Hong Kong Stock Exchange (HKEX) (section 239) or otherwise (as provided for in section 240), subject to exemptions (as contained in section 241). Except as hereinbefore provided, there is a general prohibition on acquisition of its own shares under section 267. In addition, no repurchase or buy-back of unpaid or partly-paid shares is permitted under section 268. Once the shares are repurchased, the repurchased shares are regarded as cancelled and cannot be held as treasury shares under section 269(1). Repurchased shares of other jurisdictions, including Bermuda, BVI, Canada (British Columbia), Cayman Islands, Italy, Japan, Jersey, Luxembourg, PRC, Singapore, UK and US (constituting more than 92% of the companies listed on HKEX) are not mandatorily required to be cancelled and maybe held as treasury shares for future resale either on market or off market.

Under the Listing Rules (both main board and GEM) and subject to the repurchase mandate granted by a listed company to its directors, a listed company may repurchase its own shares either through HKEX or by way of a general offer (in which case such offer may be subject to the Takeovers Code). Currently, the repurchased shares are automatically cancelled and are not permitted to be held as treasury shares for future resale. Under the general mandate granted by the listed company to its directors for the issue of new shares, such repurchased shares will normally be included in the general mandate as additional new shares to be issued by the listed company under the general mandate. In short, under the current listing regime, the repurchased shares (a) are not treasury shares, (b) may not be resold by the listed company on and off HKEX, (c) must be cancelled, but (d) may be issued as new shares under the general mandate for the issue of new shares by the listed company. Share buy-back and share repurchase are used interchangeably in this article.

On 27 October 2023, HKEX issued the Consultation Paper on Proposed Amendments to Listing Rules relating to Treasury Shares to consult the market on the proposal to remove the requirement to cancel the repurchased shares upon share repurchase under the repurchase mandate and to adopt a framework in the Listing Rules to govern the resale of these treasury shares. The

根據《公司條例》（第622章）的規定，上市公司有權以公開要約（第238條）或於香港聯合交易所（聯交所）（第239條）或其他方式（按第240條的規定）購回（或回購）本身的股份，亦可獲豁免（載於第241條）。除上述規定外，第267條列明一般禁止購入本身股份。此外，第268條亦列明不得購回或回購未繳股款或部分已繳股款的股份。根據第269(1)條，股份一旦回購，將被視為已註銷股份，不可以庫存方式持有。其他司法管轄區的購回股份，包括百慕達、英屬處女群島、加拿大（英屬哥倫比亞省）、開曼群島、意大利、日本、澤西島、盧森堡、中國內地、新加坡、英國及美國（佔逾92%聯交所上市公司）則毋須強制註銷，並可以庫存方式持有，以便日後於場內外再出售。

根據《上市規則》（主板及GEM）及在上市公司授予其董事回購授權下，上市公司可透過聯交所或公開要約（在此情況下，有關要約可能受《收購守則》規限）購回其本身股份。根據現行規定，購回股份將會被自動註銷，不得以庫存方式持有，作未來再出售用途。根據上市公司授予其董事發行新股的一般性授權，該等購回股份通常會納入一般性授權，作為上市公司根據一般性授權將予發行的額外新股。簡而言之，在現行上市機制下，購回股份（a）並非庫存股份，（b）不得由上市公司於聯交所內外再出售，（c）必須被註銷，但（d）可於上市公司發行新股之一般性授權下以新股形式發行。本文中，「購回股份」及「回購股份」二詞可互換使用。





consultation was well received by the market with 56 responses, most of them were in support of the proposal to remove the requirement to cancel the repurchased shares and to introduce a new regime for treasury shares. On 12 April 2024, the Consultation Conclusions were issued by HKEX implementing the proposal with the Listing Rules amended. The new treasury share regime has been effective on 11 June 2024. In addition, a new HKEX Guidance Letter (referenced HKEX-GL119-24) and a new set of frequently asked questions (FAQs) have also been issued by HKEX to give information and guidance to the market on the new treasury share regime, both of which have been effective as from 11 June 2024.

This FRA Column will give a short outline of the new treasury share regime under the Listing Rules.

New Treasury Share Regime

The requirement to cancel repurchased shares is removed and the new treasury share regime is introduced, the effect of which is that the repurchased shares may be cancelled or retained and held as treasury shares for future resale. For this purpose, 'treasury shares' is defined as shares repurchased and held by the listed company in treasury as authorised by the laws of the listed company's place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Listing Rules, include shares repurchased by the listed company and held or deposited in CCASS for sale on HKEX. The treasury shares are allowed to retain their listing status.

2023年10月27日，聯交所刊發有關庫存股份的《上市規則》條文修訂建議的諮詢文件，就建議刪除回購授權下進行回購後須註銷購回股份的規定，以及在《上市規則》中採納規管庫存股份再出售的框架，徵詢市場意見。市場反應良好，聯交所共收到56份回應意見，其中大部分支持刪除有關註銷購回股份的規定，以及引入新庫存股份機制的建議。2024年4月12日，聯交所刊發諮詢總結，並根據經修訂的《上市規則》落實相關建議。新的庫存股份機制已於2024年6月11日生效。此外，聯交所亦刊發新的指引信（參考編號為HKEX-GL119-24）及常問問題集，向市場提供有關新庫存股份機制的資料及指引，兩者均自2024年6月11日起生效。

本期《財經事務及監管政策委員會》專欄將簡述《上市規則》下的新庫存股份機制。

新庫存股份機制

聯交所刪除註銷購回股份的規定，並引入新的庫存股份機制，讓上市公司可自行決定註銷或保留該等購回股份作庫存股份，以供日後再出售。就此目的而言，「庫存股份」的定義為按上市公司註冊成立地的法例，以及上市公司組織章程細則或相等的章程文件授權而購回，並以庫存方式持有的股份，就《上市規則》之目的而言，庫存股份包括上市公司購回，並於中央結算系統持有或存放，以在聯交所出售的股份。新機制允許上市公司保留庫存股份的上市地位。

Resale of Treasury Shares

Generally, a resale of treasury shares is treated as new shares. A resale of treasury shares is required to be subject to pre-emption similar to an issue of new shares (i.e. to be offered to all shareholders on a pro-rata basis) or alternatively to be approved by shareholders under specific mandate or general mandate. The price discount limit for an on-market resale (or an off-market resale for cash) of treasury shares under a general mandate is set at 20% of the higher of (a) the closing price on the trading day immediately prior to the resale, and (b) the average price in the 5 trading days immediately prior to the resale. For a share scheme using treasury shares, it is required to satisfy share grants to be subject to the same requirements as a share scheme funded by new shares under the Listing Rules. The requirements currently applicable to an issuance of new shares are extended to a resale of treasury shares including connected transaction requirements, disclosure requirements and documentary requirements. A resale of treasury shares is a disposal of shares by the listed company and is subject to stamp duty under the Stamp Duty Ordinance, Cap. 117.

Risks of Market Manipulation and Insider Dealing Relating to Treasury Shares

In order to mitigate the risks of market manipulation and insider dealing, the following measures are implemented.

As regards moratorium periods for share repurchases and resales of treasury shares, the existing 30-day moratorium period for issuance of new shares after any share repurchase is extended to any resale of treasury shares (whether on or off-market) and the carve-out is extended to include (a) capitalisation issues, and (b) grants of share awards or options under a share scheme or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme. In addition, a moratorium period of 30 days is imposed on an on-HKEX share repurchase after an on-HKEX resale of treasury shares.

As regards dealing restrictions for a resale of treasury shares on HKEX, the dealing restrictions on on-HKEX share repurchases are extended to on-HKEX resales of treasury shares and the restricted period is adjusted from one month to 30 days preceding results announcement. In addition, a listed company is required to procure its broker to disclose to HKEX information concerning its resale of treasury shares on HKEX. An on-HKEX resale of treasury shares to a connected person without knowledge is exempt from the connected transaction requirements under the Listing Rules. Furthermore, an on-market resale of treasury shares is carved out from the disclosure requirement (as regards

庫存股份再出售

一般而言，再出售庫存股份被視為新股。與發行新股類似，庫存股份再出售受優先購買權所規限（即須按持股比例向所有股東售股），或須根據股東批准的特定授權或一般性授權進行。根據一般性授權，在場內再出售（或為收取現金而在場外再出售）庫存股份的價格折讓上限為以下較高者的 20%：(a) 再出售之前一個交易日的收市價；或 (b) 再出售之前五個交易日的平均價格。使用庫存股份之股份計劃須於償付股份授予時，遵守《上市規則》中與涉及發行新股的股份計劃相同的要求。現行適用於發行新股的規定已擴大至庫存股份再出售，包括關連交易規定、披露規定及提交文件的規定。再出售庫存股份指上市公司出售股份，並須根據《印花稅條例》（第 117 章）的規定繳納印花稅。

庫存股份相關的市場操縱及內幕交易風險

為減低市場操縱及內幕交易風險，須實施下列措施。

就股份回購及再出售庫存股份的暫止期而言，現行購回股份後再發行新股的 30 天暫止期將延伸至任何庫存股份再出售（不論場內或場外），豁除規定亦延伸至 (a) 資本化發行，及 (b) 根據股份計劃授出的股份獎勵或期權，或根據股份計劃授出的股份獎勵或期權獲歸屬或行使時發行的新股或轉讓的庫存股份。在聯交所再出售庫存股份後的 30 天內，不得在聯交所回購任何股份。



announcement) and documentary requirement (as regards circular) under the Listing Rules (for the submission of placee information).

As regards insider dealing, a resale of treasury shares may be inside information and is subject to the rules governing insider dealing under the Securities and Futures Ordinance, Cap. 571.

New Listings Relating to Treasury Shares

For new listings on HKEX, all listing applicants are required to disclose details of treasury shares held in prospectus and are restricted from reselling those treasury shares within six months after listing.

Other Amendments to Listing Rules Relating to Treasury Shares

As regards voting rights attached to treasury shares, a holder of treasury shares is required to abstain from voting on matters that require shareholders' approval under the Listing Rules. Listed companies are required to ensure that treasury shares are appropriately identified and segregated. In the calculation of issued shares under the Listing Rules, for example, for public float and size test, treasury shares are excluded from the listed company's issued or voting shares under various parts of the Listing Rules.

In relation to repurchase of shares, a listed company is required to disclose in the explanatory statement for share repurchase mandate its intention as to whether the repurchased shares will be cancelled or kept as treasury shares. After each repurchase of shares, a listed company is required to disclose in the next day disclosure return (a) whether repurchased shares will be cancelled or held as treasury shares, and (b) (where applicable) the reasons for any deviation from the intention statement previously disclosed in the explanatory statement. A listed company is required to report cancellation of treasury shares through the next day disclosure returns and when such disclosure obligation arises.

For clarification, a resale of treasury shares by a listed company or its subsidiary includes a resale of treasury shares through their agents or nominees. There are other minor consequential or housekeeping amendments relating to the new treasury share regime that will not be discussed here.

Amendments to Listing Rules and Issue of New Guidance Letter and FAQs

The Amendments to the Main Board Listing Rules relating to the new treasury share regime are contained in HKEX Update No. 145 and the related Amendments to the GEM Listing Rules are contained in HKEX Updated No. 79, both dated April 2024 and both with mark-ups showing changes to the existing Listing Rules. HKEX has also issued HKEX Guidance Letter (HKEX-GL119-24) dated April 2024 to provide guidance on arrangements for listed companies to hold or deposit treasury shares in CCASS including (a) existing treasury shares held for resale on HKEX, and (b) repurchased shares pending cancellation. HKEX also issued FAQs to provide further guidance to listed companies including listed companies with dual listings and moratorium periods etc. All the above have taken effect as from 11 June 2024.

在聯交所再出售庫存股份的交易限制方面，在聯交所回購股份的交易限制亦適用於在聯交所再出售庫存股份，限制期間由公布業績前一個月內調整為30天。上市公司亦須敦促其經紀商向聯交所披露有關再出售庫存股份的資料。上市公司在不知情的情況下在場內向關連人士再出售庫存股份可獲豁免遵守《上市規則》有關關連交易的規定。此外，在場內再出售庫存股份除於《上市規則》（提交獲配售人的資料）之披露規定（有關公告）及提交文件規定（有關通函）。

就內幕交易而言，再出售庫存股份或涉及內幕消息，須受《證券及期貨條例》（第571章）有關內幕交易的規定所規限。

與庫存股份相關的新上市公司

就聯交所新上市公司而言，所有上市申請人均須在招股章程中披露其所持有庫存股份的詳細資料，並不得在上市後六個月內再出售該等庫存股份。

有關庫存股份的其他《上市規則》修訂

就庫存股份附屬之投票權而言，庫存股份持有人須就《上市規則》規定須經股東批准的事宜放棄投票。上市公司須確保庫存股份能適當地被識別及被區分。在根據《上市規則》計算已發行股份數目（例如計算公眾持股量及規模測試）時，須將庫存股份從《上市規則》不同部分所述上市公司已發行股份或有投票權股份中剔除。

就回購股份而言，上市公司須在回購股份說明函件中披露其擬購回的股份是否會被註銷或被保留作庫存股份的意向。上市公司每次回購股份後，均須於翌日披露報表中披露（a）購回股份是否會被註銷或以庫存方式持有，以及（b）（如適用）不符合此前說明函件中所披露的意向聲明之原因。上市公司須在翌日披露報表中及披露責任產生時，匯報註銷庫存股份的情況。

為清晰起見，上市公司或其附屬公司再出售庫存股份包括由其代理人或名義持有人代為進行的庫存股份再出售。新的庫存股份機制亦存在其他較為瑣碎的相應或輕微修訂，本文將不予討論。

《上市規則》修訂及刊發新指引信及常問問題

有關新庫存股份機制的《主板上市規則》修訂載於聯交所第一百四十五次修訂文件，而《GEM上市規則》的相關修訂則載於聯交所第七十九次修訂文件，兩份修訂文件均於2024年4月刊發，並保留所有修訂標記，以顯示現行《上市規則》的變動。聯交所亦於2024年4月刊發聯交所指引信（HKEX-GL119-24），說明於中央結算系統持有或存放庫存股份的安排，為上市公司提供指引，包括（a）擬在聯交所再出售的現有庫存股份，以及（b）尚待註銷的購回股份。聯交所亦刊發了常問問題集，進一步為上市公司（包括雙重上市及須面臨暫止期的公司等）提供指引。上述文件均於2024年6月11日起生效。



Conclusion

For the avoidance of doubt, the new treasury share regime under the Listing Rules is not applicable to companies incorporated in Hong Kong and listed on HKEX. HKEX will work with SFC and the Government to amend the Companies Ordinance to give effect to the new treasury share regime. Members will be updated when the Companies Ordinance is amended and the new treasury share regime is applicable to companies incorporated in Hong Kong. Members are advised to consult their legal advisers whether the new treasury share regime is applicable in the places where they are incorporated and whether amendments to their corporate constitutional documents are required to implement the new treasury share regime. For those companies that are dually listed on another stock exchange in addition to HKEX, they are advised to seek professional advice as to whether the new treasury share regime is applicable in such other stock exchange. **M**

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結語

為免生疑問，《上市規則》下的新庫存股份機制不適用於在香港註冊成立並在聯交所上市的公司。聯交所將與證監會及政府合作修訂《公司條例》，以實施新的庫存股份機制。待《公司條例》完成修訂，而新庫存股份機制適用於在香港註冊成立的公司時，我們將會為會員提供最新資訊。我們建議會員諮詢法律顧問，以了解新庫存股份機制是否適用於其註冊地，以及是否需要在新的庫存股份機制下修訂其公司的章程文件。就同時於聯交所以外證券交易所上市之公司，我們建議其尋求專業意見，了解新庫存股份機制是否適用於該其他證券交易所。 **M**

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