

Standing Committee on Company Law Reform

The Thirty-Ninth Annual Report

2024 / 2025

Standing Committee on Company Law Reform

Thirty-Ninth Annual Report

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PREFACE

(i)

Terms of Reference of the Standing Committee on Company Law Reform

- (1) To advise the Financial Secretary on amendments to the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance as and when experience shows them to be necessary.
- (2) To report annually to the Financial Secretary on those amendments to the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance that are under consideration from time to time by the Standing Committee.
- (3) To advise the Financial Secretary on amendments required to the Securities and Futures Ordinance on matters relating to corporate governance and shareholders' protection.

(ii)

Membership of the Standing Committee for 2024/2025

Chairman: Mr Johnny MOK, SC, BBS, JP

Members: Mr Jack CHAN Hoi, JP
Ms Ivy CHEUNG Wing-han
Mr Paul CHOW Koon-ying
Ms Christine CHUNG Wai-yin (up to 31.1.2025)
Ms Julianne Pearl DOE
Mr Dennis HO Chiu-ping
Ms Sabrina HO Shuk-ying
Ms Wendy KAM Mei-ha
Mr Geoffrey Edward KAO
Mr Jason KARAS
Mr Ernest LEE Chun-ho

Dr Stefan LO Huoy-cheng	(from 1.2.2025)
Mr LOW Chee-keong	(up to 31.1.2025)
Mr David John SIMMONDS	
Ms Jacqueline WALSH	(up to 31.1.2025)
Ms Flora WANG Fang	(from 1.2.2025)
Ms Tiffany WONG	
Mr Kenneth YEO Boon-ann	(from 1.2.2025)

**Ex-Officio
Members:**

Ms Katherine NG Kit-shuen Head of Listing Hong Kong Exchanges and Clearing Limited	
Mr Stefan GANNON, JP Special Adviser to CE Hong Kong Monetary Authority	(up to 5.10.2024)
Ms Karen Deborah KEMP, JP General Counsel Hong Kong Monetary Authority	(from 6.10.2024)
Ms Annabel LEE Tung-mei Director, Legal Services Division Securities and Futures Commission	
Miss Helen TANG, JP Registrar of Companies	
Ms Phyllis MCKENNA, JP Official Receiver	(up to 30.3.2025)
Miss Lillian CHOW Official Receiver	(from 31.3.2025)
Mr Keith GIANG Tsz-sheung, JP Deputy Secretary for Financial Services and the Treasury (Financial Services)	
Ms Quinnci WONG Hoi-kam Senior Assistant Law Officer (Civil Law) Department of Justice	(up to 31.1.2025)
Ms Sandy HUNG Yung-yung Assistant Law Officer (Civil Law) (Commercial) Department of Justice	(from 1.2.2025)

Secretary:

Ms Majestic YEUNG

(iii)

Meeting held during 2024/2025

		Date of meeting
Two Hundred and Thirty-Second Meeting	-	27.9.2024

Discussion Paper: Allowing the Holding and Disposal of Repurchased Shares by Listed Companies Incorporated in Hong Kong

(iv)

Paper circulated during 2024/2025

Discussion Paper		Date of dissemination
Proposals on Real Estate Investment Trust Enhancements and Market Conduct Covering Listed Collective Investment Schemes	-	23.4.2024
Allowing the Holding and Disposal of Repurchased Shares by Listed Companies Incorporated in Hong Kong	-	13.6.2024
Information Paper		
Consultation Conclusions and Legislative Proposals on Proposed Company Re-domiciliation Regime in Hong Kong	-	8.7.2024
Consultation Conclusions and Legislative Proposals on Promoting Paperless Corporate Communication for Hong Kong Companies	-	26.9.2024

Consultation Conclusions on Proposals to (i)	-	9.10.2024
Introduce a Statutory Scheme of Arrangement and Compulsory Acquisition Mechanism for Real Estate Investment Trusts and (ii) Enhance the SFO Market Conduct Regime for Listed Collective Investment Schemes		

REPORT

The Standing Committee on Company Law Reform (“SCCLR”) was formed in 1984. It advises the Financial Secretary (“FS”) on amendments to the Companies Ordinance (Chapter 622) (“CO”) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) (“CWUMPO”), as well as on amendments to the Securities and Futures Ordinance (Chapter 571) (“SFO”) on matters relating to corporate governance and shareholders’ protection. The SCCLR reports annually to the FS through the Secretary for Financial Services and the Treasury on amendments that are under consideration.

2. From 1 April 2024 to 31 March 2025, the SCCLR -

- (a) held one meeting during the year to discuss the legislative proposal for enabling listed companies incorporated in Hong Kong to hold shares bought back in treasury and dispose of them under certain restrictions;
- (b) received two Discussion Papers from the Government on the proposed legislative amendments to the SFO and the CO respectively, and provided written responses to the said two Discussion Papers; and
- (c) received three Information Papers from the Government respectively on the (i) consultation conclusions and legislative proposals on proposed company re-domiciliation regime in Hong Kong, (ii) consultation conclusions and legislative proposals on promoting paperless corporate communication for Hong Kong companies, and (iii) consultation conclusions on proposals to (I) introduce a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts and (II) enhance the SFO market conduct regime for listed collective investment schemes.

Discussion Paper on “Allowing the Holding and Disposal of Repurchased Shares by Listed Companies Incorporated in Hong Kong”

Background

3. The Discussion Paper, titled “Allowing the Holding and Disposal of Repurchased Shares by Listed Companies Incorporated in Hong Kong”, was circulated to members on 13 June 2024 for review, comments and suggestions.

4. Following consideration of members’ feedback, a finalised version of the same Discussion Paper was distributed to members on 17 September 2024 for their further consideration.

5. At the 232nd meeting held on 27 September 2024, representatives from the Financial Services and the Treasury Bureau (“FSTB”) presented the said Discussion Paper, outlining the policy objectives and legislative proposals for the introduction of a treasury share regime for Hong Kong listed companies.

6. Members were informed that the Listing Rules were amended in June 2024 to remove the mandatory requirement for listed companies to cancel repurchased shares, allowing such shares to be held in treasury in accordance with the laws of their place of incorporation and their constitutional documents.

7. It was noted that section 269 of the CO mandated Hong Kong incorporated companies to cancel shares bought-back, which effectively precluded them from holding shares bought-back as treasury shares under the amended Listing Rules. While the original intent of section 269 was to mitigate risk of market manipulation and insider trading, these risks could be adequately addressed by the strengthened safeguards under the SFO, including civil and criminal provisions and additional measures under the revised Listing Rules, such as (a) a 30-day moratorium restricting the resale of treasury shares and (b) prohibitions on share repurchases during periods of undisclosed inside information or during the 30-day period preceding results announcements.

8. Members were advised that the proposed treasury regime would provide greater flexibility and efficiency for listed companies to adjust their share capital

through holding, selling and transferring treasury shares for specific purposes. The establishment of a treasury regime that is in line with international practice in jurisdictions such as Bermuda, the Cayman Islands and the Mainland would also attract quality companies to incorporate their holding entities and apply for listing in Hong Kong, thereby enhancing the competitiveness of Hong Kong as an international financial centre.

9. Members were further briefed that the Government was preparing legislative amendments to align the CO with the amended Listing Rules. These legislative proposals sought to address operational considerations for the treasury share regime and draw on practices from other jurisdictions. Key proposals included -

- (a) allowing repurchased shares to be held as treasury shares either in the company's name or through a recognised clearing house (e.g. HKSCC Nominees Ltd.) as its nominee;
- (b) permitting the cancellation, transfer or resale of treasury shares on or off exchange, subject to the same approval requirements as applied to the allotment of new shares under sections 140 and 141 of the CO;
- (c) ensuring that holding and cancellation of treasury shares would not affect the company's total amount of issued share capital, with any resale or transfer for a consideration resulting in an increase in the issued share capital;
- (d) suspending rights attached to treasury shares, such as voting rights and the right to dividends, and excluding treasury shares when calculating thresholds relevant to corporate actions to prevent companies from influencing their own matters; and
- (e) introducing disclosure requirements, including the entry of treasury shares in the register of members and filing returns with the Companies Registry upon share repurchase, resale, or cancellation.

10. Members were informed that the Government aimed to introduce a draft bill to the Legislative Council by the end of 2024.

Discussion Outcomes

11. Members broadly agreed that the proposed treasury share regime would provide greater flexibility to Hong Kong-incorporated companies in managing their share capital.

12. Members noted that the proposed treasury share regime would align with the revised Listing Rules and offer cost-effective and efficient capital management options, thereby enhancing the competitiveness of Hong Kong as an international business and financial centre.

13. Members discussed the implications of share repurchases and holding of treasury shares on a company's total issued shares and share capital. It was observed that (a) share capital might be reduced if the repurchase was funded by share capital, (b) holding treasury shares would not affect the company's share capital or the total issued shares, and (c) cancelling treasury shares would result in a reduction of the total issued shares.

14. Members noted that Hong Kong accounting standards had already included provisions governing treasury shares which was based on the principles set out by HKEX during the amendment of the Listing Rules. Additionally, any profit generated from the resale of treasury shares would not be recognised as profit but would instead increase the share capital by the proceeds received.

15. Members acknowledged the commercial flexibility offered by the proposed treasury share regime. Companies would have the option to hold repurchased shares as treasury shares rather than cancelling them, enabling future disposal at an opportune time. Such disposals would be subject to the same restrictions as the allotment of new shares. Treasury shares could also be utilised for bonus shares issuance or fundraising resale, offering a quicker and more cost-effective alternative to issuing new shares.

16. Members noted that the rights attached to treasury shares would be suspended under the proposed regime. For example, treasury shares would not carry voting rights, the right to dividends, or participation in the distribution of the company's assets. Treasury shares would be excluded from the threshold calculations under the Takeovers Code, ensuring that companies holding treasury shares would not acquire shareholder's rights.

17. Members discussed the treatment of bonus shares and share consolidation involving treasury shares. It was noted that bonus shares allotted in respect of treasury shares would be treated as repurchased shares. Companies would have the discretion to retain these bonus shares as treasury shares or cancel them. In share consolidation, treasury shares would continue to be treated as treasury shares.

18. Members considered the reporting obligations under the proposed treasury share regime. Companies holding treasury shares, or their nominees, would be required to (a) enter their names in the register of members to reflect the holding of treasury shares and (b) file returns with the Companies Registry within 15 days of share repurchase, cancellation, or sale/transfer, using amended and new prescribed forms. Penalties for non-compliance would align with the existing similar provisions under the CO.

19. Members observed that the legislative amendments to the CO would complement the revisions to the Listing Rules, enabling Hong Kong-incorporated listed companies to fully benefit from the treasury share regime in line with international standards.

20. Upon conclusion of discussion, members expressed general support for the legislative proposals set out in the said Discussion Paper.

Discussion Paper on “Proposals on Real Estate Investment Trust Enhancements and Market Conduct Covering Listed Collective Investment Schemes”

Background

21. The Discussion Paper, titled “Proposals on Real Estate Investment Trust Enhancements and Market Conduct Covering Listed Collective Investment Schemes”, was disseminated to members on 23 April 2024.

22. The Securities and Futures Commission (“SFC”) conducted a public consultation on two legislative initiatives, namely, the introduction of a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts (“REITs”) and the extension of certain market conduct provisions to cover listed collective investment schemes (“CISs”) including REITs.

23. While companies formed and registered under the CO already benefited from a statutory framework for corporate restructuring and compulsory acquisition (e.g. through schemes of arrangement and share takeovers), the industry had been advocating for the implementation of a similar regime tailored for REITs in Hong Kong. This would facilitate privatisation and other forms of corporate restructuring for REITs within Hong Kong.

24. In alignment with the SFC's policy to regulating REITs in a manner comparable to listed companies — given their analogous economic nature and interests — the SFC proposed to introduce a new Part to the SFO. This Part would establish a statutory mechanism for the schemes of arrangement and compulsory acquisitions applicable to REITs. The proposed provisions would be modeled on Part 13 of the CO (Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-back) with appropriate modifications to reflect the specific characteristics of REITs. These modifications would also define the roles and responsibilities of REITs management companies and trustees in the execution of such mechanism.

25. Separately, the SFC also proposed to expand certain market conduct provisions under the SFO — applicable only to listed corporations — to also cover listed CISs (including REITs). These provisions included (a) market misconduct regimes (Part XIII of the SFO for civil matters and Part XIV of the SFO for criminal offences), (b) disclosure of inside information regime (Part XIVA of the SFO) and (c) disclosure of interests regime (Part XV of the SFO).

Discussion Outcomes

26. Members expressed general support for the legislative proposals outlined in the said Discussion Paper, while providing comments on detailed operational aspects.

Information Paper: “Consultation Conclusions and Legislative Proposals on Proposed Company Re-domiciliation Regime in Hong Kong”

27. The Information Paper, titled “Consultation Conclusions and Legislative Proposals on Proposed Company Re-domiciliation Regime in Hong Kong”, was shared with members on 8 July 2024 for information.

28. The FSTB conducted a public consultation on the proposal of introducing a company re-domiciliation regime in Hong Kong from 31 March to 31 May 2023. The FSTB received 20 written responses across various sectors. Respondents expressed unanimous support for the said proposal and also provided suggestions on multiple aspects. The said Information Paper summarised the feedback received during the consultation, addressed the key views expressed by respondents, and presented the FSTB's latest legislative proposals.

Information Paper: “Consultation Conclusions and Legislative Proposals on Promoting Paperless Corporate Communication for Hong Kong Companies”

29. The Information Paper, titled “Consultation Conclusions and Legislative Proposals on Promoting Paperless Corporate Communication for Hong Kong Companies”, was circulated to members on 26 September 2024 for information.

30. The FSTB conducted a public consultation on the proposal of promoting paperless corporate communication for Hong Kong companies. This consultation, held from 23 November 2023 to 26 January 2024, attracted nine submissions from different stakeholders. The consultation results revealed broad support for the said proposal, with respondents offering comments on different aspects. The FSTB summarised the major views received, provided responses to these comments, and incorporated relevant suggestions into its latest legislative proposals.

Information Paper: “Consultation Conclusions on Proposals to (i) Introduce a Statutory Scheme of Arrangement and Compulsory Acquisition Mechanism for Real Estate Investment Trusts and (ii) Enhance the SFO Market Conduct Regime for Listed Collective Investment Schemes”

31. The Information Paper, titled “Consultation Conclusions on Proposals to (i) Introduce a Statutory Scheme of Arrangement and Compulsory Acquisition Mechanism for Real Estate Investment Trusts and (ii) Enhance the SFO Market Conduct Regime for Listed Collective Investment Schemes”, was disseminated to members on 9 October 2024 for information.

32. On 28 March 2024, the SFC launched a two-month consultation on the said proposals. The consultation received 11 written submissions from stakeholders across various sectors. The said proposals were generally well-received, with many respondents expressing strong support. Some respondents sought clarifications on the technical aspects of the said proposals. In response, the SFC refined the said proposals by incorporating clarifications and modifications to address these comments. The said Information Paper provided a detailed account of the key comments received during the consultation process as well as the SFC's responses thereto.