

**SECURITIES INDUSTRY COUNCIL**  
**(“SIC” OR THE “COUNCIL”)**  
**PRACTICE STATEMENT ON TREASURY SHARES**

**Introduction**

Under the Companies Act, shares repurchased by a company may be held in treasury instead of being cancelled. The company may subsequently dispose of such shares by, amongst others, (i) selling them for cash; (ii) transferring them for the purposes of or pursuant to an employee’s share scheme; or (iii) transferring them as consideration for the acquisition of shares or assets of another company.

**Application of the Code**

*General*

2 As treasury shares do not carry voting rights, they should be excluded from the calculation of all percentages of voting rights, shareholdings, share capital and relevant securities referred to in the Code. For the same reason, offers under the Code are not required to be extended to treasury shares.

*General Principle 7 and Rule 5*

3 A transfer or sale of shares from treasury by a company will normally be treated in the same way as an issue of new shares. Hence, a transfer or sale of treasury shares by an offeree company without the approval of shareholders at a general meeting would constitute a frustrating action under General Principle 7 and Rule 5 of the Code, unless such transfer or sale is pursuant to a contract entered into earlier.

Note 1 on Rule 8.7

4 Under Note 1 on Rule 8.7, an offeree company must provide the offeror with all relevant details of, amongst others, its issued shares following the announcement of a firm intention to make an offer. Such details should include the extent to which any such shares are held in treasury and details of any agreements to transfer or sell such shares out of treasury.

Rule 14.2 and Rule 15.1

5 In the event that an offer is extended to treasury shares, it would not be appropriate for the outcome of the offer to be influenced through a decision taken by the board of the offeree company in respect of the company's treasury shares. Hence, the offeree company cannot accept an offer in respect of treasury shares, sell or transfer such shares to the offeror during the offer period, until the offer is unconditional as to acceptances.

Note 4 on Rule 28.1

6 Unlike options, convertibles and subscription rights, treasury shares do not place a contingent claim on the offeree company to issue securities which carry voting rights. Hence, in determining whether an offer can be declared unconditional as to acceptances under Note 4 on Rule 28.1, treasury shares should be excluded from the calculation of the maximum potential issued share capital of the offeree company. Council should be consulted in cases where shares are to be transferred or sold out of treasury during the offer period pursuant to a contract entered into earlier.

Note 2 on Section 8 of Appendix 2

7 For the purpose of Rule 12, purchase of shares includes the purchase of its own shares by the offeree company. The total amount of shares of the relevant class remaining in issue following the share buy-back must also be disclosed. In this regard, a breakdown of shares held in treasury should be provided, if applicable.

*Practice Statements are issued by the SIC to provide informal guidance to companies involved in take-overs and practitioners as to how the SIC normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the SIC and are not a substitute for consulting the SIC to establish how the Code applies in a particular case.*

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