
CHAPTER 12 SHARE BUY-BACKS**PART A – GENERAL****12.01 Introduction**

This Chapter sets out the requirements that must be complied with by a listed company in respect of the purchase of the listed company's own shares.

PART B – DEFINITIONS**12.02 Definitions**

For the purpose of this Chapter, unless the context otherwise requires, (a) ~~“treasury shares” shall have the meaning given under subsection 67A(3A)(b) of the Companies Act 1965;~~ (b) ~~“on the market”~~ transactions means transactions made through the Automated Trading System (“ATS”) of the Exchange and ~~shall exclude~~ “Direct Business” transactions as defined in the Rules of the Exchange.

PART C – GENERAL REQUIREMENTS**12.03 Authorisation**

A listed company must not purchase its own shares:-

- (a) ~~within 3 years from the date of admission to the Official List~~ during the Sponsorship Period; and
- (b) unless the shareholders of the listed company have given an authorisation to the directors of the listed company to make such purchase(s) by way of ordinary resolution which has been passed at a general meeting and subject to the provisions of section 67A of the Companies Act 1965 and Part IIIA of the Companies Regulations 1966.

12.04 On the market transactions

A listed company must ensure that any purchase by a listed company of its own shares ~~and/or~~ resale of its treasury shares, or both, is effected only on the market of the Exchange.

12.05 Announcement of intention to propose a share buy-back

A listed company must ~~make an~~ immediately announcement to the Exchange of any decision by the board of directors of the listed company to submit to shareholders a proposal for the listed company to be authorised to purchase its own shares.

12.06 Circular to shareholders for purchase of own shares

- (1) A listed company seeking authorization from its shareholders to purchase its own shares other than by way of a renewal of an existing authorization, must issue a circular to its shareholders that complies with the requirements of sub-Rule (3) below.

- (2) A ~~listed company~~listed corporation that is renewing its existing authorization must either issue:
- (a) a statement accompanying its notice of general meeting (~~hereinafter referred to as~~ **"Share Buy-back Statement"**), in substitution of the circular; or
 - (b) a circular, as referred to in sub-Rule (1) above.

Where a ~~listed company~~listed corporation issues a Share Buy-back Statement, it must ensure that such Statement complies with the requirements of sub-Rule (4) below.

- (3) ~~Without limiting the generality of Rule 8.11, the~~ listed corporation must ~~ensure that~~include in the circular referred to under sub-Rule (1) above ~~includes the~~ information set out in Part A of Appendix 12A and all such information concerning the proposed purchase as shareholders and their ~~professional~~ advisers would reasonably require and would reasonably expect to find in the circular for the purposes of making an informed assessment as to the merits of approving the proposed purchase and the extent of the risks involved in doing so.
- (4) The ~~listed company~~listed corporation must ~~ensure that~~include in the Share Buy-back Statement ~~includes the~~ information set out in Part B of Appendix 12A and all such information concerning the proposed purchase as shareholders and their ~~professional~~ advisers would reasonably require and would reasonably expect to find in the Share Buy-back Statement for the purposes of making an informed assessment as to the merits of approving the proposed purchase and the extent of the risks involved in doing so.
- (5) The listed corporation must ~~submit the draft~~ circular or ~~the draft~~ Share Buy-back Statement, as the case may be, ~~must be submitted~~ to the Exchange together with a checklist showing compliance with Parts A or B of Appendix 12A respectively.

12.07 Contents of ordinary resolution for share buy-back

- (1) A ~~listed company~~listed corporation must ~~ensure that~~include in the ordinary resolution required under Rule 12.03 ~~above~~ for a ~~listed company~~listed corporation to purchase its own shares ~~includes the~~ information set out in Appendix 12B.
- (2) The listed corporation must ~~submit the draft~~ resolution ~~must be submitted~~ to the Exchange together with a checklist showing compliance with Appendix 12B.
- (3) Any authority conferred by such resolution may only continue to be in force until:-
- (a) the conclusion of the first annual general meeting of the ~~listed company~~listed corporation following the general meeting at which such resolution was passed at which time it ~~shall~~will lapse unless by ordinary resolution passed at that meeting, the authority is renewed, either unconditionally or subject to conditions;
 - (b) the expiration of the period within which the next annual general meeting after that date is required by law to be held; or
 - (c) revoked or varied by ordinary resolution passed by the shareholders in general meeting,

whichever occurs first.

12.08 Announcement of outcome of general meeting

A ~~listed company~~listed corporation must ~~make an immediately~~ announcement to the Exchange of the outcome of the general meeting called to consider the proposed purchase of its own shares on the Exchange, immediately following such meeting.

12.09 Maximum limit

A ~~listed company~~listed corporation must not purchase its own shares or hold any of its own shares as treasury shares if this results in the aggregate of the shares purchased or held exceeding 10% of its issued and paid-up capital.

PART D – SOURCE OF FUNDS AND CONSIDERATION**12.10 Source of funds**

- (1) A ~~listed company~~listed corporation must ensure that the proposed purchase(s) of its own shares is made wholly out of retained profits ~~and/or~~ the share premium account of the ~~listed company~~listed corporation.
- (2) For the purpose of calculating the total amount of retained profits ~~and/or~~ share premium available for effecting a share buy-back, the ~~listed company~~listed corporation ~~is~~must not ~~permitted to~~ use the amount of retained profits and share premium available on a group basis.

12.11 Types of funds

For the purpose of Rule 12.10 ~~above~~, there are no restrictions on the types of funds which can be utilised so long as the share buy-back is backed by an equivalent amount of retained profits ~~and/or~~ share premium. The use of borrowings as a funding source is entirely within the ambit envisaged by this Chapter.

PART E – DECLARATION OF SOLVENCY**12.12 Declaration of solvency**

A ~~listed company~~listed corporation must ensure that a solvency declaration is lodged with the Exchange by the directors of the ~~listed company~~listed corporation as follows:

- (a) where it is incorporated under the Companies Act 1965, in accordance with section 67A of the Companies Act 1965 and Part IIIA of the Companies Regulations 1966; or
- (b) where it is a foreign corporation, in the form and manner prescribed under Part IIIA of the Companies Regulations 1966 subject to the necessary modifications.

12.13 Execution of solvency declaration

- (1) The solvency declaration must be signed and dated by the majority of the directors.
- (2) If any director, whether or not that director signed the declaration, is of the opinion that it is likely that the ~~listed company~~listed corporation will not remain solvent at the time of the relevant purchase(s), the director must immediately notify the board of directors of the ~~listed company~~listed corporation in writing and lodge a copy of such notice with the Exchange and the giving of such notice ~~shall~~will revoke the validity of the earlier solvency declaration.

PART F - ADDITIONAL REQUIREMENTS**12.14 Public shareholding**

A ~~listed company~~listed corporation must not purchase its own shares on the Exchange if that purchase(s) will result in the ~~listed company~~listed corporation being in breach of Rule 8.02(1).

12.15 ~~Minimum issued capital~~

A ~~listed company~~ must not exercise its rights under Section 67A of the Companies Act 1965, Part IIIA of the Companies Regulations 1966 or this Chapter if it will result in the issued and paid-up share capital of the ~~listed company~~ falling below the prescribed minimum provided under Rule 3.04 or such other amount as may be determined by the Exchange from time to time.

12.1615 Appointment of stockbroker

A ~~listed company~~listed corporation intending to purchase its own shares and/or resell treasury shares on the Exchange may appoint up to 2 Participating Organisations for that purpose. –The ~~listed company~~listed corporation must ensure that all dealing(s) in its own shares for treasury shares are made through the ~~af~~resaid Participating Organisations only.

12.1716 Notice of appointment of stockbroker

A ~~listed company~~listed corporation must lodge a notice of the appointment of the Participating Organisations concerned with the Exchange immediately and the ~~listed company~~listed corporation must open one securities account in its own name with such Participating Organisations designated as "Share Buy-Back Account" which must solely be used for the purchase of its own shares and/or resale of treasury shares.

12.1817 Purchase price

A ~~listed company~~listed corporation may only purchase its own shares on the Exchange at a price which is not more than 15% above the weighted average market price for the shares for the 5 market days immediately ~~prior to~~before the purchase.

12.1918 Resale price

A ~~listed company~~listed corporation may only resell treasury shares on the Exchange at: -

- (a) a price which is not less than the weighted average market price for the shares for the 5 market days immediately ~~prior to~~before the resale; or
- (b) a discounted price of not more than 5% to the weighted average market price for the shares for the 5 market days immediately ~~prior to~~before the resale provided that:-
 - (i) the resale takes place not earlier than 30 days from the date of purchase; and
 - (ii) the resale price is not less than the cost of purchase of the shares being resold.

12.2019 Notification of purchase

A ~~listed company~~listed corporation must ~~make an~~ immediately announcement to the Exchange of any purchase(s) of its own shares not later than 6.30 p.m. on the day the purchase is made. The listed corporation must include in its announcement ~~shall include~~ the information set out in Part A of Appendix 12C.

12.2120 Notification of resale

A ~~listed company~~listed corporation must ~~make an immediately~~ announcement to the Exchange of any resale(s) of its treasury shares not later than 6.30 p.m. on the day the resale is made. The listed corporation must include in its announcement ~~shall include~~ the information set out in Part B of Appendix 12C.

12.2221 Notification of cancellation

A ~~listed company~~listed corporation must ~~make an immediately~~ announcement to the Exchange of any cancellation of its shares or treasury shares not later than 6.30 p.m. on the day the cancellation is made. The listed corporation must include in its announcement ~~shall include~~ the information set out in Part C of Appendix 12C.

12.2322 Exercise of powers

- (1) A ~~listed company~~listed corporation and its directors in exercising the power to purchase a ~~listed company~~listed corporation's own shares and/or resell treasury shares, or both, are subject, at all times, to all such obligations imposed on them under the law, including ~~without limitation~~ but not limited to, the provisions of Part V of the CMSA.
- (2) In exercising its power to purchase its own shares and/or resell treasury shares, or both, a ~~listed company~~listed corporation must not engage in speculative trading activities in relation ~~thereto~~ such purchase or resale.

12.2423 Information to be included in annual reports

A ~~listed company~~listed corporation ~~shall~~must include in its annual report, information with respect to purchase of its own shares as set out in Appendix 12D.

12.2524 Status of purchased shares

All shares which are purchased by the ~~listed company~~listed corporation ~~shall~~will be automatically delisted upon their cancellation by the ~~listed company~~listed corporation.

[End of Chapter.]

Appendix 12A
Contents of circular and statement for share buy-back

APPENDIX 12A**Part A****Contents of circular in relation to a share buy-back**

(Rule 12.06(43))

- (1) A heading drawing attention to the importance of the circular and advising holders of shares who are in any doubt as to what action to take to consult appropriate independent ~~professional~~ advisers;
- (2) A statement that Bursa Malaysia Securities Berhad takes no responsibility for the contents of the circular, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the document. In relation to a document which has not been perused by Bursa Malaysia Securities Berhad before its issuance, a statement to that effect;
- (3) A statement with regard to the reasons for the proposed purchase;
- (4) The maximum number or percentage of shares to be acquired;
- (5) The total maximum amount of funds to be allocated for the proposed purchase or otherwise a basis, other than reference to any person's discretion or opinion, or a formula to determine the maximum fund that is to be allocated;
- (6) The amount of retained profits and share premium based on the latest audited financial statements~~accounts~~ and the latest management accounts (where applicable);
- (7) The number of shares held directly and indirectly by the directors and substantial shareholders;
- (8) The source of funds for the purpose of the proposed purchase including, where applicable, details relating to financing for the proposed purchase, the repayment capabilities of the ~~listed company~~listed corporation and the impact on its cash flow;
- (9) The direct and indirect interests of the directors and substantial shareholders and any person connected with the directors ~~and/or~~ substantial shareholders, or both, in the proposed purchase of shares or resale of treasury shares;
- (10) Both the potential advantages and disadvantages of the proposed purchase to the ~~listed company~~listed corporation and its shareholders respectively;
- (11) Any material financial effect on the ~~listed company~~listed corporation or group if the proposed purchase(s) were to be carried out in full at any time during the proposed authorised period (such as the working capital of the ~~listed company~~listed corporation as compared with the position disclosed in the most recent published or announced audited financial statements~~accounts~~);
- (12) A statement as to the consequences of the proposed purchase on the ~~listed company~~listed corporation and its shareholders with regard to the Malaysian Code on Take-Overs and Mergers Code 1998 or in relation to a foreign corporation, the relevant laws of the place of incorporation in respect of take-overs and mergers;

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Contents of circular and statement for share buy-back

- (13) The details of any purchase made in the preceding 12 months giving the date of each purchase and the purchase price per share or the highest, lowest and average prices paid and total consideration paid for such purchase(s);
- (14) The details of number of shares currently held as treasury shares and of any resale of treasury shares made in the preceding 12 months giving the date of each resale and the resale price per share or the highest, lowest and average resale prices and total consideration received for such resale(s);
- (15) The details of any cancellation of shares made in the preceding 12 months;
- (16) The details of the highest and lowest prices at which the relevant shares were traded on the Exchange for the preceding 12 months and the last transacted price on the latest practicable date ~~prior to~~before printing the circular;
- (17) Whether it is the proposed intention of the directors to retain the shares as treasury shares or cancel them, or both, the rationale for the alternatives chosen and, if available, information as to the percentage or number of shares purchased which are to be retained ~~and/or cancelled, or both~~;
- (18) The public shareholding spread of the ~~listed company~~listed corporation, as at the latest practicable date;
- (19) A statement by the board of directors whether the proposal is in the best interest of the ~~listed company~~listed corporation;
- (20) A recommendation from the board of directors as to the voting action that shareholders should take;
- (21) An appendix containing the following information:-
- (a) a responsibility statement by the directors that the circular has been seen and approved by the directors of the ~~listed company~~listed corporation and that they collectively and individually accept full responsibility for the accuracy of the information given and confirm that after making all reasonable enquiries to the best of their knowledge and belief, there are no other facts the omission of which would make any statement in the circular misleading;
 - (b) where a person is named in the circular as having advised the ~~listed company~~listed corporation or its directors, a statement that such adviser ~~or expert~~ has given and has not withdrawn its written consent to the inclusion of the adviser's ~~or expert's~~ name ~~and/or~~ letter (where applicable), or both in the form and context in which it is included;
 - (c) a statement of all material contracts (not being contracts entered into in the ordinary course of business) entered into by the ~~listed company~~listed corporation and/or its subsidiaries within 2 years immediately preceding the date of the circular. The following particulars ~~shall~~must be disclosed in respect of each such contract:-
 - (i) the date of the contract;
 - (ii) the parties of the contract;

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Contents of circular and statement for share buy-back

- (iii) the general nature; and
 - (iv) the consideration and mode of satisfaction~~thereof~~;
- (d) a statement of all material litigation, claims or arbitration involving the ~~listed company~~listed corporation and/or any of its subsidiaries, including those pending or threatened against such companies. The following particulars ~~shall~~must be disclosed:-
- (i) the background;
 - (ii) the date of the suit;
 - (iii) the names of the plaintiff(s) and defendant(s);
 - (iv) the estimate of the maximum exposure to liabilities;
 - (v) directors'/solicitors' opinion of the outcome; and
 - (vi) the status;
- (e) a statement that for a period of not less than 2 weeks following the publication of the circular, the following documents (or copies ~~thereof~~of the documents) may be inspected at the registered office of the ~~listed company~~listed corporation:-
- (i) the memorandum and articles of association;
 - (ii) the audited financial statements~~accounts~~ of the ~~listed company~~listed corporation/group for the past 2 financial years and the latest unaudited results since the last audited financial statements~~accounts~~;
 - (iii) all reports, letters or other documents, balance sheets, valuations and statements by any expert, any part of which is extracted or referred to in the circular;
 - (iv) the letters of consent referred to in subparagraph ~~(21)~~(b) above;
 - (v) the material contracts referred to in subparagraph ~~(21)~~(c) above; and
 - (vi) the relevant cause papers in respect of material litigation referred to in subparagraph ~~(21)~~(d) above; and
- (22) any other information concerning the proposed purchase as shareholders and their ~~professional~~ advisers would reasonably require and would reasonably expect to find in the circular for the purposes of making an informed assessment as to the merits of approving the proposed purchase and the extent of the risks involved in doing so.

Appendix 12A
Contents of circular and statement for share buy-back

Part B**Contents of Share Buy-back Statement**

(Rule 12.06(44))

- (1) A statement that Bursa Malaysia Securities Berhad takes no responsibility for the contents of the share buy-back statement, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the document. In relation to a document which has not been perused by Bursa Malaysia Securities Berhad before its issuance, a statement to that effect;
- (2) A statement with regard to the reasons for the proposed purchase;
- (3) The amount of retained profits and share premium based on the latest annual audited financial statements~~accounts~~ and the latest management accounts (where applicable);
- (4) The source of funds for the proposed purchase, including where applicable, details relating to financing for the proposed purchase, the repayment capabilities of the ~~listed company~~listed corporation and the impact on its cash flow;
- (5) The direct and indirect interests of the directors and substantial shareholders and any person connected with the directors and/or substantial shareholders, or both, in the proposed purchase of shares or resale of treasury shares;
- (6) Both the potential advantages and disadvantages of the proposed purchase to the ~~listed company~~listed corporation and its shareholders respectively;
- (7) Any material financial effect on the ~~listed company~~listed corporation or group if the proposed purchase(s) were to be carried out in full at any time during the proposed authorised period (such as the working capital of the ~~listed company~~listed corporation as compared with the position disclosed in the most recent published or announced audited financial statements~~accounts~~);
- (8) A statement as to the consequences of the proposed purchase on the ~~listed company~~listed corporation and its shareholders with regard to the ~~Malaysian Code on Take-Overs and Mergers Code 1998~~ or in relation to a foreign corporation, the relevant laws of the place of incorporation in respect of take-overs and mergers;
- (9) A statement referring its shareholders to the relevant parts of its annual report where information on purchases made by the ~~listed company~~listed corporation of its own shares in the last financial year, is set out;
- (10) The public shareholding spread of the ~~listed company~~listed corporation, as at the last practicable date;
- (11) A statement by the board of directors whether the proposal is in the best interest of the ~~listed company~~listed corporation;
- (12) A recommendation from the board of directors as to the voting action that shareholders should take; and

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Contents of circular and statement for share buy-back

- (13) Any other information concerning the proposed purchase as shareholders and their professional advisers would reasonably require and would reasonably expect to find in the Share Buy-back Statement for the purposes of making an informed assessment as to the merits of approving the proposed purchase and the extent of the risks involved in doing so.

[End of Appendix.]

Appendix 12B
Contents of ordinary resolution for share buy-back

APPENDIX 12B**Contents of ordinary resolution in relation to a share buy-back**

(Rule 12.07(1))

- (1) The total number or percentage and description of the shares which the ~~listed company~~listed corporation is authorised to purchase on the Exchange;
- (2) The dates on which the authority conferred by the resolution will commence and determine;
- (3) The maximum funds to be allocated by the ~~listed company~~listed corporation for the purpose of purchasing its own shares or a basis, other than reference to any person's discretion or opinion, or a formula to determine the maximum fund that is to be allocated; and
- (4) Whether the shares are proposed to be cancelled or retained as treasury shares, or both and, if available, information as to percentage or number of shares purchased which are to be retained ~~and/or cancelled~~, or both.

[End of Appendix.]

Appendix 12C
Contents of announcement for purchase or resale of shares

APPENDIX 12C**Part A****Contents of announcement in relation to shares purchased**
(Rule 12.2919)

- (1) The date of purchase;
- (2) The description of shares purchased;
- (3) The number of shares purchased;
- (4) The price of each share or, where relevant, the highest and lowest price paid;
- (5) The total consideration paid;
- (6) The number of shares purchased retained in treasury;
- (7) The number of shares purchased which are proposed to be cancelled;
- (8) The cumulative net outstanding treasury shares at the date of notification, where applicable; and
- (9) Where all or any of the shares are proposed to be cancelled, the adjusted share capital.

Part B**Contents of announcement in relation to resale of shares**
(Rule 12.2420)

- (1) The date of resale;
- (2) The description of shares resold;
- (3) The number of shares resold;
- (4) The resale price of each share or, where relevant, the highest and lowest resale price sold;
- (5) The total consideration received; and
- (6) The cumulative net outstanding treasury shares at the date of notification, where applicable.

Appendix 12C
Contents of announcement for purchase or resale of shares

Part C

Contents of announcement in relation to cancellation of shares

(Rule 12.2221)

- (1) The number of shares cancelled;
- (2) The date of cancellation; and
- (3) The outstanding and paid-up capital of the ~~listed company~~ listed corporation after cancellation.

[End of Appendix.]

Appendix 12D
Disclosure in annual report for share buy-back

APPENDIX 12D**Disclosure in annual report in relation to share buy-back**

(Rule 12.2423)

- (1) A monthly breakdown of purchase(s) of its own shares made during the financial year showing the number of shares purchased each month and the purchase price per share or the highest, lowest and average price paid, and the total consideration paid for such purchase(s);
- (2) A monthly breakdown of resale(s) of its treasury shares during the financial year showing the number of treasury shares resold each month and the resale price of each share, or the highest, lowest and average resale price and the total consideration received for such resale(s);
- (3) The details of the shares retained as treasury shares during the financial year; and
- (4) The details of shares cancelled during the financial year.

[End of Appendix.]