

Proposed Company Re-domiciliation Regime in Hong Kong

Consultation Conclusion and Legislative Proposals

Financial Services and the Treasury Bureau
3 July 2024

Chapter 1 Introduction

- 1.1. The Financial Services and the Treasury Bureau (FSTB) conducted a public consultation on the proposal of introducing a company re-domiciliation regime in Hong Kong from March to May 2023. This report summarises and responds to the views received, and presents the latest legislative proposals.

Background

- 1.2. Hong Kong is a leading destination for business and investment, renowned for the ease of doing business with the underpinning of a strong tradition of rule of law. Our open and efficient company governance regime, simple taxation system and world-class professional services have made us an international hub for companies to set up headquarters and regional offices to expand their reach to Hong Kong and the Mainland, as well as the vibrant economies in the Asian region and beyond.
- 1.3. The Government is determined to strengthen our position as a global business and financial hub. We are well aware that the market, especially the insurance sector, has demonstrated interest and demand for re-domiciliation to Hong Kong. Taking into account that a number of jurisdictions have already put in place company re-domiciliation regimes, and that the re-domiciliation mechanisms introduced in Hong Kong for Open-ended Fund Companies and Limited Partnership Funds have been operating smoothly since their launch in November 2021, we consider that Hong Kong is well-positioned to respond to the needs of the market by introducing a company re-domiciliation regime.
- 1.4. Our proposed company re-domiciliation regime will enable companies re-domiciling to Hong Kong to maintain their legal identities, thereby ensuring their business continuity and reducing the need to go through complicated and costly judicial procedures. We also believe that attracting companies to re-domicile to Hong Kong will bring greater demand for Hong Kong's professional services (such as audit, accounting and legal services), and create more investment and job opportunities as it is likely that the re-domiciled companies may move some of their business operations to Hong Kong.

Public consultation

- 1.5. We launched a public consultation from 31 March 2023 to 31 May 2023 and set out our proposals in the consultation document (Consultation Document) in **Annex A**, which is available at the FSTB's website¹.
- 1.6. During the public consultation period, we received 20 written responses from a good mix of backgrounds, including business chambers, professional associations, relevant advisory bodies, individual firms or companies, as well as individual members of the public. A list of respondents is set out in **Annex B**. We also arranged engagement sessions with representatives from a total of seven organisations as set out in **Annex C**. On 3 July 2023, we briefed the Legislative Council (LegCo) Panel on Financial Affairs on the legislative proposals.
- 1.7. Overall speaking, respondents unanimously supported the proposed introduction of a company re-domiciliation regime to facilitate non-Hong Kong companies' re-domiciliation to Hong Kong. The respondents agreed that the proposal would facilitate non-Hong Kong companies' re-domiciliation to Hong Kong, enabling them to benefit directly from our robust market environment as well as clear and transparent regulatory regime. The respondents also urged for the early implementation of the mechanism, and provided insightful and pragmatic suggestions on various aspects of our legislative proposals including the policy framework, eligibility criteria and application documents, tax arrangements and operational implications.
- 1.8. We are glad to note the public's general support of the legislative proposals, and would like to take this opportunity to thank all respondents who sent in submissions and/or participated in the engagement sessions for their valuable views and comments on the proposals. Views received and our responses are set out in Chapters 2 to 5.
- 1.9. Taking into account views received, we have prepared the latest legislative proposals as set out in Chapter 6.

¹ [https://www.fstb.gov.hk/fsb/en/publication/consult/doc/Public%20consultation%20paper%20\(e\)_for%20issue.pdf](https://www.fstb.gov.hk/fsb/en/publication/consult/doc/Public%20consultation%20paper%20(e)_for%20issue.pdf)

Chapter 2

Policy Framework

Proposals in Consultation Document

- 2.1. Currently, a company intending to transfer its domicile to Hong Kong needs to be wound up in its original domicile and establish a new entity in Hong Kong, or enter into a court-sanctioned scheme of arrangement to convert into a wholly-owned subsidiary of a Hong Kong-incorporated company. These options entail significant legal cost, extensive and complicated procedures, and disruption in the company's operations.

Cost effective option to preserve business continuity

- 2.2. We proposed a comprehensive company re-domiciliation regime to provide a simple and cost-effective alternative. Generally speaking, under the proposed regime, once re-domiciled, the re-domiciled companies will have the same rights as any other incorporated companies of their kind in Hong Kong under the Companies Ordinance (Cap. 622) (CO). Similar to locally incorporated companies, re-domiciled companies would then be required to comply with the relevant requirements under the CO. Upon successful completion of the re-domiciliation procedures, the companies will preserve their identities, i.e. no new legal entity is created throughout the process. The re-domiciliation process will not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies.

Scope and coverage

- 2.3. We proposed to introduce a re-domiciliation regime to provide a simple and straightforward route for non-Hong Kong companies to transfer their domicile to Hong Kong. The regime applies to all five types of companies that could be formed under the CO, or their comparable types in the company's original domicile.

Views received

Overall policy direction

- 2.4. Most respondents expressed support for the introduction of a comprehensive company re-domiciliation regime in Hong Kong.

They agreed that the introduction of a company re-domiciliation will provide a simple and straightforward route for non-Hong Kong companies to transfer their domicile to Hong Kong. The proposal may further enhance the local business environment and infrastructure, allowing Hong Kong to give full play to as well as consolidate its position as an international financial, trade and professional services centre, whereby increasing the competitiveness of the Hong Kong markets. The respondents also agreed that the regime will facilitate offshore companies to eliminate the risk and cost of companies for complying with changing regulatory frameworks in other jurisdictions by transferring their domicile to Hong Kong. Non-Hong Kong companies already with operations in Hong Kong would not have to comply with two different sets of regulations indefinitely, hence avoiding dual regulation.

Inward regime

- 2.5. Some respondents suggested considering a two-way regime which allows both inward and outward (i.e., from Hong Kong to other jurisdictions) re-domiciliation to provide greater flexibility for incoming companies.

Types of companies

- 2.6. Certain respondent enquired whether companies will be allowed to change their company types during the re-domiciliation process and whether companies of a type other than the five types which can currently be formed in Hong Kong will be allowed to re-domicile to Hong Kong.

FSTB's response

- 2.7. On inward regime: Our proposal of an inward company re-domiciliation regime aims to address the demand from the market, including interest expressed by the insurance sector for a simple and accessible re-domiciliation mechanism for companies to re-domicile to Hong Kong in light of the increasing compliance costs in offshore jurisdictions, while we are not aware of actual demand from the local market for re-domiciliation from Hong Kong to other jurisdictions. At the same time, we note that there is no standard approach worldwide; comparable jurisdictions including Australia and Singapore have put in place an inward-only regime to suit their

policy objectives and development needs. All in all, the need for outward re-domiciliation among local companies as well as the implications of an outward regime on the stability and development of the Hong Kong markets remain to be ascertained. We therefore consider it appropriate to prioritise the introduction of an inward regime pursuant to the policy intent with a view to meeting the existing demand of the market as soon as practicable.

- 2.8. On company types: With consideration that our policy intent is to introduce a company re-domiciliation regime to address the demand from the market with the expectation that re-domiciled companies would bring increased demand for professional services, investments and job opportunities, we will **revise** the scope of the proposed regime to cover four types of companies only, namely (a) private companies limited by shares; (b) public companies limited by shares; (c) private unlimited companies with a share capital; and (d) public unlimited companies with a share capital. Meanwhile, in the absence of actual demand for re-domiciliation from companies limited by guarantee without a share capital, which is a company type commonly adopted by non-profit making organisations, we do not see a substantial need for inclusion of such companies into the proposed re-domiciliation regime.
- 2.9. We need to ensure that all re-domiciled companies will be adequately regulated in Hong Kong and governed by the CO. As the provisions under the CO is only applicable to company types that can be formed under the ordinance, companies of other types will not be allowed to re-domicile to Hong Kong. Moreover, since companies will preserve their identities, i.e. no new legal entity is created through the re-domiciliation progress, companies will not be allowed to change their company types in the re-domiciliation application.

Chapter 3 Eligibility Criteria and Application Documents

Proposals in Consultation Document – eligibility criteria

- 3.1. To ensure that re-domiciled companies will not prejudice the integrity of our business environment, we proposed that companies applying for re-domiciliation to Hong Kong should fulfil the requirements/conditions as summarised below:
- (a) **General:** The law of its original domicile permits outward re-domiciliation, and the company has complied with the requirements of such laws. The company type of the applicant under the law of its original domicile is the same or substantially the same as that of the re-domiciled company under the CO. As at the date of application for re-domiciliation, the company's first financial year end since its incorporation has passed;
 - (b) **Integrity:** The company shall comply with all the requirements of the CO in respect of the registration of a local company, and the re-domiciled company will not be used for unlawful purposes or purposes contrary to public interest;
 - (c) **Member and creditor protection:** The application for re-domiciliation by the company is made in good faith and not intended to defraud its existing creditors; and consent to the re-domiciliation has been obtained from its members under the law of its original domicile. If the law of the company's original domicile does not require consent to the proposed re-domiciliation by members of the company, the members (i) have consented to the transfer by a resolution that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and (ii) were given at least 21 days' notice of the meeting and the proposed resolution; and
 - (d) **Solvency:** The company is able to pay its debts that will fall due within 12 months after the date of application; and the company is not in liquidation.
- 3.2. In order to enable our proposed regime to be as inclusive as possible to different types and hierarchies of companies, we proposed no economic substance test for the applicants.

Views received

- 3.3. Most respondents generally agreed that criteria should be in place to ensure that the re-domiciliation will not prejudice the integrity of our business environment.
- 3.4. As regards our proposal that no economic substance test should be required, some respondents suggested that this would facilitate the re-domiciliation of holding companies. Certain respondent mentioned that the absence of an economic substance test may entail risk of attracting companies which we do not target such as shell companies.

FSTB's response

- 3.5. Our policy intent is to ensure that our proposed regime is as inclusive as possible to cover companies of different types and structures. We also note that most jurisdictions with a re-domiciliation regime in place do not mandate an economic substance test for companies to be eligible for the re-domiciliation arrangements. That said, to ensure that the re-domiciliation will not prejudice the integrity of our business environment, companies applying for re-domiciliation to Hong Kong should meet our proposed criteria on integrity, member and creditor protection and solvency.

Proposals in Consultation Document – application documents

- 3.6. To ensure that the applicants fulfill the eligibility criteria, we proposed a list of required documents for the re-domiciliation application (Appendix to **Annex A**).

Views received

Proof of solvency

- 3.7. We proposed requiring companies to file, *inter alia*, the latest audited financial statements of the company as at a date no more than three months prior to their application date (item (e) in Appendix to **Annex A**).
- 3.8. A number of respondents suggested that the requirement for an applicant to submit the latest audited financial statements as at a date

no more than three months prior to the application date should be relaxed or withdrawn, taking into account that some offshore jurisdictions do not require companies incorporated there to prepare audited financial statements. Some suggested that alternatively, companies may be required to submit a declaration on solvency or a “certificate of good standing” issued by authorities of the original domicile.

Proof of compliance with the requirements of the laws of the original domicile

- 3.9. In order for an applicant to prove that it has complied with the requirements of the laws of its original domicile regarding its outward re-domiciliation, we proposed that it should submit a statement/certificate issued by directors confirming that the company has complied with such requirements of the law of its original domicile.
- 3.10. Most respondents were supportive of the criteria as well as the requirement for the relevant proof. Some suggested that such requirement should be clearly provided and it should be satisfied by documentary proof in the form of, for instance, legal opinion.

Members’ consent

- 3.11. We proposed that companies should obtain consent to the re-domiciliation from its members under the law of its original domicile. If the law of the company’s original domicile does not require members’ consent to the proposed re-domiciliation by members of the company, we would require that the members (i) have consented to the re-domiciliation by a resolution that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and (ii) were given at least 21 days’ notice of the meeting and the proposed resolution. In this regard, we proposed that the applicants should submit the certified copy of the special resolution authorising the proposed re-domiciliation.
- 3.12. Respondents were generally supportive of the consent requirement. Two respondents suggested that “special resolution” should be clearly defined and the notice period requirements should be relaxed or dropped. Some suggested the requirement that the application is made in good faith should be clearly defined.

FSTB's response

- 3.13. Taking into account the above suggestions, we will revise and streamline the application requirements as explained in the ensuing paragraphs.
- 3.14. On proof of solvency: Noting the respondents' views and with consideration of the need to ascertain the solvency, on balance, we will **adjust** the requirement as the financial statements as at a date **no more than 12 months** prior to the application date. The financial statements are required to be audited only if it is so required under the law of its original domicile or the rules of relevant stock exchange or similar regulatory bodies. In addition, we will require the provision of a legal opinion of a legal practitioner who practises the law of the original domicile of the applicant that the company is duly registered and validly subsisting in the original domicile and that the company is not in liquidation. In any case, after re-domiciliation, a re-domiciled company would be required to prepare annual audited financial statements in accordance with the CO.
- 3.15. On proof of compliance: To ensure an applicant's compliance with the requirements of the laws of its original domicile, we **accept** the respondents' suggestion and will require the provision of a legal opinion of a legal practitioner who practises the law of the original domicile of the applicant that the proposed re-domiciliation is allowed under that law.
- 3.16. On members' consent: We will **streamline** the arrangements by adjusting the requirement to accept members' consent by a resolution duly passed by at least 75% of the eligible members (regardless of whether passed in a meeting or by resolution in written form). The above members' consent requirement will only apply if neither the law of the original domicile nor the constitutional documents of the applicant requires it to obtain consent from its members for the proposed re-domiciliation. We note that members' consent is a very common requirement for outward re-domiciliation regime (including offshore jurisdictions such as Bermuda and Cayman Islands).
- 3.17. Our new proposed list of required documents is at **Annex D**.

Other views/suggestions by the respondents

3.18. Though not specifically mentioned in the Consultant Document, some respondents offered their views on the involvement of professionals including Trust or Company Service Providers (TCSP) licensees, professional company secretaries, accountants or lawyers in filing or vetting of the applications. Some opined that a re-domiciled company should be required to have a company secretary. Two respondents suggested that the Companies Registry (CR) should consider making a performance pledge on the average processing time of a re-domiciliation application upon receipt of complete documents.

FSTB's response

3.19. Once re-domiciled, re-domiciled companies would generally have the same rights as any locally incorporated companies of their kind in Hong Kong under the CO, and would also be required to comply with the relevant CO requirements. Under section 474 of the CO, a company must have a company secretary.

3.20. Currently, there is no requirement under the CO for applications for incorporation to be submitted by professionals including TCSP licensees, professional company secretaries, accountants or lawyers. Apart from the required legal opinion of a legal practitioner who practises the law of the original domicile of the applicant (Item 7 of **Annex D**), we do not see a strong policy reason to impose an additional requirement that the re-domiciliation applications should be filed by professionals.

3.21. As regards the processing time of application, the time required will vary according to the type of company the applicant is applying to be registered. Upon receipt of all the required documents, generally the CR will be able to approve an application within two weeks.

Chapter 4

Tax Arrangements

Proposals in Consultation Document

- 4.1. Our proposed regime will operate on the basis that the re-domiciliation process would not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies. Likewise, the re-domiciliation process should not affect the companies' tax obligations in the jurisdiction of their original domicile to, e.g., avoid the risk of the process being used for tax evasion.
- 4.2. With a view to providing certainty to the re-domiciled companies on their profits tax liabilities under the Inland Revenue Ordinance (Cap. 112) (IRO) after re-domiciliation, we also need to amend the IRO to address transitional tax matters.

Views received

Transitional tax matters, tax residency and stamp duty

- 4.3. Respondents offered their views mainly on three related issues, namely the transitional tax matters, tax residency and stamp duty.
- 4.4. Most respondents who commented on tax matters considered that it is essential to address the transitional tax matters in our legislative proposals. Some opined that the transitional arrangements should be kept simple and clear. Certain respondent suggested that the transitional arrangements should at least be on par with that of other jurisdictions to ensure complete coverage. Some further suggested that tax incentives or credits (such as credits for exit tax on unrealised profits imposed by the applicant's original domicile) should be provided to proactively attract companies to utilise the mechanism for re-domiciliation to Hong Kong.
- 4.5. Some respondents opined that the tax residency of a re-domiciled company should be clarified for tax purposes in the IRO and the tax treaties, while some suggested that the Inland Revenue Department (IRD) should clarify the transitional timing when Hong Kong taxation will start to apply to a re-domiciled company, as well as the tax implications during the period when the re-domiciled company

has yet to de-register from its original domicile.

- 4.6. Some respondents opined that there should be clear indication on any implications on stamp duty while some suggested waiver of stamp duty for transfer of shares of re-domiciled companies.

FSTB's response

- 4.7. The re-domiciliation process should not affect a company's tax obligations in the jurisdiction of its original domicile.
- 4.8. On transitional tax matters: With a view to providing certainty to the re-domiciled companies on their profits tax liabilities after re-domiciliation, we will amend the IRO to address transitional tax matters in a comprehensive manner with reference of comparable jurisdictions' arrangements. The amendments will cover fair deduction for trading stock, specified types of expenditures, depreciation allowances etc., as such elements that may have occurred before re-domiciliation would have to be taken into account for tax assessment after re-domiciliation.
- 4.9. On tax benefits or credits: For the purposes of elimination of double taxation, unilateral tax credits will be provided for re-domiciled companies in respect of the tax payable on actual profits derived in Hong Kong after re-domiciliation where similar profits have been taxed in an unrealised form by the company's original domicile upon exit. As regards other tax benefits, we hope to leverage Hong Kong's existing advantages and policy measures to attract non-Hong Kong companies to re-domicile to Hong Kong and develop their business locally in the long run.
- 4.10. On tax residency: As far as Hong Kong is concerned, regardless of its domicile or residency, a company is charged to profits tax under the IRO on its profits arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong. Clarification of the tax residency of a re-domiciled company for the general purposes of the IRO would not be necessary.
- 4.11. On Stamp duty: Since the re-domiciliation process will not entail any transfer of a company's asset or change in the beneficial ownership of a company's asset, no stamp duty liabilities will arise from the process.

Chapter 5

Operational Implications

Views received

- 5.1. In addition to suggestions as set out in the earlier chapters, respondents offered their views on other matters related to the operational implications of our proposed re-domiciliation regime.

Business continuity of re-domiciled companies

- 5.2. Most respondents appreciated that the proposed re-domiciliation regime will preserve the corporate identity of companies. Some suggested that there should be express provisions in the law stipulating the effect of re-domiciliation and the continuity of corporate identity, contracts, rights and obligations, etc. of re-domiciled companies. Two respondents opined that implications on contracts, including the governing laws of previously signed contracts, potential contractual disputes and the legal procedures in case litigations arise, should be clarified.
- 5.3. Two respondents suggested that a re-domiciled company which was a registered non-Hong Kong company prior to the re-domiciliation should be allowed to retain its business registration number to avoid issues with continuity of bank accounts, payment gateways, etc.
- 5.4. Two respondents enquired whether the re-domiciliation process will affect the historical records and filings of a company if the company was not a registered non-Hong Kong company prior to the re-domiciliation.

60-day de-registration period

- 5.5. Upon successful application, the CR will issue a certificate of re-domiciliation to the company. We proposed that the company should then be required to provide evidence of de-registration in its original domicile to CR within 60 days in order to complete the process, failing which its company registration in Hong Kong would be revoked, meaning that the re-domiciliation process is not successful and is therefore terminated. The CR may on application extend the 60-day period, subject to any condition considered appropriate.

- 5.6. Some respondents enquired whether during the 60-day period the companies will be allowed to operate as a Hong Kong company, and if so, what would be the implications if the company fails to de-register from its original domicile. Some enquired whether the 60-day period will be adequate for companies to be de-registered from its original domicile, and suggested that flexibility should be allowed in terms of the format of the evidence of de-registration.

Authorization arrangements for existing financial institutions

- 5.7. Some respondents opined that financial regulators should provide clarity (e.g. by issuing guidelines and practice notes) on the regulatory implications on relevant authorization arrangements. Some suggested that there should be coordination between the CR and financial regulators on the licensing and re-domiciliation procedures to ensure seamless transition of licences.

FSTB's response

- 5.8. On business continuity: We will expressly provide in the legislation that re-domiciliation will not create a new legal entity, and will not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies. Such provisions will provide certainty on the policy intent, based on which companies may follow-up with other contractual parties on their proposed re-domiciliation as necessary.
- 5.9. We envisage that a majority of companies seeking re-domiciliation to Hong Kong would be non-Hong Kong companies registered under Part 16 of the CO which have established a place of business in Hong Kong. To address the concerns over business continuity of these companies, we **accept** the respondents' suggestion and will make specific arrangements under the CO and the Business Registration Ordinance (Chapter 310) to allow registered non-Hong Kong companies to retain their company name in use to carry on business in Hong Kong (i.e. its corporate name or approved name as defined in the CO) and business registration number after re-domiciliation. The simultaneous business registration arrangement between the CR and the IRD will also apply to company re-domiciliation applications.

- 5.10. If a re-domiciled company was not a registered non-HK company before the re-domiciliation, its filings and records prior to the re-domiciliation would be governed by the law of its original domicile and fall outside the regulatory remit of the CO. The record-keeping requirements for local companies under the CO will only become applicable to a re-domiciled company upon the date of re-domiciliation.
- 5.11. On the 60-day deregistration period: Upon issuance of the certificate of re-domiciliation, a company will become a re-domiciled company in Hong Kong. With consideration of respondents' feedback on the uncertainty in the time required for deregistration in the original domicile, we will **adjust** the proposed requirement by extending the original proposed period from 60 days to **120 days**. We will also allow a re-domiciled company to apply for extension where necessary to provide greater flexibility.
- 5.12. On authorization arrangements for existing financial institutions: We are aware that some prospective re-domiciled companies may be carrying out activities that are regulated by Hong Kong financial regulators. Under the insurance and banking regulatory regimes, the place of incorporation of a financial institution is relevant to the application of certain regulatory requirements and to the supervisory approach. In this regard, we will propose amendments to the Insurance Ordinance (Chapter 41), Banking Ordinance (Chapter 155) and relevant subsidiary legislation to ensure that insurers and Authorized Institutions (AIs) which re-domicile to Hong Kong and complete their deregistration from its original place of domicile will be regulated and supervised as if they were locally-incorporated insurers and AIs. Insurers and AIs incorporated outside Hong Kong will also be required to approach their respective regulators in Hong Kong prior to making the re-domiciliation application to the CR, such that necessary assessment on their capability in fulfilling the regulatory requirements applicable to locally-incorporated insurers and AIs can be conducted in advance.
- 5.13. In addition to the legislative amendments, we will explore administrative arrangements to facilitate coordination between the CR and financial regulators.

Chapter 6

Latest Legislative Proposals

- 6.1. Taking into account views received, we have prepared the latest legislative proposals as summarised in the ensuing paragraphs.

Policy framework

- 6.2. Business continuity: We will expressly provide in the legislation that re-domiciliation will not create a new legal entity, and will not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies.
- 6.3. Rights and requirements: Re-domiciled companies will generally have the same rights as any locally incorporated companies, and will be required to comply with the relevant requirements under the CO.
- 6.4. Scope and coverage: We will introduce an inward company re-domiciliation regime to allow (a) private companies limited by shares, (b) public companies limited by shares, (c) private unlimited companies with a share capital and (d) public unlimited companies with a share capital to transfer their domicile to Hong Kong. No economic substance test will be imposed on the applicants.

Eligibility criteria

- 6.5. The latest proposed criteria are as follows:
- (a) General: The law of the applicant's original domicile permits outward re-domiciliation, and the applicant has complied with the requirements of such laws. The company type of the applicant under the law of its original domicile is the same or substantially the same as that of the re-domiciled company under the CO. As at the date of application for re-domiciliation, the company's first financial year end since its incorporation has passed;
 - (b) Integrity: The applicant shall comply with all the requirements of the CO in respect of re-domiciliation, which are substantially the same as those requirements applicable to the registration of a local company, and the re-domiciled company will not be used for unlawful purposes or purposes contrary to public interest;

Revised criteria based on views received

- (c) Members' consent: If neither the law of the original domicile or the constitutional documents of the applicant requires members' consent, an applicant should obtain such consent by a resolution duly passed by at least 75% of eligible members (regardless of format);
- (d) Solvency: An applicant should submit (i) financial statements as at a date no more than 12 months prior to the application date and (ii) a legal opinion in relation to the solvency of the applicant. The financial statements are required to be audited only if such have been prepared for compliance with the requirements in the applicant's original domicile, relevant stock exchange or regulatory bodies; and
- (e) Proof of compliance: An applicant should submit a legal opinion that the proposed re-domiciliation is allowed under the law of its original domicile.

Application

- 6.6. The CR will process the re-domiciliation applications. The new proposed list of required documents are set out at **Annex D**. Upon receipt of all the required documents, an application will generally be approved by the CR within two weeks.
- 6.7. Upon successful application, the CR will issue a certificate of re-domiciliation to the company. The company should then be required to deregister from its original domicile and provide evidence of the de-registration to CR.
- 6.8. We will also provide the following operational facilitation:
 - (a) We will extend the period for a re-domiciled company's deregistration from its original domicile to 120 days and allow the company to apply for extension of the period where necessary;

- (b) A re-domiciled company which is a registered non-Hong Kong company prior to re-domiciliation will be allowed to retain its company name and business registration number after re-domiciliation; and
- (c) Additional arrangements will also be put in place in consultation with financial regulators for prior assessment on the capacity of existing financial institutions for compliance with local regulatory requirements before re-domiciliation.

Transitional tax matters

6.9. While a company's tax obligations in the jurisdiction of its original domicile will not be affected by the re-domiciliation process, transition tax arrangements will be put in place to provide certainty for the tax assessment after re-domiciliation, which cover fair deduction for trading stock, specified types of expenditures and depreciation allowances.

Other legislative amendments

6.10. In addition to the legislative amendments required for introducing the new re-domiciliation regime, we need to introduce related and consequential amendments to existing provisions of the CO and other enactments to provide clarity on their applicability to a re-domiciled company. In general, a re-domiciled company will be treated under the CO in the same way as a locally incorporated company. Amendments will be introduced to provisions in the existing CO as well as provisions in other enactment to expand the scope of application from locally-incorporated companies to also covering re-domiciled companies.

Safeguarding National Security

6.11. Upon the commencement of the Safeguarding National Security Ordinance on 23 March 2024, the Chief Executive in Council have been vested with comprehensive powers to perform the constitutional duty of safeguarding national security, among which is the statutory power to order locally-incorporated companies to be struck off the Companies Register in the case where the companies are believed to endanger national security in Hong Kong. Related amendments to relevant enactment will be introduced in the amendment bill to expand the said power to cover re-domiciled

companies, thereby ensuring comprehensiveness and effectiveness of the protection of national security.

Next step

6.12. On the basis of our latest legislative proposals, we have proceeded to prepare the amendment bill to be introduced to the Legislative Council. We look forward to the community's continuous support for our efforts to take forward the legislative proposals.

**Public Consultation on
Proposed Company Re-domiciliation Regime in Hong Kong**

FOREWORD

1. This consultation document is issued by the Financial Services and the Treasury Bureau (“FSTB”) for seeking views on proposals relating to the introduction of a company re-domiciliation regime in Hong Kong.
2. FSTB welcomes written comments on or before 31 May 2023 through any of the following channels –

Mail : Division 4, Financial Services Branch,
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway, Hong Kong

Fax : (852) 2869 4195

Email : c-redom-consult@fstb.gov.hk

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4. Names of the contributing parties and their affiliations may be referred to in other documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish to have their names or affiliations disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB and other government departments/agencies for purposes which are related to this consultation.

Proposed company re-domiciliation regime in Hong Kong

Purpose

The Government intends to introduce a full-fledged legal regime to facilitate company re-domiciliation to Hong Kong. This paper sets out the proposal.

Background

2. Hong Kong is a leading destination for business and investment, renowned for the ease of doing business underpinned by a strong tradition of rule of law. Our open and efficient company governance regime, simple taxation system, and world class professional services has made us an international hub for companies to set up headquarters and regional offices to expand their reach beyond Hong Kong to the Mainland, the vibrant economies in the Asian region and beyond.

3. The Government is determined to strengthen our position as a global business and financial hub and an open and competitive economy. We have already taken the first step to put into place user-friendly fund re-domiciliation mechanisms for Open-Ended Fund Companies and Limited Partnership Funds to attract existing foreign funds to establish and operate in Hong Kong. Upon re-domiciliation, the continuity of the fund (its legal entity, contracts made, property, rights, privileges, obligations, etc.) can be preserved. After the passage of the Securities and Futures (Amendment) Bill 2021 and Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 by the Legislative Council in September 2021, the mechanisms commenced in November 2021 and have already recorded utilisation.

4. As a further step, we are considering a more comprehensive legal arrangement that enables non-Hong Kong companies to re-domicile to Hong Kong. A company re-domiciliation regime would enable a company domiciled elsewhere to change its place of incorporation to Hong Kong while maintaining its legal identity as a body corporate. This would give companies maximum business continuity and reduce administrative complexity in the process.

Benefits of a full-fledged legal re-domiciliation regime

5. For companies which seek to change its domicile to Hong Kong, the re-domiciliation regime offers a cost-effective option that will maintain the companies' legal identity. Without a re-domiciliation regime, a company may change its place of incorporation to Hong Kong by winding up its original incorporation and establishing a new one in Hong Kong. The company will bear significant legal cost and suffer disruption in its operation, while not being able to retain its assets, intellectual and property rights, contracts and corporate history. Alternatively, the company may enter into a court-sanctioned scheme of arrangement to convert into a wholly-owned subsidiary of a Hong Kong incorporated company with the consent of the company shareholders and other stakeholders pursuant to the statutorily-prescribed threshold. This however entails extensive and complicated procedures substantially driven by the Court, which has the power to order, inter alia, meetings to be summoned with classes of shareholders and other stakeholders, in turn bringing about significant cost implications. In addition, this may not allow a complete exit from the original place of incorporation, i.e., the company could possibly remain subject to the regulatory regimes in two jurisdictions. The proposed re-domiciliation regime would provide a much simpler and effective solution.

6. As the hosting jurisdiction, companies re-domiciling to Hong Kong will bring increased demand for Hong Kong's professional services such as audit, accounting, and legal services, and make it easier for non-Hong Kong companies to access our leading capital markets. Some re-domiciliation cases will bring along increased investment and skilled job opportunities to the community when some company operations switch to Hong Kong following the change of their places of incorporation. For companies which are already economically active in Hong Kong but now domiciled abroad, changing their places of incorporation to Hong Kong will facilitate them following Hong Kong's high corporate governance standards while at the same time aligning better the geographical coverage of their business activities with the place of company registration and helps boosting Hong Kong's reputation as a business hub.

7. Comparable common law jurisdictions like Canada, New Zealand and Singapore have in recent years introduced their re-domiciliation regimes, and the United Kingdom is developing its position. Major offshore hubs for company incorporation like BVI, Bermuda and Cayman Islands also have their respective re-domiciliation mechanisms. The proposed re-domiciliation regime will help Hong Kong stay competitive internationally.

Legislative Proposal

General

8. We propose to amend the Companies Ordinance (Cap. 622) (“CO”) to introduce an inward re-domiciliation regime. Under the CO, five types of companies could be formed in Hong Kong, including (a) private companies limited by shares; (b) public companies limited by shares; (c) companies limited by guarantee without a share capital; (d) private unlimited companies with a share capital; and (e) public unlimited companies with a share capital. The proposed regime will be applicable to all the five mentioned company types or their comparable types in the company’s original place of incorporation.

9. We will put in place provisions to ensure that upon successful completion of the re-domiciliation, the company concerned will retain its identity, i.e., no new legal entity is created throughout the process. The re-domiciled company would have the same rights and obligations as any other incorporated company of its kind in Hong Kong, and should comply with the relevant CO requirements just like any other companies.

10. Most jurisdictions’ re-domiciliation arrangements do not mandate an economic substance test for companies to be eligible for the arrangements¹. In order to enable our proposed regime to be as inclusive as possible to different types and hierarchies of companies (e.g. holding companies), we also intend not to impose an economic substance test on the applying companies. This will also ensure parity between local and re-domiciled companies.

11. The proposed regime will operate on the basis that the re-domiciliation process would not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies. Likewise, the re-domiciliation process also should not affect the companies’ tax obligation to the originating jurisdiction to, e.g., avoid the risk of the process being used for tax evasion. Insofar as the Inland Revenue Ordinance (Cap. 112) is concerned, regardless of the domicile, profits tax is charged for a year of assessment if a person carries on a trade, profession or business in Hong Kong and has profits arising in or derived from Hong Kong from such trade, profession or business for that year of assessment. Any such profits tax liabilities are not affected by its re-

¹ Except notably Singapore, which imposes conditions that the inward re-domiciling companies should reach specified thresholds of total asset, annual revenue and number of employees.

domiciliation. Nevertheless, we will include necessary consequential amendments to the Inland Revenue Ordinance to provide certainty to the re-domiciled companies on their tax obligations, and to empower the Inland Revenue Department to address transitional tax matters such as fair deduction for trading stock, bad debts, impairment losses on financial assets, depreciation etc., as such elements that may have occurred before re-domiciliation would have to be taken into account for tax assessment after re-domiciliation.

Administration by Registrar of Companies (“R of C”)

12. We will empower the R of C to administer and approve cases of application for company re-domiciliation. While the proposed regime will be open and convenient to attract businesses of different natures and scales, we will put in place appropriate check and balance to ensure that companies re-domiciling to Hong Kong are of good standing and will not prejudice the integrity of our business environment. When processing re-domiciliation applications, the R of C will consider the following factors –

General	<p>(a) The type of the non-Hong Kong company under the law of its original place of incorporation is the same or substantially the same as the proposed type specified in the application for re-domiciliation;</p> <p>(b) The company has complied with the requirements (if any) of the law of its place of incorporation in relation to the transfer of its incorporation;</p> <p>(c) As at the date of application for re-domiciliation (“Application Date”), the company’s first financial year end at its place of incorporation has passed;</p>
Integrity	<p>(d) The company shall comply with all the requirements of the CO in respect of the incorporation of a local company²;</p>

² The requirements include, among others, the requirements relating to the name of the company.

	(e) The intended company will not be used for an unlawful purpose, contrary to public interest or endangering national security;
Member and creditor protection	<p>(f) The application by the company for transfer of its incorporation is made in good faith and not intended to defraud existing creditors of the company;</p> <p>(g) If the requirements of the law of the company's original place of incorporation do not include consent to the transfer of incorporation by members of the company, the members (i) have consented to the transfer by a resolution that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and (ii) were given at least 21 days' notice of the meeting and the proposed resolution;</p>
Solvency	<p>(h) The company is able to pay its debts as they fall due during the period of 12 months after the Application Date;</p> <p>(i) The company is not in liquidation or being wound up and no proceeding for liquidation or winding up against the company is ongoing or pending;</p> <p>(j) No receiver, or receiver and manager, is in possession of, or has control over, any property of the company and no relevant proceeding is ongoing or pending; and</p> <p>(k) No compromise or arrangement made between the company and another person(s) is being administered and no relevant proceeding is ongoing or pending.</p>

13. Other than the above factors, the R of C will also be empowered

to impose other conditions on the companies applying for re-domiciliation depending on circumstances of each individual case.

14. In terms of process, the company should make an application to the R of C with the required documents and application fee, which examples are set out at **Appendix**. The company should also apply for relevant licence(s) separately should any be required for its operation in a certain field in Hong Kong.

15. Upon successful application, the company will be registered in the Companies Register maintained by the Companies Registry, which is available for public inspection, and the R of C will issue a certificate of re-domiciliation. If the company was originally registered as a registered non-Hong Kong company under Part 16 of the CO, it shall cease to be so registered on the same date.

16. After the issuance of the certificate, the company concerned would be required to notify the R of C and provide evidence of de-registration in its original place of incorporation within 60 days³ in order to complete the process, failing which its company registration in Hong Kong would be revoked, meaning that the re-domiciliation process is not successful and is therefore terminated.

Advice sought and next steps

17. A comprehensive company re-domiciliation regime is another important step of the Government to strengthen Hong Kong's status as a business hub, and to meet demand from the business sector which hope to leverage on Hong Kong's company governance regime. We welcome views and suggestions on our proposal. We will take into account views to be received and refine our proposal, with a view to developing the relevant legislative amendment instrument for submission to the Legislative Council in 2023/2024.

Financial Services Branch
Financial Services and the Treasury Bureau
March 2023

³ R of C may on application extend the 60-day period, subject to any condition considered appropriate.

Appendix

Document/fee to be filed with R of C for re-domiciliation application

- (a) Completed application form which include:
- Place of incorporation of the company;
 - Name of the company in its place of incorporation at the time of application;
 - Whether the company has registered as a registered non-Hong Kong company under Part 16 of CO;
 - Proposed name of the intended company;
 - Address of the place which is to be the registered office of the intended company;
 - Name and any other particulars in respect of each person who is to be a director and company secretary of the intended company;
 - (Other than an intended company that is a company limited by guarantee) Details of the share capital and members of the intended company; and
 - In case of an intended company that is a company limited by guarantee, the number of members.
- (b) Certified copy of the certificate of incorporation (or a document of similar effect) issued to the company under the law of its original place of incorporation.
- (c) Certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining the company's constitution in its original place of incorporation.
- (d) Copy of the articles of association that the company proposes to adopt.
- (e) The latest audited financial statements of the company as at a date no more than three months prior to the Application Date.
- (f) Certified copy of the special resolution authorising the transfer of incorporation.

- (g) Statements and Consent to Act signed by each proposed director (to be included in the application form).
- (h) Statement/certificate issued by directors (can be included in the application form) confirming that all the requirements for registration in respect of re-domiciliation of company under the CO will, on the re-domiciliation date, be met in relation to the intended company.
- (i) Statement/certificate issued by directors (can be included in the application form) confirming that the company has complied with the requirements of the law of its place of incorporation in relation to the transfer.
- (j) Statement/certificate issued by directors (can be included in the application form) that as soon as practicable after the re-domiciliation date of the company, the company, which has become a re-domiciled company, must take all reasonable steps to procure its deregistration in its place of incorporation.
- (k) Notice to Business Registration Office (IRBR1) and the prescribed business registration fee and levy.
- (l) Application fees.
- (m) After approval of the application by the Companies Registry, a document evidencing that the company has been deregistered in its place of incorporation within 60 days after the date of registration.
- (n) If any documents required to be submitted to the Companies Registry is not in English or Chinese, a certified translation of such document in English or Chinese.

**Public Consultation on
Proposed Company Re-domiciliation Regime in Hong Kong**

List of Respondents (Written Submissions)

1. Asian Institute of Economics & Social Science
2. Mr. Shree Vardhan Mundhra
3. The Hong Kong Chartered Governance Institute
4. Hong Kong Trade Development Council
5. The Chinese General Chamber of Commerce, Hong Kong
6. Hong Kong Professionals and Senior Executives Association
7. PACE Solutions Limited
8. Ernst & Young Tax Services Limited
9. Ms. Jo Wing Yee Lit
10. KPMG Tax Services Limited
11. PricewaterhouseCoopers Limited
12. FWD Life Insurance Company (Bermuda) Limited
13. The Hong Kong Chinese Enterprises Association
14. The Hong Kong Federation of Insurers
15. Hong Kong Institute of Certified Public Accountants
16. The Hong Kong Institute of Directors
17. Slaughter and May
18. Federation of Hong Kong Industries
19. The Law Society of Hong Kong
20. Hauzen LLP in association with Anjie Law Firm

**Public Consultation on
Proposed Company Re-domiciliation Regime in Hong Kong**

List of Respondents (Engagement Sessions)

1. Standing Committee on Company Law Reform
2. Hong Kong Federation of Insurers
3. Hong Kong General Chamber of Commerce
4. Hong Kong Chartered Governance Institute
5. Professional Services Advisory Committee of Hong Kong Trade Development Council
6. The Law Society of Hong Kong
7. Hong Kong Institute of Certified Public Accountants

**Public Consultation on
Proposed Company Re-domiciliation Regime in Hong Kong**

List of Documents to be Filed for Re-domiciliation Application

1. Completed and signed re-domiciliation form which, among others, contains information in relation to the applicant's name, original domicile, registration under Part 16 of the CO (if any), and details of share capital and members; as well as the intended re-domiciled company's name, company type, address of registered office, and name and other particulars of each person who is to be a director and company secretary;
2. Copy of the proposed articles of association to be adopted as the articles of association of the intended re-domiciled company;
3. Certified copy of certificate of incorporation (and registration in the case of a company which has re-domiciled before) of the applicant;
4. Certified copy of the constitutional documents of the applicant;
5. If neither the law of the original domicile nor the constitutional document of the applicant requires members' consent, certified copy of a resolution duly passed by at least 75% of the eligible members;
6. Legal opinion of a legal practitioner who practises the law of the original domicile in relation to, among others, the applicant's due registration in the original domicile, company type and solvency, permission and consent from members of the company for the proposed re-domiciliation, as well as the intended re-domiciled company's type, name and adoption of the proposed articles of association;
7. Financial statements (or audited financial statements, if any) as at a date no more than 12 months prior to the application date; and
8. Certificate signed by a director of the applicant in relation to, among others, the applicant's registration and solvency, as well as permission, members' consent and intent for the proposed re-domiciliation.