

**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 –

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3. FSTB may, as appropriate, reproduce, quote, summarise and publish the written comments received, in whole or in part, in any form and use without seeking permission of the contributing parties.
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.