

立法會

Legislative Council

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Bills Committee on Companies (Amendment)(No. 2) Bill 2024

Background brief

Purpose

This paper provides background information on the Companies (Amendment) (No. 2) Bill 2024 (“the Bill”). It also gives a brief account of the major views and concerns raised by Members during relevant discussions at the meeting of the Panel on Financial Affairs (“FA Panel”) on 3 July 2023.

Background

2. In 2021, the Government took the first step by putting in 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 funds concerned (their legal entity, contracts made, property, rights, privileges, obligations, etc.) could be preserved. The mechanisms were commenced in November 2021.

3. As there is currently no company re-domiciliation regime applicable to companies in general in Hong Kong, non-Hong Kong-incorporated companies intending to re-domicile to Hong Kong have to be wound up to establish a new company in Hong Kong, or undergo a court-sanctioned scheme of arrangement in order to be converted into a wholly-owned subsidiary of a Hong Kong-incorporated company. These options involve complicated procedures and substantial costs and the companies concerned cannot preserve their legal identities, assets, intellectual property, contracts and corporate history.

4. According to the Administration, with reference to the positive experience gained in respect of the fund re-domiciliation mechanisms and

the examples in other jurisdictions¹, it considered that Hong Kong was well-positioned to introduce a company re-domiciliation regime, under which a simpler and more effective re-domiciliation mechanism would be provided for non-Hong Kong companies. In the Policy Address 2023 and the 2024-2025 Budget, the Government announced the proposal to introduce a company re-domiciliation mechanism to facilitate non-Hong Kong-incorporated companies to re-domicile to Hong Kong. The proposed company re-domiciliation regime will enable a non-Hong Kong-incorporated company that has successfully registered under the regime to maintain its legal identity as a body corporate, thereby ensuring its business continuity and reducing the need to go through complicated and costly judicial procedures. 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.

Companies (Amendment)(No. 2) Bill 2024

5. The Bill was published in the Gazette on 20 December 2024 and received its First Reading at the Legislative Council (“LegCo”) meeting of 8 January 2025. The Bill seeks to: (a) amend the Companies Ordinance (Cap. 622) (“CO”) (including its subsidiary legislation) to provide for a regime to enable a company incorporated outside Hong Kong to transfer its domicile to Hong Kong; (b) provide for related matters; and (c) make related or technical amendments to CO and other enactments. Details about the main provisions of the Bill are set out in paragraph 23 of the LegCo Brief ([File Ref.: CO/2/3C](#)) issued on 24 December 2024 and paragraphs 5 to 19 of the Legal Service Division Report on the Bill ([LC Paper No. LS1/2025](#)). The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Major views and concerns expressed by Members

6. At the FA Panel meeting on 3 July 2023, the Administration briefed the Panel on the proposal to introduce the company re-domiciliation regime to facilitate non-Hong Kong companies’ re-domiciliation to Hong Kong. Members generally supported the Administration’s proposed

¹ Comparable jurisdictions including Australia, New Zealand and Singapore have already put in place company re-domiciliation regimes to facilitate re-domiciliation of foreign companies to these jurisdictions. Traditional offshore jurisdictions in which registered non-Hong Kong companies with business in Hong Kong are incorporated, including British Virgin Islands, Cayman Islands, Bermuda and Marshall Islands, also have their respective re-domiciliation mechanisms.

legislative amendments. Members' major views and concerns are summarized in the ensuing paragraphs.

Application eligibility and requirements

7. Members noted that if a company was not required under the laws of its original domicile to **obtain its members' consent** for re-domiciliation, it must fulfil the following two requirements: (a) its members had consented to the re-domiciliation by a resolution that had been passed by at least 75% of the members entitled to vote on the resolution; and (b) its members had been given at least 21 days' notice of the meeting concerned and the proposed resolution. In this connection, Members suggested that consideration be given to raising the required passage by at least 75% of members' votes to 100%, so to avoid any disputes arising from the re-domiciliation. Enquiries were also raised about the threshold of 75% of votes in comparison with other jurisdictions. Given that the notice period for removing auditors under CO was 28 days, Members enquired why the notice period for re-domiciliation, which was of greater significance, was set at 21 days only.

8. The Administration advised that under the proposed company re-domiciliation regime, if a company was not required under the laws of its original domiciles to obtain its members' consent for re-domiciliation, the requirements under CO for calling general meetings and passing special resolutions would apply, i.e. **at least 21 days' notice given and passage by at least 75% of votes obtained**. In the light of the comments received during the consultation period², the Administration was considering relaxing the requirements.³

Measures to facilitate and attract companies' re-domiciliation to Hong Kong

9. Members suggested that the Administration formulate more **targeted measures** for the proposed company re-domiciliation regime by drawing on the experience gained from implementing the re-domiciliation regimes for funds outside Hong Kong, so as to **attract and facilitate the re-domiciliation of non-Hong Kong companies**, in particular insurers registered overseas, **to Hong Kong**. In addition, Members enquired,

² The Financial Services and the Treasury Bureau conducted a public consultation between March and May 2023 on the proposed introduction of a company re-domiciliation regime in Hong Kong. [Consultation Conclusion](#) was provided to FA Panel for reference and uploaded to the LegCo Website.

³ Having considered the views received during the public consultation, the Administration would streamline the arrangement to accept members' consent by a resolution duly passed by at least 75% of votes of the eligible members (regardless of whether passed in a meeting or by resolution in written form).

in tandem with the efforts to facilitate the re-domiciliation of companies, what measures the Administration would put in place to **strengthen the vetting** of the companies to ensure the integrity of the local market.

10. The Administration advised that the eligibility and requirements for companies applying for re-domiciliation were already set out in paragraph 8 of the discussion paper ([LC Paper No. CB\(1\)708/2023\(02\)](#)). **In addition to general requirements, there were also requirements on integrity, protection for companies' members and creditors, solvency, etc.,** so as to ensure that companies re-domiciling to Hong Kong would not prejudice the integrity of Hong Kong's business environment. The Administration had extensively consulted various stakeholders during the consultation period, giving them a clear account of the specific requirements in relation to the application eligibility and process, and responding to their views as far as possible. It would, among others, consider relaxing the requirement for companies' members to be given at least 21 days' notice of the relevant meeting and the proposed resolution on the re-domiciliation, as well as the requirement for companies intending to re-domicile to file with the Registrar of Companies ("R of C") their latest audited financial statements as at a date within three months prior to the date of their re-domiciliation application.⁴

11. Pointing out that the re-domiciliation cost for **captive insurers** was generally higher, Members suggested that **concessionary measures be provided** for captive insurers **to lower their re-domiciliation cost**. Members remarked that a large number of captive insurers had opted to re-domicile to or set up a presence in Singapore owing to the administrator regime established for captive insurers there. Members suggested that the Administration consider **introducing an administrator regime for captive insurers** with a view to enhancing the appeal of the re-domiciliation regime for captive insurers.

12. The Administration advised that it would propose amending the Inland Revenue Ordinance (Cap. 112) to avoid double taxation of companies due to their re-domiciliation. Various measures had been provided to support the development of the insurance industry. The Administration would maintain communication with Members and the insurance industry on ways to assist the industry, in particular captive insurers, in re-domiciling.

⁴ Having considered the views received during the public consultation which suggested that some offshore jurisdictions did not require companies incorporated there to prepare audited financial statements, the Administration would relax the requirement for ascertaining the applicant's solvency to a requirement to submit the latest accounts as at a date no later than 12 months prior to the application date.

13. Members enquired whether **the requirements in respect of company re-domiciliation and information disclosure** in Hong Kong were competitive compared with other jurisdictions. Members were concerned if **financial incentives**, such as the waiver of fees to lower the re-domiciliation cost, would be provided to attract enterprises to re-domicile to Hong Kong.

14. The Administration advised that unlike the practices of other jurisdictions (such as Singapore), **no economic substance test would be imposed** on companies intending to re-domicile to Hong Kong, which was meant to ensure that the applicability of the re-domiciliation mechanism would be as extensive as possible to cover companies of different sizes. In respect of information disclosure and inspection regime, enhancement measures had been rolled out on an ongoing basis with new arrangements implemented in phases. The Administration stressed that the company re-domiciliation mechanism was introduced primarily from a development perspective. It was hoped that Hong Kong could attract and facilitate the re-domiciliation of prospective companies to Hong Kong by leveraging its own advantages and policy initiatives, rather than relying solely on the provision of financial incentives. The Administration added that to bring convenience to companies intending to re-domicile to Hong Kong, **the Companies Registry was expected to complete processing the applications within two weeks** after the necessary documents were made ready.

15. Members enquired about **the regions and industries whose enterprises would benefit from Hong Kong's re-domiciliation regime**. Noting the strong demand from the insurance industry for re-domiciliation to Hong Kong, Members asked whether the insurance industry had been adequately consulted to ensure that the re-domiciliation regime of Hong Kong as well as the thresholds set would not deter insurers from re-domiciling to Hong Kong. Enquiries were also raised about the overall competitiveness of the proposed company re-domiciliation regime compared with other jurisdictions.

16. The Administration advised that during the consultation period, it was aware of the strong demand from **the insurance industry** for re-domiciliation to Hong Kong. For instance, many of the 12 insurers registered in Bermuda had expressed interest in re-domiciling to Hong Kong by utilizing the proposed regime. In addition, there were some 14 000 **registered non-Hong Kong companies that had a place of business in Hong Kong**, of which over half of them were registered in the British Virgin Islands and about 20% in the Cayman Islands. It would be more likely for these **companies with business connection with Hong Kong** to re-domicile to Hong Kong through the proposed regime. The Secretary for Financial

Services and the Treasury had met with the insurance industry and the Hong Kong Federation of Insurers on the introduction of the re-domiciliation regime, and had, in the light of the views expressed by the industry, commenced communication with the jurisdictions where the insurers were originally domiciled (e.g. Bermuda) to explain about the proposed re-domiciliation regime.

17. The Administration added that there were increasingly stringent regulatory requirements on the registration of various types of enterprises in overseas jurisdictions. With the implementation of a global minimum corporate tax rate, it might not be effective for enterprises to reduce their taxation costs by domiciling overseas. It was opportune for Hong Kong to introduce a re-domiciliation regime to allow companies originally domiciled outside Hong Kong for tax considerations to re-domicile to Hong Kong.

18. Members enquired whether the Administration would consider introducing an **outward re-domiciliation** regime to encourage local enterprises to “go global”. The Administration responded that among the jurisdictions from which it had drawn reference, those with an **inward re-domiciliation regime** did not necessarily have an **outward one** put in place. As the Administration would focus at present on introducing and enhancing the proposed inward re-domiciliation regime, the introduction of an outward re-domiciliation regime would not be considered for the time being.

Tax and transitional arrangements

19. Members noted that under the Administration’s proposal, companies **must notify R of C of their de-registration in their original domiciles within 60 days after a certificate of re-domiciliation was issued to them**, and such requirement was similar to the relevant requirement of Singapore, a major competitor of Hong Kong. Members suggested relaxing the 60-day requirement to allow sufficient time for re-domiciling companies to deal with the related tax and legal arrangements.

20. The Administration advised that the requirement for re-domiciling companies to notify R of C within 60 days was modelled on the practices of other jurisdictions, and it was proposed to provide in the legislation that R of C might approve applications for extension of the 60-day period, subject to any condition considered appropriate. Such requirement was meant to **minimize the cases of re-domiciling companies**, which would have completed their registration in Hong Kong, **holding concurrent registration status in both their original domiciles and Hong Kong**. However, as some companies would be required to submit to their original domiciles the certificate of re-domiciliation issued by Hong Kong before

they could be de-registered by the government of their original domiciles, it would be impossible to hold off the issuance of the certificate of re-domiciliation to re-domiciling companies until they had completed de-registration in their original domiciles. Therefore, a balance had to be struck in respect of the notice period.

21. Members enquired about **the arrangements** for re-domiciled companies **in relation to balancing allowances and charges of assets and bad debt provisioning**, as well as the issues of powers and responsibilities involved in the transition from auditors in the original domiciles to auditors in Hong Kong.

22. The Administration advised that companies carrying on business in Hong Kong were chargeable to profits tax on the profits derived from Hong Kong, regardless of whether the companies were registered in Hong Kong. Re-domiciliation would have no impact on the tax liabilities of re-domiciled companies that had been carrying on business in Hong Kong before their re-domiciliation. For re-domiciled companies not carrying on business in Hong Kong before their re-domiciliation, how the machinery and plant held by these companies at the time of re-domiciliation for use in their business operation in Hong Kong should be taxed would be stipulated in the amendment ordinance. Generally speaking, **the depreciation allowances would be calculated on the basis of the value or net book value** (whichever was less) of the machinery and plant **at the date of re-domiciliation**. After re-domiciliation, re-domiciled companies might incur **bad debts** in respect of their business carried on outside Hong Kong **prior to re-domiciliation**. As the profits derived from such business were not chargeable to tax in Hong Kong, the bad debts involved would **not be deductible** when computing profits tax in Hong Kong. Regarding the powers and responsibilities of auditors, the Administration advised that it had received views from the sector during the consultation period and would discuss the relevant arrangements with the Hong Kong Institute of Certified Public Accountants in due course.

Relevant papers

23. A list of relevant papers is set out in the [Appendix](#).

Council Business Divisions
Legislative Council Secretariat
6 February 2025

Bills Committee on Companies (Amendment)(No. 2) Bill 2024**List of relevant papers**

Committee	Date of meeting	Paper
Panel on Financial Affairs	3 July 2023	Agenda Item III: Company re-domiciliation regime Minutes
	4 July 2024*	Administration's paper on proposed company re-domiciliation regime in Hong Kong - consultation conclusion and legislative proposals

* Issue date