



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

LC Paper No. CB(1)193/2025(01)



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : CO/2/3C
本函檔號 OUR REF : LS/B/2/2025
電話 TELEPHONE : 3919 3511
電郵 EMAIL : cwong@legco.gov.hk

By Email (ericlee@fstb.gov.hk)

7 February 2025

Mr Eric LEE
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)(4)
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway, Hong Kong

Dear Mr LEE,

Companies (Amendment) (No. 2) Bill 2024

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the matters as stated in the **Appendix**.

Please let us have your response in both Chinese and English as soon as possible, preferably before the second meeting of the Bills Committee.

Yours sincerely,

(Clara WONG)
Assistant Legal Adviser

Encl.

c.c. Department of Justice
(Attn: Mr Alan CHONG, Senior Assistant Law Draftsman)
(By email: alanchong@doj.gov.hk)
(Attn: Miss Celia HO, Senior Government Counsel)
(By email: celiaho@doj.gov.hk)
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to the Bills Committee

Clause 3(7) of the Bill

1. Please clarify why it is necessary to add the proposed new section 2(5A) to the Companies Ordinance (Cap. 622) (i.e. a re-domiciled company is, **for the purposes of the laws of Hong Kong**, to be regarded as a company incorporated in Hong Kong with effect from its re-domiciliation date). Please also clarify the reason(s) for providing in the proposed new section 2(5C)(a) of Cap. 622 that the proposed new section 2(5A) of Cap. 622 does not apply to a re-domiciled company that is an airline.

Clause 66 of the Bill

2. In view of the proposed new section 791A(1)(b) of Cap. 622 which also covers the requirement under section 791(1) of Cap. 622 in relation to a change specified in the proposed new section 791(2)(e) of Cap. 622 (as added by clause 65(3) of the Bill), please consider adding the reference to the proposed new section 791(8) of Cap. 622 (as added by clause 65(5) of the Bill) to the proposed new section 791A(2)(b) of Cap. 622.

Clause 68 of the Bill (the proposed new Part 17A of the Companies Ordinance (Cap. 622))

3. Under the proposed new section 820C(2) of Cap. 622, the Registrar of Companies (“Registrar”) **must** refuse (i.e. having no discretion) to register a non-Hong Kong corporation (“applicant”) as a re-domiciled company if any of the applicable registration requirements is not complied with. On the other hand, under the proposed new section 820C(3) of Cap. 622, the Registrar **may** (having a discretion) refuse to register an applicant as a re-domiciled company if the Registrar is of the opinion that the intended re-domiciled company is likely to be used for an unlawful purpose or for a purpose contrary to public interest. Please clarify why “must” is used in the proposed new section 820C(2), and “may” is used in the proposed new section 820C(3), of Cap. 622.

4. The proposed new section 820C(4) of Cap. 622 provides that the Registrar may require an applicant to provide any further documents or information that is, in the Registrar’s opinion, necessary for considering the re-domiciliation application. Please clarify if there would be any consequence(s) for failing to provide any such documents or information by the applicant. And if so, please consider providing for such consequence(s) in the Bill.

5. According to Annex B to the Legislative Council Brief (File Ref.: CO/2/3C) issued by the Financial Services and the Treasury Bureau on 18 December 2024, if a re-domiciliation application is refused by the Registrar under the proposed new section 820C(2) or (3) of Cap. 622, the applicant may submit a fresh application to the Registrar for registration as a re-domiciled company. Please clarify:

- (a) whether, in refusing a re-domiciliation application under the proposed new section 820C(2) or (3) of Cap. 622, the Registrar would inform the applicant the reason(s) of refusal (e.g. which of the information required has not been provided) to facilitate the applicant to submit a fresh application, and if so, please consider providing the same in the Bill; and
- (b) the reason(s) for not providing a right to appeal by the applicant against the refusal decision under the proposed new section 820C(2) or (3) of Cap. 622. It is noted that under section 14 of the Limited Partnership Fund Ordinance (Cap. 637), a person aggrieved by a decision of the Registrar for refusing the registration of a non-Hong Kong fund as a limited partnership fund under section 82C of Cap. 637 may appeal to the Court against the decision.

6. Under the proposed new section 820E(5) of Cap. 622, the Registrar may, on an application made by the body corporate to which a certificate of re-domiciliation is issued (i.e. the re-domiciled company), extend the period (i.e. 120 days after the date on which the certificate is issued) within which the body corporate must be deregistered in its place of incorporation and must submit to the Registrar a document evidencing the deregistration to the satisfaction of the Registrar, subject to any conditions the Registrar considers appropriate. Please clarify (a) the circumstances under which the Registrar would allow such time extension application; and (b) the condition(s) that would be imposed by the Registrar.

7. Please clarify why it is provided, under the proposed new section 820F(8) of Cap. 622, that a decision of the Registrar to revoke the registration of a re-domiciled company is final. Please also clarify whether Article 82 of the Basic Law would be engaged, and if so, how the proportionality test referred to in *Mok Charles Peter v Tam Wai Ho* [2011] 2 HKC 119 (and subsequently applied in *Sam Woo Marine Works Ltd v Incorporated Owners of Po Hang Building* [2017] 6 HKC 183) could be satisfied, regarding the proposed finality of the decision of the Registrar, which would appear to restrict or limit the power of final adjudication vested in the Court of Final Appeal.

8. Please clarify the reason(s) for not including the proposed new offence under section 820G(2) of Cap. 622 (failure to deliver director's written consent) in Schedule 7 to Cap. 622 as a compoundable offence. It is noted that the offence under section 74(2) (failure to deliver director's written consent) is currently listed in Schedule 7 to Cap. 622.

9. Under the proposed new section 820H(7) of Cap. 622, the Court “**may not**” (rendered as “不得” in the Chinese text) extend the period within which a re-domiciled company must deliver a return to the Registrar for registration in compliance with the proposed new section 820H(3) of Cap. 622, unless it is satisfied that the failure was accidental or due to inadvertence, or it is just and equitable to extend the period. It is noted that under section 346(3) of Cap. 622, the Court “**must not**” (rendered as “不得” in the Chinese text) make an order to extend certain registration time unless any of the

specified conditions is satisfied. For the sake of consistency, please consider whether “may not” in the proposed new section 820H(7) of Cap. 622 should be replaced by “must not”. Please also clarify whether the Court may impose any terms and conditions when granting the time extension, and if so, please consider providing so in the Bill.

Clause 76 of the Bill

10. Under the proposed new section 820B(3)(c) of Cap. 622, the re-domiciliation form to be delivered to the Registrar must be accompanied by the documents specified in the proposed new Schedule 6C to Cap. 622. Under section 2(1)(g) of the proposed new Schedule 6C to Cap. 622, every other document that the Registrar required for determining the application must be submitted. Please clarify what those documents would be. Would they include (a) a letter of no-objection to the registration as a re-domiciled company from the Insurance Authority (“IA”) referred to in the proposed new section 3BA(3) of the Insurance Ordinance (Cap. 41) (“LNO”); and (b) the written notice containing the approval from the Monetary Authority (“MA”) for a re-domiciliation registration application given under the proposed new section 43E(3) of the Banking Ordinance (Cap. 155), if applicable? Please also clarify how could an applicant know the list of documents as required under section 2(1)(g) of the proposed new Schedule 6C to Cap. 622. Should the list of documents be specified in the proposed new Schedule 6C to Cap. 622?

Clause 119 of the Bill

11. Under the proposed new section 3BA(5)(a) and (b) of Cap. 41, an application by a non-HK insurer for LNO must be in the specified form and be accompanied by any information specified by IA. Please clarify what information would be so specified by IA and why the information would not be set out in the Bill. Please also clarify where the information would be specified (e.g. in the specified form or a guideline to be published by IA). Further, please clarify whether the application should also be accompanied by any document, in addition to information, to be specified by IA, as in the proposed new section 43D(2) of Cap. 155.

12. Under the proposed new section 43F(2) of Cap. 155, a specified entity which becomes a re-domiciled company must as soon as practicable after the certificate of re-domiciliation is issued to it, notify MA in writing of that fact and submit a copy of the certificate to MA. Under the proposed new section 43G(2) of Cap. 155, a specified entity must as soon as practicable after the deregistration (as required by the proposed new section 820E(3)(a) of Cap. 622), notify MA in writing of the deregistration and submit a document evidencing the deregistration to MA. It is however noted that no similar notification requirements would be imposed under the Bill on an authorized insurer when it becomes a re-domiciled insurer under the proposed new section 3BA or 3BB of Cap. 41. Further, it appears that the notification duties on an authorized insurer under section 14 of Cap. 41 do not cover an event that an authorized insurer becoming a

re-domiciled insurer. Please clarify the reason(s) for not imposing similar notification requirements on the re-domiciled insurers. Please also clarify how could IA be informed of the fact that an authorized insurer has become a re-domiciled insurer and has been deregistered.

Clause 136 of the Bill

13. Please clarify why no criminal sanction is proposed to be imposed for contravening the proposed new section 64P(2A) of Cap. 41 (i.e. failure to notify IA of the fact that a licensed insurance intermediary has become a re-domiciled company). It is noted that the offence currently under section 64P(6) of Cap. 41 covers a contravention of the existing section 64P(3) of Cap. 41 only.

Clause 157 of the Bill

14. Under the proposed new section 43D(2) of Cap. 155, an application for MA's approval for a re-domiciliation registration application must be accompanied by any document or information that MA specifies for the purpose of considering the application. Please clarify what document(s) and information would be so specified by MA and why the document(s) and information would not be set out in the Bill. Please also clarify where the document(s) and information would be specified (e.g. in the specified form or a guideline to be published by MA).

15. Under the proposed new section 43E(2)(a) of Cap. 155, MA may, after considering the application for its approval for a re-domiciliation registration application made by a specified entity under the proposed new section 43D of Cap. 155, grant approval to the specified entity for the making of a re-domiciliation registration application. Please clarify whether MA may impose any terms and conditions on granting such approval. And if so, please consider empowering MA to do so in the Bill.

16. Under the proposed new section 43F(2) and (3) of Cap. 155, a specified entity must as soon as practicable after the certificate of re-domiciliation is issued to it, notify MA in writing of that fact and submit a copy of the certificate to MA, failing which every responsible person for the specified entity commits an offence. Please clarify why a specific timeframe (e.g. within a specified period such as 14 days after the certificate is issued) is not proposed in the Bill for the sake of certainty, given the imposition of criminal sanction in the event of non-compliance.

17. Under the proposed new section 43G(2) and (4) of Cap. 155, a specified entity must as soon as practicable after the deregistration (as required by the proposed new section 820E(3)(a) of Cap. 622), notify MA in writing of the deregistration and submit a document evidencing the deregistration to MA, failing which every responsible person for the specified entity commits an offence. Please clarify why a specific timeframe (e.g. within the specified period as referred to in the proposed new section

820E(3), or as extended under the proposed new section 820E(5), of Cap. 622) is not proposed in the Bill for the sake of certainty, given the imposition of criminal sanction in the event of non-compliance.

Clause 199 of the Bill

18. Under the proposed new section 7A(6) of the Business Registration Ordinance (Cap. 310), the Commissioner of Inland Revenue must as soon as practicable refund to the body corporate the paid prescribed business registration fee and levy if the body corporate's re-domiciliation registration application is refused by the Registrar under the proposed new section 820C of Cap. 622. Please clarify why such paid fee and levy would not be refundable if the Registrar makes an order to revoke the registration of the body corporate as a re-domiciled company under the proposed new section 820F of Cap. 622.

Proposed new offences under the Bill

19. The Bill proposes to introduce a number of new offences which do not expressly require the proof of *mentes reae* (i.e. the mental elements) (and one of which provided with a statutory defence) as follows:

- (a) failure to deliver a statement of the particulars of a charge to the Registrar for registration under the proposed new section 338A(7) of Cap. 622 (clause 19 of the Bill);
- (b) failure to deliver to the Registrar for registration a return containing the particulars of the change in the place of incorporation of a registered non-Hong Kong company under the proposed new section 791(8) of Cap. 622 (clause 65 of the Bill);
- (c) failure to deliver director's written consent to the Registrar for registration under the proposed new section 820G(2) of Cap. 622 (clause 68 of the Bill);
- (d) failure to deliver to the Registrar for registration a return containing information relating to the share capital and members of the re-domiciled company under the proposed new section 820H(5) of Cap. 622 (clause 68 of the Bill);
- (e) contravening the prohibition against making a re-domiciliation registration application by a bank under the proposed new section 43B(3) of Cap. 155 (clause 157 of the Bill);

- (f) contravening the restriction on a re-domiciliation registration application by a specified entity under the proposed new section 43C(2) of Cap. 155 (clause 157 of the Bill);
- (g) producing any document or information that is false in a material particular by a specified entity under the proposed new section 43D(3) of Cap. 155 (clause 157 of the Bill);
- (h) producing any document or information that is false in a material particular by a specified entity under the proposed new section 43E(5) of Cap. 155 (clause 157 of the Bill);
- (i) failure to give specified notice(s) to MA by a specified entity which becomes a re-domiciled company under the proposed new section 43F(3) of Cap. 155 (clause 157 of the Bill);
- (j) producing any document or information that is false in a material particular by a specified entity which becomes a re-domiciled company under the proposed new section 43F(4) of Cap. 155 (clause 157 of the Bill);
- (k) failure to give specified notice(s) etc. to MA by a specified entity which is deregistered under the proposed new section 43G(4) of Cap. 155 (clause 157 of the Bill); and
- (l) producing any document or information that is false in a material particular by a specified entity which is deregistered under the proposed new section 43G(5) of Cap. 155 (clause 157 of the Bill).

20. Please clarify:

- (a) according to the Administration's legislative intent, which of these proposed new offences would be strict liability offences and which of them would be absolute liability offences (i.e. the prosecution needs not prove the existence of *mentes reae* of committing the offences);
- (b) for each of these proposed new offences intending to be a strict liability offence:
 - (i) whether it is the Administration's legislative intent that the implied common law defence of "honest and reasonable mistaken belief" would be available to a person charged with such an offence;
 - (ii) if so, whether the defendant would only bear an evidential burden (i.e. the second alternative referred to in *Kulemesin v HKSAR* (2013) 16

HKCFAR 195 (“*Kulemesin*”)), or would be required to discharge a persuasive burden (i.e. the third alternative referred to in *Kulemesin*), as to the defendant’s belief; and

- (iii) if it is the Administration’s legislative intent that the third alternative referred to in *Kulemesin* applies, how the derogation of the constitutional right to be presumed innocent under Article 87 of the Basic Law and article 11(1) of the Hong Kong Bill of Rights could satisfy the rationality and proportionality tests laid down in *Hysan Development Co Ltd v Town Planning Board* [2016] 6 HKC 58; and
- (c) for each of these proposed new offences intending to be an absolute liability offence (i.e. the fifth alternative referred to in *Kulemesin*), please provide justification(s) for making it as an absolute liability offence.

21. Regarding the proposed penalties to be imposed on the proposed new sections 43D(3), 43E(5), 43F(4) and 43G(5) of Cap. 155 (relating to producing any document or information that is false in a material particular), please clarify the reason(s) for setting the penalty level at a fine at **tier 7** (HK\$400,000) and imprisonment for 2 years (for conviction on indictment), instead of, for example, a fine at **tier 8** (HK\$1,000,000) and imprisonment for 2 years (for conviction on indictment), as in similar offences under Cap. 155 (e.g. section 20(8) (relating to submission of information which is false in a material particular), and section 47(4) (relating to producing any book, account, document, etc., which is false in a material particular)). It is noted that the proposed penalties for summary conviction of these proposed new offences are set at a fine at tier 5 (HK\$100,000) and imprisonment for 6 months, which are the same as the similar offences under Cap. 155 mentioned above.

Drafting issues

Clauses 68, 76 and 157 of the Bill

22. It is noted that the Chinese renditions of “effect” under the heading and subsections (1)(a), (4) and (5) of the proposed new section 820D of Cap. 622 are different (“效果” and “效力” are used respectively). Please clarify the reason(s) for adopting different renditions.

23. Under the proposed new section 820E(4) of Cap. 622, section 2(1)(h) of the proposed new Schedule 6C to Cap. 622, and the proposed new section 43G(3) of Cap. 155, please consider whether the conjunction word “and” in the phrase “in a language other than the English language and the Chinese language” should be replaced by “or”.

Clauses 245 and 246 of the Bill

24. Please consider whether the Chinese rendition of “fraudulent” under the proposed new sections 179(1)(ba) and 381(1)(ba) of the Securities and Futures Ordinance (Cap. 571) should be changed to “欺詐性” instead of “欺詐”, as in sections 179(1)(b) and 381(1)(b) of Cap. 571.

25. In the proposed new section 381(1)(ba) of Cap. 571, please consider replacing “section 820C” by “section 820C(1)”, for the sake of consistency with the proposed new section 179(1)(ba) of Cap. 571.

Clause 271 of the Bill

26. Under section 1(1) of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), in paragraph (b)(ii) of the proposed amended definition of “identification document”, for the sake of consistency and clarity, please consider adding “section 820C(5)(c) of” after “the company under”, and replacing “the Companies Ordinance (Cap. 622)” by “the Ordinance”, as Cap. 622 is already mentioned in paragraph(b) of the proposed amended definition of “identification document”.