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

List of follow-up actions arising from the discussion at the meeting on 10 February 2025

Issues	Government's response
In respect of the proposed new section 820C(3) of the Companies Ordinance (Cap. 622) (clause 68 of the Bill), consider whether it is necessary to provide in the clause that the Registrar of Companies may refuse the registration application of a company intending to re-domicile if he/she is of the opinion that the company may endanger national security, with reference to the relevant legislation of Singapore and the relevant legislative proposal of the United Kingdom.	The proposed company re-domiciliation regime has put in place appropriate safeguards at two stages of the re-domiciliation process, i.e., upon application for re-domiciliation by a non-Hong Kong company, and after the company becomes a re-domiciled company, with a view to addressing potential national security risks therein. <u>Application for re-domiciliation</u> Clause 68 of the Companies (Amendment) (No.2) Bill 2024 ("the Bill") proposes to add a new section 820C(3) to the Companies Ordinance (Cap. 622) ("CO") to provide that if the Registrar of Companies ("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, the Registrar may refuse the re-domiciliation application. While the CO has not defined "unlawful" and "public interest", their respective ordinary meaning includes "where offence is involved" and "the general welfare of a public considered as warranting recognition and protection". As such, the above grounds for refusal of application is sufficient to cover national security considerations, including contravention with The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region and the Safeguarding National Security Ordinance (6 of 2024) ("SNSO"), as well as other circumstances involving national security . Moreover, clause 109 of the Bill proposes to add a new section 360BA to the Companies (Winding Up and Miscellaneous Provisions) Ordinance

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	(Cap. 32) ("CWUMPO") to, in gist, provide that if the Registrar suspects that the re-domiciliation application is made (a) with the object of circumventing (i) the refusal of the Societies Officer to register a society under the Societies Ordinance (Cap. 151); (ii) the cancellation by the Societies Officer of the registration from registration of a society registered under the Societies Ordinance; or (iii) the prohibition of the operation or continued operation of a society by the Secretary for Security under section 8 of the Societies Ordinance (collectively, "Cap 151-related Grounds"), then the Registrar may, pending the receipt of the instructions of the Chief Executive in Council ("CE-in-C"), withhold the registration regarding the re-domiciliation application. If the CE-in-C is satisfied that the re-domiciliation application is made with any object of the Cap 151-related Grounds, the CE-in-C may order the Registrar to refuse the re-domiciliation application. Cap 151-related Grounds precisely include where it is necessary in the interests of, inter alia, national security or public safety and public order. <u>Re-domiciled company</u> Clause 110 of the Bill proposes to amend section 360C of the CWUMPO to, in gist, empower the CE-in-C to order the Registrar to strike a re-domiciled company off the Companies Register if the CE-in-C is satisfied that if the company were (1) a society to which the Societies Ordinance applied, it were liable to have its registration cancelled under that Ordinance; or to have its operation or continued operation prohibited by the Secretary for Security under that Ordinance (i.e. involving Cap-151-related Grounds); (2) an organization to which section 60(1) or (2) of the SNSO applied, it would be liable to have its operation or continued operation in Hong Kong prohibited by the Secretary for Security under that section. Upon the publication in the Gazette the

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	notice about the company being stuck off, the company shall be dissolved. The same treatment is applicable to companies incorporated in Hong Kong. All in all, we are of the view that the Bill already contains clear provisions to introduce safeguards to manage risks, including national security risks, arising from the re-domiciliation of non-Hong Kong companies to Hong Kong. With regard to the re-domiciliation regime of other jurisdictions, in January 2022, the United Kingdom ("UK") Government launched a public consultation on the introduction of a company re-domiciliation regime. In October 2024, the independent expert panel which is responsible for giving advice on the legal framework of the re-domiciliation regime submitted a report[1] to the UK Government, in which it suggests that there is no need to carry out specific national security assessment on companies applying for re-domiciliation to the UK. The Companies Act of Singapore stipulates that the authority must refuse to register an applicant if it would be contrary to national security or interest to do so. For the company laws of Australia and New Zealand, there is no express provision concerning the refusal of re-domiciliation application on national security grounds. In other words, under the legal framework of re-domiciliation of other jurisdictions, there are different approaches in safeguarding against national security risks.
In respect of the proposed new section 820E(3) of Cap. 622 (clause 68 of the Bill), provide the justifications for proposing that a re-domiciled company must be deregistered in its	Under the proposed company re-domiciliation regime, an applicant becomes a re-domiciled company upon the issuance of the certificate of re-domiciliation, and is to comply with the relevant requirements under the amended CO. In addition, within the 120 days after the re-

[1] https://assets.publishing.service.gov.uk/media/670c01eb3b919067bb48308a/corporate-re-domiciliation-report-of-the-uk-independent-expert-panel.pdf

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place of incorporation within 120 days after the issuance of the certificate of re-domiciliation ("specified period") and advise whether reference would be made to the relevant legislation of Singapore to adjust the specified period to 60 days to reduce potential legal risks	domiciliation date (or a period as extended by the Registrar) ("transitional period"), the company will be required to deregister in the place of incorporation and submit to the Registrar a document evidencing the deregistration to the satisfaction of the Registrar. Such arrangement serves to ensure the effective preservation of the legal identity of the company as a body corporate throughout the re-domiciliation process while facilitating its operation in Hong Kong as a re-domiciled company during the transitional period. Although the re-domiciled company will be registered in both its place of incorporation and Hong Kong during the transitional period, the proposed new section 820D of the CO as added by clause 68 of the Bill stipulates the effect of re-domiciliation to Hong Kong (i.e., the re-domiciliation process does not create a new legal entity, does not affect the identity or continuity of the company, and does not affect the company's contract, legal proceedings, property, etc.). It enhances clarity of the legislative intent and may serve as the basis for the handling of relevant matters by a re-domiciled company during the transitional period. We consider that this provision effectively minimises the potential legal risks in relation to the concerned companies. We understand that the outward company re-domiciliation regimes of traditional offshore jurisdictions have relevant provisions to retain the exiting company's identity and continuity of its operation. Besides, a re-domiciled company, while being registered in both its place of incorporation and Hong Kong during the transitional period, will be subject to two corporate governance regimes. From the perspectives of compliance cost and operation, there is incentive for the company to expedite its deregistration in the place of incorporation.

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	During the public consultation exercise, stakeholders including the professional sector pointed out that the 60-day period as originally proposed may not be sufficient for a company to duly complete the deregistration. With consideration of stakeholders' views, the uncertainty in the time required for the outward re-domiciliation process of companies in traditional offshore jurisdictions as well as the assurance provided by the aforementioned provision on the effect of re-domiciliation, we are of the view that setting a 120-day period may strike a proper balance between administrative facilitation and legal certainty for the companies.
Advise whether it would take into account members' views to adjust upwards the proposed fees payable for a re-domiciliation application.	The Bill proposes the total application fee for company re-domiciliation to be $6,050 (if lodged in electronic form) and $6,725 (if lodged in hard copy form). The fee levels are determined on a cost-recovery basis mainly with reference to the relevant existing fees for incorporation of a local company and adding on top the estimated extra costs arising from the additional procedures and time required for processing a re-domiciliation application. Upon the implementation of the re-domiciliation regime, taking into account actual operational experience and costs for processing re-domiciliation applications, we will review the relevant fees and adjust the fee level as necessary under the Government's fee review mechanism in due course.

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Financial Services and the Treasury Bureau
February 2025