

香港特別行政區政府
財經事務及庫務局
財經事務科
香港添馬添美道二號
政府總部二十四樓



FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

24TH FLOOR
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
TAMAR
HONG KONG

電話 TEL.: 2528 9016
圖文傳真 FAX.: 2869 4195
本函檔號 OUR REF.: CO/2/3C
來函檔號 YOUR REF.: LS/B/2/2025

By email (cwong@legco.gov.hk)

14 February 2025

Ms Clara WONG
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms WONG,

Companies (Amendment) (No.2) Bill 2024

In consultation with the Transport and Logistics Bureau (“TLB”), the Companies Registry (“CR”), the Inland Revenue Department, the Department of Justice, the Hong Kong Monetary Authority (“HKMA”) and the Insurance Authority (“IA”), our consolidated response to your letter dated 7 February 2025 (“the letter”) is as follows.

Proposed new section 2(5A), (5B) and (5C) of the Companies Ordinance (Cap. 622) (Clause 3(7) of the Bill)

Paragraph 1 of the letter

2. A re-domiciled company, as a matter of fact, was a company incorporated outside Hong Kong. Given the policy intent of the proposed company re-domiciliation regime is to regard a re-domiciled company, despite its incorporation outside Hong Kong, in the same way as a company incorporated in Hong Kong in general, a new section 2(5A) is proposed to be added to Cap. 622 to the effect as a general deeming provision that for the purposes of the laws of

Hong Kong, a re-domiciled company is to be regarded as a company incorporated in Hong Kong from its re-domiciliation date. To reflect the said policy intent under different contexts, the above general deeming provision is subject to specific amendments and modifications that proposed to be made to provisions in other enactments under Part 4 of the Bill (proposed section 2(5B) of Cap. 622 refers).

3. The proposed new section 2(5C)(a) (concerning airline) and (c) (concerning provisions specified in proposed Schedule 12 to Cap. 622) provides for the exceptions where the general deeming provision should not apply in light of the unique circumstances in specific policy realms. Specifically, for section 2(5C)(a) regarding “airline”, the TLB formulated guidelines for the designation of airlines under Hong Kong’s air services agreements and provisional arrangements for operating air services to, from or through Hong Kong in accordance with the principles as stipulated in the Basic Law. The key designation criterion is that an airline must be incorporated and have their principal place of business in Hong Kong. This requirement is designed to safeguard Hong Kong’s overall status as an international aviation hub by ensuring the proper utilisation of traffic rights. This designation criterion has been reflected in the bilateral air services agreements that Hong Kong has entered into with its aviation partners. The application of the general deeming provision to a company that is an airline may render an airline that is a re-domiciled company to be eligible to become a designated airline in Hong Kong, which deviates from the policy intent. Therefore, section 2(5C)(a) is proposed to provide that a re-domiciled company that is an airline should not be regarded as a company incorporated in Hong Kong.

Proposed new section 791A of Cap. 622 (Clause 66 of the Bill)

Paragraph 2 of the letter

4. In the case where a re-domiciled company which is a registered non-Hong Kong company immediately before the re-domiciliation and is required to comply with the requirement in the proposed new section 791(2)(e) of Cap. 622 (i.e., deliver to the Registrar of Companies (“Registrar”) for registration a return containing the particulars of the change of the place of incorporation of the company as defined in proposed amended section 774 of Cap. 622) fails to comply with the requirement pursuant to the proposed new section 791A(2)(a) of Cap. 622, the consequence in the proposed new section 791(8) of Cap. 622 should also apply. We will move a committee stage amendment (“CSA”) to this effect.

Proposed new Part 17A of Cap. 622 (Clause 68 of the Bill)

Paragraph 3 of the letter

5. Under the proposed new section 820C(2) of Cap. 622, the Registrar must refuse to register an applicant if any of the applicable registration requirements is not complied with. It is a duty for the Registrar to refuse to register an applicant under section 820C(2) of Cap. 622. The Registrar is not vested with any discretion given whether an applicant fulfills the applicable registration requirements is a fact-based and straightforward decision. Under the proposed new section 820C(3) of Cap. 622, it is a power instead of a duty for the Registrar to refuse the application to register an applicant 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, given the said grounds of refusal require the Registrar's assessment and judgement taking into account any matter that is deemed relevant.

Paragraph 4 of the letter

6. In the case where the applicant fails to provide further documents or information as required by the Registrar to the extent that the applicant is considered as having failed to comply with the applicable registration requirements or 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, the Registrar would refuse to register the applicant pursuant to the proposed new sections 820C(2) or 820C(3) of Cap. 622, as the case may be. It is thus not necessary to separately provide for the consequence of the said failure.

Paragraph 5 of the letter

7. 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. It is in line with the practice for refusal of an incorporation application on the ground that the company is intended to be formed for an unlawful purpose contrary to section 67(2) of Cap. 622.

8. The limited partnership fund ("LPF") re-domiciliation regime as provided in the Limited Partnership Fund Ordinance (Cap. 637) adopts the existing appeal mechanism applicable to the registration of local LPFs. By the same token, the proposed company re-domiciliation regime as provided in the Cap. 622 will adopt the relevant arrangement as currently applicable to the incorporation of local companies, i.e., the Registrar's decision will be subject to judicial review.

Paragraph 6 of the letter

9. In exercising the Registrar's power under the proposed new section 820E(5) of Cap. 622 to extend the specified period for a re-domiciled company to deregister from its place of incorporation and submit evidence, the Registrar would consider relevant factors including the reason(s) of company's failure in fulfilling the deregistration requirement, the duration of extension sought by the company, the likeliness of compliance with the deregistration requirement by the end of the extension, etc. Subject to the circumstances of individual cases, the Registrar may consider extending the specified period subject to conditions such as requiring the applicant to report to the Registrar periodically on the progress of deregistration in its original place of incorporation with supporting evidence.

Paragraph 7 of the letter

10. Under the proposed new section 820F of Cap. 622, if the Registrar intends to revoke the registration of a re-domiciled company because of its non-compliance with a requirement under the proposed new section 820E of Cap. 622, the Registrar must give the company a written notice of the Registrar's intention to revoke the registration. The company may make representation to the Registrar and the Registrar must consider the representation (if any). The proposed new section 820F(8) serves to provide for clarity that the decision of the Registrar to revoke the registration of a re-domiciled company is final. The Registrar's decision will however be generally amenable to judicial review, through which the Court of Final Appeal may exercise its power of final adjudication. Therefore, the provision does not restrict or limit the power of final adjudication vested in the Court of Final Appeal by Article 82 of the Basic Law.

Paragraph 8 of the letter

11. The nature of the offence provided under the proposed new section 820G(2) of Cap. 622 is the same as that under section 74(2) of Cap. 622, both of which concern the failure of a director to deliver written consent to the Registrar. Upon review, given the offence under section 74(2) of Cap. 622 is compoundable as listed in Schedule 7 to Cap. 622, we will move a CSA to add the proposed new section 820G(2) of Cap. 622 to the said Schedule to render it a compoundable offence.

Paragraph 9 of the letter

12. The proposed new section 820H(7) is prepared with reference to the existing section 142(5) of Cap. 622, which provides for circumstances (similar to those proposed under section 820H(7)) as to when the Court *may* (instead of *must*)

extend the specified period for filing the return of the allotment. This is more comparable to proposed section 820H(7), which also concerns the filing of return. On the other hand, the existing section 346 of Cap. 622 concerns the extension of certain registration periods specified under Cap. 622, which are not considered comparable with proposed section 820H(7). From the drafting perspective, the proposed new section 820H(6) of Cap. 622 provides the Court with a discretionary power to extend a period (“the Court *may*...extend...”). The proposed new section 820H(7) seeks to limit that power. It is more appropriate to express the limitation by “may not”. Please refer to paragraph 9.2.10 of *Drafting Legislation in Hong Kong: A Guide to Styles and Practices*.

13. As to whether the Court may impose any terms and conditions when granting the time extension under the proposed section 820H(7) of Cap. 622, under Order 1B, rule 1(3) of the Rules of High Court (Cap. 4A), when the Court makes an order, it may make an order subject to conditions and specify the consequences of failure to comply with the order or a condition. As such, it appears that the court still has power to impose terms and conditions when granting the time extension under the proposed section 820H(7) of Cap. 622 even if the same is not expressly provided in Cap. 622.

Paragraph 10 of the letter

14. The proposed new Schedule 6C to Cap. 622 intends to set out all documents which must accompany the re-domiciliation form in a re-domiciliation application to be submitted to the Registrar. Section 2(1)(g) of Schedule 6C was intended to provide flexibility for the Registrar to require further document. Given that the proposed new section 820C(4) already empowers the Registrar to, in the course of consideration of a re-domiciliation application, require an applicant to provide any further documents or information that is, in the Registrar’s opinion, necessary for consideration the re-domiciliation application, and with a view to providing greater certainty to applicants on the documents which are required to accompany the re-domiciliation form, we come to the view that it is not absolutely necessary to reserve power for the Registrar to require further documents to accompany the re-domiciliation form under the proposed section 2(1)(g) of Schedule 6C to Cap. 622. We will move a CSA to remove the proposed new section 2(1)(g) of Schedule 6C to Cap. 622 at clause 76 of the Bill.

Proposed new sections 3BA, 3BB and 3BC of the Insurance Ordinance (Cap. 41)
(Clause 119 of the Bill)

Paragraph 11 of the letter

15. Section 137 of Cap. 41 empowers the IA to specify the form of any

document required under the Ordinance to be in the specified form and the form of such other documents required for the purposes of the Ordinance as the IA thinks fit. Regarding an application by a non-HK insurer for a letter of no-objection under the proposed new section 3BA(5)(a) and (b) of Cap. 41, the IA will request information and documents to accompany an application in the specified application form. The key information and documents to be required may include an implementation plan of the proposed re-domiciliation process supported by legal opinion to support the validity and implementation of the process, pre-approval or no-objection (if required) from the insurance regulator at the applicant's place of incorporation, impact assessment and gap analysis regarding the applicant's ability to comply with the applicable regulatory and capital requirements in Hong Kong, communication plan with policyholders, and documents to be submitted to the Companies Registry for the re-domiciliation application under the proposed new section 820B of Cap. 622. Such information serves to assist the IA in assessing whether the applicant would be able to comply with the regulatory requirements applicable to a HK insurer under Cap. 41 after it re-domiciles to Hong Kong and whether the proposed re-domiciliation might have any material adverse impact on the policyholders of the applicant. The drafting of the proposed new section 3BA(5) aligns with the approach adopted in existing provisions on handling various types of applications under Cap. 41. It allows flexibility for future modifications to suit regulatory and operational needs.

Paragraph 12 of the letter

16. While there are commonalities in the re-domiciliation of entities under the banking and insurance regimes, procedural details, including notification obligations on the relevant entities, are devised by the HKMA and the IA according to their needs and practices in accordance with the respective regulated sectors, thus may not necessarily be completely identical with each other.

17. There are existing provisions in Cap. 41 that would enable the IA to be notified of a change of domicile of an authorized insurer. Section 14(1) of Cap. 41 imposes an obligation ("Notification Obligation") on authorized insurers, including non-HK insurers, to notify the IA of any change in their particulars in a form specified by the IA within one month after the date of change. Such particulars cover particulars furnished in the authorized insurer's application for authorization to carry on insurance business under section 7 of Cap. 41 and which fall within a type of particulars in the form specified by the IA for the purposes of section 14(1) of Cap. 41. The IA will update the specified form referred to in both section 7(2)(a) and section 14(1) of Cap. 41 to add an item regarding the authorized insurer's place of domicile. The Notification Obligation will apply when a non-HK insurer becomes a re-domiciled insurer pursuant to proposed section 3BA(1) of Cap. 41 as there will be a change of domicile, i.e. when the

non-HK insurer (i) becomes a re-domiciled company when the Registrar issues to it the certificate of re-domiciliation – at which point of time Hong Kong becomes the non-HK insurer’s domicile; and (ii) is deregistered (with “deregister” defined in the proposed section 820E of Cap. 622) from its place of incorporation (as the term is defined under proposed section 820A of Cap. 622) – at which point of time such place is no longer the domicile of the non-HK insurer.

18. Where a company (other than an authorized insurer) incorporated outside Hong Kong re-domiciles to Hong Kong and then becomes a re-domiciled insurer upon the IA grants to it new authorization under section 7 of Cap. 41, the change of domicile as a result of the re-domiciliation will take place prior to the company becomes an authorized insurer in Hong Kong (and thus the Notification Obligation under section 14(1) of Cap. 41 does not apply to it). This means that when the IA is considering the company’s new authorization application and before it determines the application, the company would have become a re-domiciled company and would have deregistered from its place of incorporation, and the IA’s new authorization (if granted) is given on the basis that the company is in the aforesaid status. Thus, there is no need to create a provision in the Bill to require the applicant to notify the IA of it having become a re-domiciled company or having deregistered from its place of incorporation; this notification would in practice be provided to the IA during the new authorization process, given that the new authorization application form specified by the IA under section 7(2)(a) of Cap. 41 will include a question on the applicant’s domicile and any change thereof.

Proposed new section 64P(2A) of Cap. 41 (Clause 136 of the Bill)

Paragraph 13 of the letter

19. The rationale for asking licensed insurance intermediaries (which are non-Hong Kong companies) to notify the IA when they later become re-domiciled companies under the proposed new section 64P(2A) of Cap. 41 (i.e. to notify the IA of a change of their place of domicile) is to assist the IA in maintaining a more complete and updated record in performing its supervisory functions generally. Unlike the particulars set out in section 64P(2) of Cap. 41, which allow the public to ascertain and verify the identity and contact details of licensed insurance intermediaries, the change of a licensed insurance intermediary’s place of domicile is unlikely to have any material adverse effect on the interests of the policyholders or public. The same rules and regulations apply to the licensed insurance intermediaries regardless of their places of domicile. Therefore, the IA does not consider a breach of the proposed section 64P(2A) of Cap. 41 should constitute a criminal offence by the licensed insurance intermediary.

Proposed new Part VIIA of the Banking Ordinance (Cap. 155) (Clause 157 of the Bill)

Paragraph 14 of the letter

20. The HKMA intends to specify any document or information which should accompany a specified entity's application for prior approval for the purposes of the proposed new section 43C(1) of Cap. 155 in the form of a guideline. Such information may include information on financial position, corporate governance matters, and internal control systems. With reference to similar arrangement currently adopted for a company's application for authorization to carry on banking business, a business of taking deposits as a deposit-taking company, or a business taking deposits as a restricted licence bank pursuant to section 15 of Cap. 155 and in order to allow flexibility for future modifications to suit regulatory and operational needs, it is considered not necessary to specify the documents or information in the Bill.

Paragraph 15 of the letter

21. Since the HKMA does not intend to grant approval under the new proposed section 43E(2)(a) of Cap. 155 until satisfied that it is appropriate to do so, the HKMA considers it unnecessary to be empowered to impose terms and conditions on granting such approval.

Paragraphs 16 and 17 of the letter

22. Given that the place of incorporation of a specified entity (in or outside Hong Kong) has implications on the applicable supervisory or regulatory requirements, which in turn support the robustness of Hong Kong's banking system, the requirement to notify the HKMA on the issuance of the certificate of re-domiciliation and deregistration in the place of incorporation, as well as the requirement to submit relevant documents, should be treated efficiently by a specified entity. Therefore, the proposed new section 43F(2) requires actions by a specified entity as soon as practicable instead of within a specified period, with a view to providing some flexibility and minimizing unintentional technical breaches. Similar notification obligations in respect of significant notifications to the HKMA with criminal sanction for non-compliance are currently provided under sections 68G and 68H of Cap. 155.

Proposed new section 7A(6) of the Business Registration Ordinance (Cap. 310) (Clause 199 of the Bill)

Paragraph 18 of the letter

23. According to the proposed new section 820F of Cap. 622, the Registrar may revoke the registration of a re-domiciled company on the ground that the company, after the issuance of the certificate of re-domiciliation, has failed to comply with the requirements concerning deregistration under the proposed new section 820E(2), (3) or (4) of Cap. 622 within the 120-day specified period or a period as extended. In the case where a re-domiciliation application is refused by the Registrar, no business registration for the applicant would have been effected and therefore paid prescribed registration fee and levy are to be refunded. Contrarily, since the business registration of a re-domiciled company which later on has its registration revoked under the proposed new section 820F of Cap. 622 has been effected upon its becoming a re-domiciled company, the paid fee and levy should not be made refundable.

Proposed new offences under the Bill

Paragraphs 19 and 20 of the letter

24. The proposed new criminal offences as listed in paragraph 19(a) to (l) of the letter are intended to be strict liability offences. The availability of common law defence of “honest and reasonable mistaken belief” and the burden on the defendant for establishing the defence are summarised at **Annex**.

Paragraph 21 of the letter

25. The legislative intent is that the level of penalty for the proposed offences in the proposed new sections 43D(3), 43E(5), 43F(4) and 43G(5) of Cap. 155, upon conviction on indictment, should be consistent with the level of penalty for existing offences of the same nature in Cap. 155, such as those mentioned in paragraph 21 of the letter. We will move CSAs to this effect.

Drafting issues

Paragraphs 22 of the letter

26. We will move a CSA to the Chinese heading of the proposed new section 820D of Cap. 622 (at Clause 68) to replace “效果” with “效力” for consistency within that section.

Paragraph 23 of the letter

27. Since the proposed new section 820E(4) of Cap. 622 (at Clause 68 of the Bill), section 2(1)(h) of the proposed new Schedule 6C to Cap. 622 (at Clause 76 of the Bill) and the proposed new section 43G(3) of Cap. 155 (at Clause 157 of

the Bill) require a certified translation in the English language or the Chinese language, in the context, “a language other than the English language and the Chinese language” must mean a third language other than those two.

Paragraph 24 of the letter

28. From the Chinese linguistic perspective, it is not necessary to replace “欺詐” with “欺詐性” in the proposed new sections 179(1)(ba) and 281(1)(ba) of the Securities and Futures Ordinance (Cap. 571) (at Clauses 245 and 246(6) of the Bill respectively). For precedents of references to “欺詐目的” (for “fraudulent purpose”) in legislation, please see, for example, section 112ZT of Cap. 571.

Paragraph 25 of the letter

29. We will move a CSA to the proposed new section 381(1)(ba) of Cap. 571 (at Clause 246(6) of the Bill) to replace “section 820C” with “section 820C(1)”.

Paragraph 26 of the letter

30. We have no objection to adding the reference to section 820C(5)(c) of Cap. 622 after “the company under” in paragraph (b)(ii) (at Clause 271(1) of the Bill). However, although “Companies Ordinance (Cap. 622)” is mentioned in the lead-in in paragraph (b), it may not be advisable to change “Companies Ordinance (Cap. 622)” to “Ordinance” in paragraph (b)(ii), since there may be a possibility that “the Ordinance” may be read as “the Ordinance [under which the company was formed...]” (see paragraph (b)(i) of the definition). Therefore, for the purpose of clarity, it is preferable that “Companies Ordinance (Cap. 622)” is kept and referred to in full in paragraph (b)(ii).

Yours sincerely,



(Eric LEE)

for Secretary for Financial Services
and the Treasury

c.c.

Transport and Logistics Bureau

(Attn: Mr WONG Chun-to

Principal Assistant Secretary for Transport
and Logistics 9

Miss Ankie KO	Assistant Secretary for Transport and Logistics 9A)
Companies Registry	
(Attn: Ms Majestic YEUNG	Deputy Principal Solicitor (Company Law Reform)
Ms Carol HAU	Solicitor (Company Law Reform))
Inland Revenue Department	
(Attn: Ms LAW King-lan	Senior Assessor (Business Registration))
Department of Justice	
(Attn: Ms Quinnci WONG	Senior Assistant Law Officer (Civil Law) (Commercial) II
Mr Alan CHONG	Senior Assistant Law Draftsman)
Hong Kong Monetary Authority	
(Attn: Mr Alan AU	Executive Director (Banking Conduct)
Mr Kevin SHAM	Head (Banking Conduct)1)
Insurance Authority	
(Attn: Mr Tony CHAN	Associate Director (Policy and Legislation)
Ms Kathleen FUNG	Senior Manager (Policy and Legislation))

Proposed new offence under the Bill

Proposed new criminal offences	Availability of common law defence	Burden on the defendant for establishing the common law defence
(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 (<i>Clause 19 of the Bill</i>)	✓	Persuasive burden (i.e. third alternative referred to in <i>Kulemesin v HKSAR</i> (2013) 16 HKCFAR 195) ¹
(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 (<i>Clause 65 of the Bill</i>)	✓	Persuasive burden ¹
(c) Failure to deliver directors written consent to the Registrar for registration under the proposed new section 820G(2) of Cap. 622 (<i>Clause 68 of the Bill</i>)	✕ ²	N.A.
(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 (<i>Clause 68 of the Bill</i>)	✓	Persuasive burden ¹
(e) Contravening the prohibition against making a re-domiciled registration application by a bank under the proposed new section 43B(3) of Cap. 155 (<i>Clause 157 of the Bill</i>)	✕ ²	N.A.

¹ The third alternative is considered proportionate given the offences concerned are regulatory offences with minor penalties imposed, and a persuasive burden on the defendant represents an appropriate balance between the rationale of the offences in terms of protection of public interest and avoiding a snaring of the blameless.

² The intent is that a defendant can only rely on the relevant statutory defence provided in the Bill or the relevant Ordinance.

(f) Contravening the restriction on a re-domiciliation registration application by a specified entity under the proposed new section 43C(2) of Cap. 155 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(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 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(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 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(i) Failure to give specified notice(s) to HKMA by a specified entity which becomes a re-domiciled company under the proposed new section 43F(3) of Cap. 155 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(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 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(k) Failure to give specified notice(s) etc. to HKMA by a specified entity which is deregistered under the proposed new section 43G(4) of Cap. 155 <i>(Clause 157 of the Bill)</i>	x ²	N.A.
(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 <i>(Clause 157 of the Bill)</i>	x ²	N.A.