

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

Summary of Views of Submissions and the Administration’s Responses

Item	Summary of views of submissions	Administration’s responses
(A) Policy Framework		
1.	<p>Proposed company re-domiciliation regime</p> <p>Support or pleased with the proposed company re-domiciliation regime. <i>[Davis Polk & Wardwell on behalf of AXA China Region Insurance Company (Bermuda) Limited, AXA China Region Limited and Manulife (International) Limited (“Davis Polk”), Deloitte Advisory (Hong Kong) Limited (“Deloitte”), The Law Society of Hong Kong (“LawSoc”), and the Society of Chinese Accountants & Auditors (“SCAA”)]</i></p>	We are pleased to note the views in the submissions.
2.	<p>Outward re-domiciliation mechanism</p> <p>An outward re-domiciliation regime would provide greater operational flexibility to companies. <i>[SCAA]</i></p>	Our proposal of an inward company re-domiciliation regime aims to address existing demand from the market, including interest expressed by the insurance sector for a simple and accessible re-domiciliation mechanism for companies to re-domicile to Hong Kong in light of the increasing compliance costs in offshore jurisdictions, while we are not aware of actual demand from the local market for re-domiciliation from Hong Kong to other jurisdictions. At the same time, we note that there is no standard approach worldwide; some comparable jurisdictions have put in place an inward-only regime to suit

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		<p>their policy objectives and development needs. All in all, the need for outward re-domiciliation among local companies as well as the implications of an outward regime on the stability and development of the Hong Kong markets remain to be ascertained. We therefore prioritise the introduction of an inward regime pursuant to the policy intent with a view to meeting the existing demand of the market as soon as practicable.</p>
(B) Eligibility Criteria and Application Documents		
3.	<p>Eligible company types</p> <p>It is proposed that the types of company eligible for re-domiciliation should be expanded to cover a wider array of company structures, including companies limited by guarantee, partnerships and other relevant corporate entities. [SCAA]</p>	<p>With consideration that our policy intent is to introduce a company re-domiciliation regime to address the demand from the market with the expectation that re-domiciled companies would bring increased demand for professional services, the proposed regime targets four types of companies which are incorporable in Hong Kong, namely (a) private companies limited by shares; (b) public companies limited by shares; (c) private unlimited companies with a share capital; and (d) public unlimited companies with a share capital. Meanwhile, in the absence of actual demand for re-domiciliation from companies limited by guarantee without a share capital, which is a company type commonly adopted by non-profit making organisations, we do not see a need for inclusion of such companies into the current regime. We will keep in close view demands for re-domiciliation from other forms of body corporate, if any, after the launch of the proposed regime and consider enhancement as and when necessary and appropriate.</p>

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4.	<p>Notice on creditors</p> <p>The proposed new section 2(2) of Schedule 6C to the Companies Ordinance (Cap. 622) which provides that a re-domiciliation form is to be accompanied by a certificate issued by the board of directors of the applicant within 35 days before the application date and signed by a director of the applicant (the "Certificate") to the effect that, among others, the applicant has served on all its creditors notice of the applicant's proposal to become a re-domiciled company. Considerations should be given to either prescribe the form of notice as well as a reasonable cut-off date for creditors to whom notice should have been served, or, to modify the requirement into requiring the applicant to have given advance written notice by publication in the Gazette and in newspapers with reference to the existing notice requirement for transfer of business under section 5 of the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49).</p> <p><i>[Davis Polk]</i></p>	<p>An application for re-domiciliation should not be made to defraud existing creditors of the applicant. Hence, it is a requirement to submit the Certificate, together with the re-domiciliation form, for a re-domiciliation application. The board of directors of the applicant should confirm by way of the Certificate that, among others, notice of the applicant's proposal to become a re-domiciled company has been served on all creditors.</p> <p>It is the policy intent for the applicant to proactively notify its creditors of its proposal to become a re-domiciled company prior to the submission of its re-domiciliation application. Hence, publication of the said notice in the gazette or local newspapers could not serve the same purpose. There is no restriction on the format, content and mode of dissemination of the said notice.</p> <p>The term "creditor" is not defined in Cap. 622 and should therefore bear its natural and ordinary meaning. Based on the natural and ordinary meaning of the term "creditor", it is believed that the board of directors of the applicant should be in a position to ascertain whether all creditors have been notified as at the date of issue of the Certificate. A cut-off date for creditors to whom the notice should have been served is considered not necessary.</p>

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5.	<p>Legal opinion</p> <p>It is proposed that the Bill sets out the validity period of a legal opinion under the proposed new section 2(1)(f) of Schedule 6C to Cap. 622 vis-à-vis the application date. <i>[Deloitte]</i></p> <p>Legal practitioners from the place of incorporation of an applicant may encounter difficulty in giving a legal opinion that the applicant is an entity the type of which is the same or substantially the same as that of the intended re-domiciled company as required under the proposed new section 2(1)(f)(ii) of Schedule 6C to Cap. 622. It is proposed that the Companies Registry ("CR") provide guidance, especially in the form of a list of pre-approved overseas company types and their corresponding Hong Kong company type upon re-domiciliation. <i>[Deloitte]</i></p>	<p>We will move a committee stage amendment ("CSA") to require that the legal opinion required to be submitted together with the re-domiciliation form under section 2(1)(f) of Schedule 6C to Cap. 622 must be issued by a legal practitioner practising the law of the place of incorporation of the applicant not more than 35 days before the application date for the re-domiciliation.</p> <p>It is noted that a list of pre-approved overseas company types and their corresponding Hong Kong company type upon re-domiciliation would facilitate applicants in ascertaining whether they are eligible to re-domicile to Hong Kong. Upon commencement of the re-domiciliation regime, the CR will consider to update the guidance materials relating to the regime to include a list of comparable overseas company types which have been successfully approved to be re-domiciled companies after gaining experience in approving re-domiciliation applications.</p>
6.	<p>Members consent</p> <p>The proposed new section 4(1)(f) of Schedule 6A to Cap. 622 requires that a resolution has been duly passed for the re-domiciliation by at least 75% of the eligible members (defined as members entitled to vote</p>	<p>We will move a CSA to reflect the policy intent of the requirement more clearly that, if the law of the place of incorporation of the applying company or its constitutional document do not impose a members' consent requirement for a re-domiciliation application, the company must obtain a members' resolution passed in a manner as permitted under the</p>

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	<p>on the resolution), which could be onerous for a listed company with a significant portion of inactive shareholders.</p> <p><i>[LawSoc]</i></p>	<p>law of its place of incorporation and its constitutional document and such passage is to meet a threshold of at least a majority of 75% as set out in the CSA.</p>
(C) Application Procedures		
7.	<p>Guidance materials for prospective applicants</p> <p>Comprehensive guidance materials and resources on the re-domiciliation process should be made available for companies considering re-domiciliation to Hong Kong.</p> <p><i>[SCAA]</i></p>	<p>In addition to issuing an external circular, a new thematic section relating to the company re-domiciliation regime will be created on the website of the CR. The section will contain the full text of the Amendment Ordinance, new / revised forms and frequently asked questions in relation to the company re-domiciliation regime.</p> <p>The CR will also publish a “Guide on Company Re-domiciliation” to provide comprehensive information including the requirements, application procedures, fee payable, filing obligations and responsibilities after re-domiciliation etc., which will also be available on the CR’s website.</p>
8.	<p>Refusal of application</p> <p>The proposed new section 820C(2) of Cap. 622 provides that the Registrar of Companies (“R of C”) must refuse to register an applicant if any of the requirements mentioned in the new section 820B that</p>	<p>The proposed new section 820C(2) provides that the Registrar must refuse a re-domiciliation application if “any of the requirements mentioned in section 820B that are applicable to the application” is not complied with. Under section 820B(3)(a)(ii)(A), “applicable requirements” refers to all of the requirements in section 820B (i.e., the requirement for</p>

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	<p>are applicable to the application is not complied with. Given the new section 820B refers to the delivery of documents and information, it is proposed that express provision should be included to the effect that the Registrar is also entitled to refuse an application if she is not satisfied that all substantive requirements are satisfied.</p> <p><i>[LawSoc]</i></p>	<p>delivery of the re-domiciliation form in accordance with subsection (2) and the proposed articles) and the substantive requirements in Schedules 6A, 6B and 6C that are applicable to the application for registration of the applicant (e.g. requirements on integrity, solvency, members consent, etc.)). Further, certain requirements under section 820B (e.g. section 820B(3)(c) which requires that the re-domiciliation form must be accompanied by the documents in Schedule 6C, which documents include the legal opinion required under s2(1)(f) of Schedule 6C, covering substantive requirements) cannot be complied with if the substantive requirements are not satisfied. The current drafting of section 820C(2) already imposes on the Registrar the duty to refuse an application if any of the substantive requirements contained in the aforementioned Schedules is not complied with.</p>
9.	<p>Deregistration in place of incorporation</p> <p>It is proposed that the 120-day period for the re-domiciled company's deregistration in its place of incorporation be extended (with condition such as on submission of supporting document on progress of deregistration).</p> <p><i>[SCAA]</i></p> <p>Alternative forms of evidence demonstrating the re-domiciled company's active pursuit of deregistration</p>	<p>The 120-day period for a re-domiciled company's deregistration in its place of incorporation is set with consideration of stakeholders' views, implementation experience of the limited partnership funds re-domiciliation regime and overseas practices. The requirement, together with the Registrar's discretion to extend the period upon company's request, can strike an appropriate balance between legal certainty and administrative convenience for companies.</p> <p>The proposed new section 820E(3)(b) of Cap. 622 provides that the re-domiciled company must submit to the Registrar a</p>

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	<p>in its place of incorporation should be accepted. [SCAA]</p> <p>A dedicated unit should be set up within the Government to assist re-domiciled companies with their deregistration process in their place of incorporation. [SCAA]</p>	<p>document evidencing the deregistration to the satisfaction of the Registrar. The current drafting has already taken into account and can accommodate the potential variation in the forms of documentary proof of deregistration to be issued by different jurisdictions.</p> <p>As regards facilitation for re-domiciled companies' deregistration in their place of incorporation, on the policy level, we have been reaching out to the relevant authorities of traditional offshore jurisdictions with local companies carrying out business in Hong Kong, including Bermuda, the British Virgin Islands, and the Cayman Islands, to solicit their facilitation for the orderly re-domiciliation of companies to Hong Kong. In particular, the Bermuda authorities recently advised that our request for designation of Hong Kong as an appointed jurisdiction for re-domiciliation of their local companies would be processed upon completion of the current legislative exercise¹.</p>
(D) Tax Arrangements		
10.	<p>Hong Kong tax residency</p> <p>Welcome the proposed new general interpretation</p>	<p>In order to achieve the policy intent that, in general, a re-domiciled company should be treated in the same way as a</p>

¹ Once Hong Kong becomes an appointed jurisdiction, individual companies applying to exit Bermuda for re-domiciliation to Hong Kong will not be required to obtain approval from the Bermuda Minister of Finance. Prior to the designation of Hong Kong as an appointed jurisdiction, companies registered in Bermuda may still apply for re-domiciliation to Hong Kong subject to consideration on a case-by-case basis.

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	<p>provision in section 2 of the Inland Revenue Ordinance (Cap. 112) to provide that “a reference in the Ordinance to a company or entity established or incorporated in Hong Kong includes a re-domiciled company”, which would ensure parity of treatment between Hong Kong-incorporated companies and re-domiciled companies. <i>[Deloitte]</i></p> <p>Hong Kong's Comprehensive Avoidance of Double Taxation Agreements or Arrangements (“CDTA”) partners should be duly notified of the treatment of re-domiciled companies as Hong Kong tax residents to ensure clear and smooth tax residency transitions of re-domiciled companies. <i>[Deloitte]</i></p> <p>Discussion with the State Taxation Administration of the People's Republic of China should be initiated to confirm whether a re-domiciled company will be regarded as a Hong Kong tax resident for the purposes of applying the double tax arrangement between the Mainland and Hong Kong. <i>[KPMG]</i></p>	<p>Hong Kong-incorporated company, the proposed new general interpretation provisions are added in section 2 of Cap. 112 so that references therein to a company “incorporated in Hong Kong” include a re-domiciled company and references to a company “incorporated outside Hong Kong” exclude a re-domiciled company. We are pleased to note that the provisions are welcome by stakeholders.</p> <p>By adding the above general interpretation provisions to Cap. 112, when construing the term “resident of the Hong Kong Special Administrative Region (HKSAR)” under the CDTA, a re-domiciled company will be regarded as a company incorporated in Hong Kong and in turn a resident of the HKSAR from the re-domiciliation date. Accordingly, upon application, a re-domiciled company would be issued a Certificate of Resident Status as it would be regarded as a resident of Hong Kong in accordance with the Resident Article of the relevant CDTA.</p> <p>The term “company incorporated in the HKSAR” is not defined under the CDTA. According to a general rule of interpretation provided in the CDTA for terms used but not defined therein, when the HKSAR applies the CDTA, the term could have the meaning that it has at that time under the applicable tax laws of the HKSAR, unless the context otherwise requires. The CDTA also has in place a mechanism under the Mutual Agreement Procedure Article for</p>

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		resolution of any disagreement arising from the implementation of the CDTA, including the recognition of a re-domiciled company as being a company incorporated in the HKSAR and hence a HKSAR resident for the purposes of the CDTA.
11.	<p>Determination of historical acquisition costs for deduction</p> <p>Given that the record keeping requirement in other jurisdictions differ from those under Cap. 112, the Inland Revenue Department (“IRD”) is proposed to adopt a pragmatic approach when processing claims for profits tax deduction by re-domiciled companies on costs on trading stock and fixed assets acquired before the re-domiciliation date.</p> <p><i>[Deloitte]</i></p> <p>The new section 3 of Schedule 17L to Cap. 112 provides that for deduction of the cost of trading stock acquired before the re-domiciliation date, the cost is taken to be the lower of (i) the cost incurred by the company in acquiring the trading stock and (ii) the net realizable value of the trading stock on the re-domiciliation date. It is proposed that re-domiciled companies be allowed to elect to adopt either (i) or (ii), or that the cost be taken as the higher of (i) and</p>	<p>The purpose of the proposed section 3 of Schedule 17L to Cap. 112 is to set out the basis for determining the cost of trading stock of re-domiciled companies where such trading stock was acquired before the re-domiciliation date. Such basis is on par with that of other comparable jurisdictions.</p> <p>When processing claims for profits tax deduction, the IRD will adopt a reasonable approach and may refer to re-domiciled companies' previous financial statements and other supporting evidence where appropriate.</p>

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	(ii). <i>[Deloitte]</i>	
12.	<p>Hong Kong Certificate of Resident Status</p> <p>It should be clarified whether the IRD will indicate on the Hong Kong Certificate of Resident Status to be issued to a re-domiciled company that the company is a Hong Kong tax resident with effect from the re-domiciliation date.</p> <p><i>[KPMG]</i></p>	<p>A non-Hong Kong incorporated company will become a re-domiciled company from the date on which a certificate of re-domiciliation is issued to it under Cap. 622 and be regarded as a Hong Kong tax resident. For the sake of clarity, the IRD will indicate on the Certificate of Resident Status to be issued to a re-domiciled company that it is a Hong Kong tax resident with effect from the re-domiciliation date.</p>
13.	<p>Unilateral tax credit</p> <p>Unilateral tax credit will be provided for re-domiciled companies in respect of the tax payable on actual profits derived in Hong Kong after re-domiciliation where similar profits have been taxed in an unrealised form by the company's place of incorporation upon exit. The proposed new section 12(8) of Schedule 17L to Cap. 112 provides that if the amount of credit claimed by a re-domiciled company exceeds the amount of the profits tax payable for that year by the company in respect of the relevant income, the excess amount is allowed to be deducted for the re-domiciled company for the particular year. It should be clarified whether the excess amount can be deducted</p>	<p>For the purpose of elimination of double taxation, under the proposed new sections 12 to 14 of Schedule 17L to Cap. 112, unilateral tax credits will be provided for re-domiciled companies in respect of the tax payable on actual profits derived in Hong Kong after re-domiciliation where same profits have been taxed in an unrealized form by the companies' original domicile upon exit.</p> <p>The proposed new section 12(8) of Schedule 17L to Cap. 112 provides that if the amount of credit claimed by a re-domiciled company exceeds the amount of the profits tax payable for that year by the company in respect of the relevant income, the excess amount is allowed for deduction in ascertaining the assessable profits of the re-domiciled company for the particular year of assessment.</p>

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	<p>(i) in determining the assessable profits of the re-domiciled company for the particular year; or (ii) only for the purposes of determining the cap on the unilateral tax credit amount for the particular year. <i>[KPMG]</i></p> <p>It is proposed that unilateral tax credits for taxes already paid in the place of incorporation be offered to provide a stronger incentive and alleviate concerns about increased tax burden. <i>[SCAA]</i></p>	
(E) Re-domiciliation of Financial Institutions		
14.	<p>Conditions imposed in place of incorporation</p> <p>Insurers intended to re-domicile to Hong Kong may face practical issues in complying with conditions which the regulators of their place of incorporation may impose. However, such issue cannot be addressed in the Bill. <i>[LawSoc]</i></p>	<p>Given the interest of some Bermuda-incorporated insurers in re-domiciling to Hong Kong, the Insurance Authority ("IA") has been in close liaison with the relevant authorities of Bermuda to clarify requirements for outward re-domiciliation from Bermuda, and has been keeping track of the insurers' preparation with a view to offering assistance as and when necessary to facilitate their re-domiciliation to Hong Kong once the company re-domiciliation regime is launched.</p>
15.	<p>Increased complexity of insurance regulatory regime</p> <p>From drafting perspective, the new concept of "re-</p>	<p>Clause 117 of the Bill proposes to create a new defined term "re-domiciled insurer" and revise the existing definition of "HK insurer" to include "re-domiciled insurer" in the definition of "HK insurer". This reflects the policy intent</p>

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	<p>domiciled insurer” to be introduced to the Insurance Ordinance (Cap. 41), alongside the existing concepts of “HK insurer” and “designated insurer” would result in complexity in the regulatory regime. It may be preferable to include “re-domiciled insurer” in the definition of “HK insurer” subject to additional provisions. <i>[LawSoc]</i></p>	<p>that a re-domiciled insurer has in general the same status as an HK insurer under the regulatory regime of Cap. 41.</p> <p>Clause 118 of the Bill proposes to amend the existing section 3B(2) of Cap. 41 to provide for the withdrawal of designation of a designated insurer as it becomes a re-domiciled insurer (i.e. a designated insurer ceases to be such upon its becoming a re-domiciled insurer). Clauses 122 to 131 further provide for the grandfathering arrangements for the approval of controllers, directors, key persons in control functions, shareholder controllers and actuary of an authorized insurer when the authorized insurer changes from a non-HK insurer (including a designated insurer) to a re-domiciled insurer. Together, the current drafting provides clarity on the status of and regulatory requirements applicable to a re-domiciled insurer vis-à-vis a non-HK insurer (including a designated insurer).</p>
16.	<p>Re-domiciliation of overseas insurers which are not authorized insurers in Hong Kong</p> <p>The re-domiciliation process for an overseas insurer which is not an authorized insurer should be clarified. <i>[LawSoc]</i></p>	<p>The proposed new section 3BB of Cap. 41 provides for how a company incorporated outside Hong Kong that is not an authorized insurer in Hong Kong may become a re-domiciled insurer. It covers two scenarios: (i) a company incorporated</p>

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		<p>outside Hong Kong, which is neither an overseas insurer² nor an authorized insurer, has re-domiciled to Hong Kong and deregistered from its place of incorporation, and later on intends to carry on insurance business in or from Hong Kong; and (ii) an overseas insurer, which is not an authorized insurer in Hong Kong, intends to re-domicile to Hong Kong and to obtain the IA's authorization under sections 8 or 8A of Cap. 41 for carrying on insurance business in or from Hong Kong.</p> <p>Under section 6(1) of Cap. 41, no person shall carry on insurance business in or from Hong Kong except for an authorized insurer, Lloyd's, or an association of underwriters approved by the IA. A contravention of section 6(1) of Cap. 41 constitutes an offence under section 6(3) of Cap. 41. Under scenario (i), after the company has become a re-domiciled company and deregistered from its place of incorporation if the company intends to carry on insurance business in or from Hong Kong, it must apply to the IA for an authorization under section 7 of Cap.41. It becomes a re-domiciled insurer upon receiving the IA's authorization under sections 8 or 8A of Cap.41.</p>

² The term "overseas insurer" as set out in LawSoc's submissions is not a term defined in Cap. 41. The Administration's response to item 16 is on the basis that "overseas insurer" refers to a company that is incorporated outside Hong Kong and is authorized to carry on insurance business in a non-Hong Kong jurisdiction, but has not been authorized by the IA to carry on insurance business in or from Hong Kong.

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		<p>For scenario (ii), if the overseas insurer wishes to carry on insurance business in or from Hong Kong after it has re-domiciled to Hong Kong to become a re-domiciled company and after it is deregistered from its place of incorporation, it must apply to the IA for an authorization under section 7 of Cap. 41. The overseas insurer does not become a re-domiciled insurer nor be permitted to carry on insurance business in or from Hong Kong simply at the point of time when it has become a re-domiciled company and has been deregistered from its place of incorporation; it will become a re-domiciled insurer and be permitted to carry on insurance business in or from Hong Kong only after it obtains the IA's authorization under sections 8 or 8A of Cap. 41.</p> <p>A cooperation mechanism will be put in place between the CR and the IA for identifying overseas applicants carrying on insurance business so that timely referral will be made to the IA.</p>
(F)Others		
17.	<p>Court-free amalgamation of re-domiciled companies</p> <p>Clarification is sought on whether re-domiciled companies are eligible for the court-free amalgamation procedure, and if positive, requirements (if any) on the timing vis-à-vis the re-</p>	<p>A re-domiciled company will be regarded as a company incorporated in Hong Kong from the date of its re-domiciliation. Definition of "company" under section 2(1) of Cap. 622 will be amended to include a "re-domiciled company". As such, once a certificate of re-domiciliation has been issued, various provisions under Cap. 622 would apply to the re-domiciled company as if it were incorporated</p>

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	domiciliation date. <i>[Deloitte]</i>	in Hong Kong including those provisions relating to amalgamation.
18.	Promotion and collaboration A multi-faceted approach is proposed to be adopted for proactive promotion and enhanced collaboration between Government agencies and professional service providers. <i>[SCAA]</i>	After the launch of the company re-domiciliation regime, we will collaborate with InvestHK and the Hong Kong Exchanges and Clearing Limited to reach out to major Hong Kong listed companies domiciled overseas and encourage them to re-domicile to Hong Kong. The Economic and Trade Offices will in parallel promote and introduce the re-domiciliation regime to foreign enterprises.
19.	Review mechanism of effectiveness A formal mechanism for regular review and feedback on the effectiveness of the company re-domiciliation regime is proposed to be established, which include periodic consultations with stakeholders, benchmarking against international practices, and collection and analysis of data from the implementation of the regime. <i>[SCAA]</i>	After the launch of the company re-domiciliation regime, the CR will monitor and review its implementation experience continuously in consultation with the Standing Committee on Company Law Reform, an existing body which advises the Financial Secretary on amendments to Cap. 622. We will also keep in view development in international practices to ensure that our regime is effective and competitive.

Financial Services and the Treasury Bureau
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