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

Purpose

This paper reports on the deliberations of the Bills Committee on Companies (Amendment) (No. 2) Bill 2024 ("the Bills Committee").

Background

2. At present, apart from the re-domiciliation regime for non-Hong Kong funds established as open-ended fund companies or limited partnership funds, there is no straightforward statutory regime to facilitate a company incorporated outside Hong Kong ("non-Hong Kong corporation") to re-domicile to Hong Kong. In general, a non-Hong Kong corporation intending to re-domicile to Hong Kong have to be wound up in its original domicile and establish a new company in Hong Kong, or enter into 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.

3. To address base erosion and profit-shifting risks arising from the digitalization of the economy, currently more than 140 jurisdictions have indicated acceptance of the international reform proposals drawn up by the Organisation for Economic Co-operation and Development (commonly known as "BEPS 2.0"). The BEPS 2.0 proposals require that in-scope large multinational enterprise groups pay a global minimum tax of at least 15% on income derived by their constituent entities in every jurisdiction where they operate, thus reducing the latitude for jurisdictions to introduce tax exemption or extremely low preferential tax rate as a means to enhance their tax competitiveness in future. In addition, the economic

substance requirements[1] imposed on some companies incorporated or registered in certain jurisdictions in recent years increase the compliance cost borne by these offshore companies. The Administration considers that a company re-domiciliation regime should be introduced in Hong Kong to enable these companies, especially those with a business focus in the Asia-Pacific region, to transfer their domicile to Hong Kong in response to the increasing compliance burden of being subject to two sets of regulations in two jurisdictions.

4. For non-Hong Kong corporations which are already economically active in Hong Kong, becoming re-domiciled companies will facilitate their compliance with Hong Kong's high standards on corporate governance and better alignment of the geographical coverage of their business activities with their domicile, as well as enhancing Hong Kong's status as a business hub. Attracting non-Hong Kong corporations to re-domicile to Hong Kong will bring greater demand for Hong Kong's professional services (such as audit, accounting and legal services) and create more investment as well as skilled job opportunities as it is likely that the corporations would move some of their business operations to Hong Kong after they have successfully re-domiciled ("re-domiciled companies").

5. Building on the positive experience gained in respect of the fund re-domiciliation mechanism and the examples in other jurisdictions, the Administration considers that Hong Kong is well-positioned to introduce a company re-domiciliation regime, under which a simpler and more effective re-domiciliation mechanism will be provided for non-Hong Kong corporations. In the 2023 and 2024 Policy Addresses and the 2024-2025 Budget, the Government announced the proposal to introduce a company re-domiciliation mechanism to facilitate non-Hong Kong corporations to re-domicile to Hong Kong. The proposed company re-domiciliation regime will enable a non-Hong Kong corporation that has successfully registered as re-domiciled company under the proposed 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 proposed 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

6. The Companies (Amendment) (No. 2) Bill 2024 ("the Bill") was published in the Gazette on 20 December 2024 and received its First Reading at the Council meeting of 8 January 2025. The Bill seeks to:

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[1] The requirements target certain mobile activities including headquarters, distribution centres, service centres, financing, leasing, fund management, banking, insurance, shipping, holding companies, and the provision of intangibles.

(a) amend the Companies Ordinance (Cap. 622) (including its subsidiary legislation) to provide for a regime to enable a non-Hong Kong corporation to transfer its domicile to Hong Kong;

(b) provide for related matters; and

(c) make related or technical amendments to Cap. 622 and other enactments.

7. Details about the main provisions of the Bill are set out in paragraph 23 of the Legislative Council Brief (File Ref.: CO/2/3C) 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.

The Bills Committee

8. At its meeting held on 10 January 2025, the House Committee agreed to form a Bills Committee to scrutinize the Bill. Hon Edmund WONG Chun-sek and Hon Adrian Pedro HO King-hong were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix 1**.

9. The Bills Committee has held four meetings with the Administration to scrutinize the Bill. The Bills Committee has invited the public and the 18 District Councils to provide written submissions on the Bill and received five submissions. A list of the organizations which have given views to the Bills Committee is in **Appendix 2**. The Administration has provided a consolidated response to these views (LC Paper No. CB(1)370/2025(03)).

Deliberations of the Bills Committee

10. Members of the Bills Committee in general support the Bill and agree that the introduction of the new re-domiciliation regime can facilitate non-Hong Kong corporations to re-domicile to Hong Kong, enabling them to benefit directly from Hong Kong's robust market environment as well as clear and transparent regulatory regime, thereby adding new impetus to the local professional services and capital markets. The Bills Committee has examined the proposed company re-domiciliation regime in detail, and its deliberations are set out in the ensuing paragraphs.

Inward re-domiciliation regime

11. Members note that the proposed company re-domiciliation regime introduced by the Bill is not a two-way regime, i.e. it only allows non-Hong Kong corporations to re-domicile to Hong Kong but not outward re-domiciliation of companies incorporated in Hong Kong. The Administration has been requested to provide the reasons for that.

12. The Administration has advised that some stakeholders have suggested providing greater flexibility for incoming companies by introducing a two-way re-domiciliation regime to allow both inward re-domiciliation (i.e. non-Hong Kong corporations re-domiciling to Hong Kong) and outward re-domiciliation (i.e. Hong Kong-incorporated companies and companies re-domiciled to Hong Kong deregistering in Hong Kong and transferring their domicile to a jurisdiction outside Hong Kong). The proposed inward-only re-domiciliation regime in the Bill aims to address the 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.

13. The Administration has also advised that it is not aware of actual demand from the local market for outward re-domiciliation. It has further noted that there is no standard approach worldwide; some comparable jurisdictions have put in place an inward-only re-domiciliation regime to suit their policy objectives and development needs. Given the need for outward re-domiciliation among Hong Kong-incorporated companies and companies re-domiciled to Hong Kong, as well as the implications of an outward re-domiciliation regime on the stability and development of the Hong Kong markets remain to be ascertained, the Administration therefore considers it appropriate to prioritize the introduction of an inward re-domiciliation regime with a view to meeting the existing market demand as soon as practicable.

Application eligibility and requirements

14. Members note that Singapore has imposed economic substance requirements on inward re-domiciling companies, under which the companies concerned have to fulfil two of the size standards and requirements (i.e. a company's total asset value exceeds S$10 million; a company's annual revenue exceeds S$10 million; or a company has more than 50 employees). In this connection, members have requested the Administration to advise the reasons for not considering the inclusion of economic substance requirements in the proposed company re-domiciliation regime. The Administration has advised that unlike other jurisdictions, Hong Kong will not impose economic substance test requirements on intended re-domiciled companies, with a view to extending the application of the proposed company re-domiciliation mechanism to companies of

different sizes as far as possible. To ensure that the re-domiciliation of a non-Hong Kong corporation to Hong Kong will not prejudice the integrity of Hong Kong's business environment, such corporations must satisfy or fulfil integrity, financial and other requirements or conditions before they can be registered under the amended Cap. 622.

Scope of application of re-domiciled companies

15. The Legal Adviser to the Bills Committee notes that the Administration has added the proposed new section 2(5A) (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 the date of issuance of the re-domiciliation certificate ("re-domiciliation date")) to Cap. 622 and provided for an exception in the proposed new section 2(5C). In this connection, the Legal Adviser to the Bills Committee has sought clarification from the Administration on why it is necessary to add the proposed new section 2(5A) to Cap. 622 and why it is provided in the proposed new section 2(5C)(a) that the proposed new section 2(5A) does not apply to a re-domiciled company that is an airline.

16. The Administration has explained that given that the policy intent of the proposed company re-domiciliation regime is to regard generally a re-domiciled company in the same way as a company incorporated in Hong Kong, the proposed new section 2(5A) is proposed to be added to Cap. 622 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 proposed to be made to provisions in other enactments under Part 4 of the Bill.

17. The Administration has further advised that the proposed new section 2(5C)(a) and (c) of Cap. 622 provides for the exceptions where the general deeming provision should not apply in light of the unique circumstances in specific policy realms. For the proposed new section 2(5C)(a) regarding "airlines", the Transport and Logistics Bureau formulated guidelines for the designation of airlines under Hong Kong's air services agreements and provisional agreements 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 utilization of traffic rights. This designation criterion has been reflected in the bilateral air services agreements that Hong Kong has entered into with the 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, the proposed new 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.

Charge

18. Under the proposed new section 338A of Cap. 622, a re-domiciled company must register charge created by the company before the re-domiciliation date and charge existing on property acquired before the re-domiciliation date. Members have sought clarification from the Administration on whether the above requirement would affect the priority of such charges. The Administration has explained that a charge is an agreement between a creditor and a debtor for the purpose of creating an encumbrance on a specific property or certain types of property as a security for the debtor to perform his obligations. If a re-domiciled company has created a specified charge or acquired any property subject to a specified charge before it becomes a re-domiciled company, the validity and priority of those charges are governed by the law of the re-domiciled company's place of incorporation, the place where the charge is created and the place where the property is situated.

19. The Administration has also advised that the proposed new section 338A of Cap. 622 provides that if a re-domiciled company, before it becomes a re-domiciled company, has created a specified charge or acquired any property in Hong Kong or elsewhere subject to a specified charge, and such charge subsists on the re-domiciliation date, the re-domiciled company must deliver to the Registrar of Companies ("Registrar") a statement of the particulars of the charge ("pre-existing charge") for registration. The purpose of the registration requirement is to enable the public to access through inspection of the register the particulars of a pre-existing charge of the re-domiciled company which has not yet been discharged on the re-domiciliation date. The registration of the charge does not affect the validity and existing priority of the charge per se.

Inquiry letters issued by the Registrar of Companies

20. Members note that the proposed amended section 744(2)(c)(i) and (ii) of Cap. 622 provides that if the Registrar has reasonable cause to believe that a company that is not a re-domiciled company is not in operation or carrying on business, the Registrar will make inquiry with each founder member and, for a re-domiciled company, with each member. Members have requested the Administration to advise on the legislative intent of section 744 and explain the reasons for the different approaches for the two cases.

21. The Administration has advised that for a company incorporated in Hong Kong, section 744(1) of Cap. 622 provides that if the Registrar has reasonable cause to believe that a company is not in operation or carrying on business, the

Registrar may send to the company by post a letter inquiring whether the company is in operation or carrying on business. Section 744(2) sets out that the letter must be addressed to the company and sent to (a) the company's registered office; (b) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; and (c) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar. For a re-domiciled company, the proposed amended section 744(2)(c) provides that, in order to inquire whether a re-domiciled company is not in operation or carrying on business, if the Registrar is unable to contact the company or an officer of the company by means of (a) or (b) above, the Registrar must send an inquiry letter to every member of the company as known to the Registrar. Since a re-domiciled company is not required to submit information on its founder members when applying for re-domiciliation, the Registrar can only send letters to the members of the re-domiciled company as known to the Registrar. If a re-domiciled company is a listed company, members on whom information is required are those holding at least 5% of the issued shares in any class of the company's shares.

22. The Administration has also advised that under sections 744(3) and 745 of Cap. 622, if the Registrar is of the opinion that the address of the registered office of the company concerned cannot be ascertained or that the letter is unlikely to be received by the company, or, that no reply has been received and after sending another letter still no reply has been received, the Registrar may publish a notice in the Gazette stating that, unless cause is shown to the contrary, the company's name will be struck off from the Companies Register and the company will be dissolved at the end of three months after the date of the notice. Since the procedures may ultimately lead to the dissolution of a company, section 744(2) of Cap. 622 requires the Registrar to contact the company by all reasonable and feasible means to ascertain whether it is in operation or carrying on business.

Scope and coverage of the proposed company re-domiciliation regime

23. The proposed new section 820B(1) of Cap. 622 provides that four types of non-Hong Kong corporations (i.e. (a) public companies limited by shares; (b) private companies limited by shares; (c) public unlimited companies with a share capital; and (d) private unlimited companies with a share capital) may apply for registration as a re-domiciled company. Members have enquired about the Administration's considerations for allowing types (c) and (d) companies to re-domicile to Hong Kong, and whether the practice is in line with that of other jurisdictions.

24. The Administration has advised that under Cap. 622, there are five types of companies that may be incorporated in Hong Kong, i.e. companies limited by guarantee without a share capital in addition to types (a) to (d) companies mentioned above. With consideration that the policy intent of the Bill is to

introduce a company re-domiciliation regime to address the demand from the market with the expectation that the re-domiciled companies would bring increased demand for professional services, investments and job opportunities, the Administration has suggested that the proposed company re-domiciliation regime should allow re-domiciliation by non-Hong Kong corporations of types (a) to (d) (or their comparable types in the place of incorporation) which are envisaged to bring about economic benefits to Hong Kong. Reference has also been drawn from the relevant regimes in Australia and New Zealand which require that the company type of a foreign company must be the same as that of a company which may be incorporated in the place of incorporation.

Approval of applications for registration

Safeguarding national security

25. The Administration has advised that the policy objective of the proposed new section 820C of Cap. 622 is that when the Registrar processes an application for re-domiciliation, the Registrar must ensure that the company applying for re-domiciliation to Hong Kong has complied with all applicable application requirements. Under the proposed new section 820C(2), the Registrar must (i.e. having no discretion) refuse 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), the Registrar may (i.e. 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.

26. The Bills Committee has expressed grave concern that the Administration has not drawn reference from the relevant legislation in Singapore and the relevant legislative proposal in the United Kingdom ("UK") to expressly provide in the proposed new section 820C(3) of Cap. 622 that the Registrar may refuse an application for registration if he is of the opinion that the intended re-domiciled company may endanger national security, so as to effectively manage the potential national security risks of companies applying for re-domiciliation. Members consider that the Administration should provide a detailed analysis on how Singapore's legal framework of re-domiciliation would safeguard against national security risks and further explain the reasons why the Administration has not drawn reference from Singapore's practice to provide in the Bill that the Registrar may refuse the registration application of an intended re-domiciled company if the Registrar is of the opinion that the company may endanger national security. Members and the Legal Adviser to the Bills Committee have also sought clarification from the Administration on why "must" is used in the proposed new section 820C(2), but "may" is used in the proposed new section 820C(3).

27. The Administration has advised that section 360(2) of the Companies Act 1967 of Singapore provides that if the authority is satisfied that (a) the intended re-domiciled company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order; or (b) it would be contrary to national security or interest for the re-domiciliation applicant to be registered, the authority must refuse to register the applicant. Article 3 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL") stipulates that it is the duty of the Hong Kong Special Administrative Region ("HKSAR") under the Constitution to safeguard national security, and the HKSAR shall perform the duty accordingly. The executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the law. Article 8 of NSL also requires that the law enforcement and other agencies of the HKSAR shall fully enforce NSL and other laws concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security in order to safeguard national security effectively. When formulating the proposed company re-domiciliation mechanism, the Administration has taken into full consideration the national security risks and measures in response to them, and proposed to introduce new provisions in the Bill to put in place appropriate safeguards during the processing of re-domiciliation applications from non-Hong Kong corporations so as to effectively address potential national security risks therein.

28. The Administration has also advised that an "unlawful" purpose under the proposed new section 820C(3) of Cap. 622 refers to all laws applicable in Hong Kong. In other words, if the Registrar is of the opinion that the intended re-domiciled company is likely to be used for purposes contrary to any law applicable in Hong Kong, including NSL and the Safeguarding National Security Ordinance (No. 6 of 2024) ("SNSO"), as well as other purposes entailing the endangerment of national security, or, if the Registrar is of the opinion that accepting the re-domiciliation application of a non-Hong Kong corporation may endanger national security (which in most cases will also be contrary to public interest), the Registrar will refuse the relevant re-domiciliation application under the new section 820C(3). Clause 109 of the Bill proposes to add a new section 360BA to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) to stipulate that if the Chief Executive-in-Council is satisfied that an application for re-domiciliation is intended to circumvent relevant considerations under the Societies Ordinance (Cap. 151), including as necessary in the interests of national security or public safety, public order, etc., the Chief Executive-in-Council may order the Registrar to refuse the re-domiciliation application.

29. The Administration has further remarked that the existing section 8(3) of SNSO clearly stipulates that where the law of the HKSAR confers any function on a person, the function is to be read as including a duty to safeguard national security; and accordingly, any person, in making any decision in the performance

of the function, must regard national security as the most important factor and give appropriate consideration to it accordingly, and a reference in any Ordinance in connection with such a function is to be read accordingly. Section 3(1) of SNSO provides that "function" therein includes a power and a duty. The proposed new section 820C(1) of Cap. 622 which clause 68 of the Bill proposes to add empowers the Registrar to process re-domiciliation applications of non-Hong Kong corporations. This power is a function within the meaning of section 3(1) of SNSO. Therefore, when processing re-domiciliation applications, the Registrar must at the same time discharge the duty of safeguarding national security as provided for in NSL and section 8(3) of SNSO, and, in making any decision, regard national security as the most important factor and give it appropriate consideration accordingly. If the Registrar considers that the approval of a re-domiciliation application of a non-Hong Kong corporation may endanger national security, the Registrar should refuse the application.

30. As regards members' enquiries on the drafting of the proposed new section 820C(2) and (3) of Cap. 622, the Administration has explained that it has taken into account that whether an applicant meets the applicable registration requirements is a matter of fact, whereas whether an intended re-domiciled company is likely to be used for an unlawful purpose or a purpose contrary to public interest involves the Registrar's assessment and judgement. Therefore "must" is adopted in the former to reflect the Registrar's duty and "may" is adopted in the latter to reflect the Registrar's power. Having considered members' views and reviewed the relevant provisions, in order to reflect its policy consideration of according great importance that the re-domiciled companies are lawful and in the interest of the public, the Administration will propose amendments to replace the reference to "may refuse" with the reference to "must refuse" in the proposed new section 820C(3) to make it certain that it is the Registrar's duty to refuse the application 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 (including a purpose that would endanger national security).

Appeal mechanism

31. Members have urged the Administration to, with reference to Singapore's relevant legislation, consider providing in the proposed new section 820C of Cap. 622 that an intended re-domiciled company has a right of appeal against the Registrar's decision to refuse its application under the proposed new section 820C(2) or (3).

32. The Administration has advised that at present, Cap. 622 does not provide for an appeal mechanism for applications for incorporation of local companies. Applicants may apply for a judicial review of the Registrar's decision to refuse an application. Clauses 68 and 76 of the Bill respectively propose to add the new Part 17A and Schedules 6A, 6B and 6C to Cap. 622 to clearly set out the procedures

and requirements for applications for re-domiciliation of companies. If the Registrar refuses an application, the Registrar will in general provide reasons to the applicant. The Administration thus takes the view that, with reference to the practice in relation to the incorporation of local companies, there is no need to put in place a separate appeal mechanism for company re-domiciliation applications.

33. The Administration has added that the inward company re-domiciliation mechanism of Singapore allows a person who is aggrieved by the authority's refusal of a re-domiciliation application to appeal to the Minister for Finance. Australia does not have a separate appeal mechanism for company re-domiciliation applications. In the UK, the independent expert panel which advises on the legal framework of the re-domiciliation regime recommended in its report submitted to the UK Government in October 2024 that there was no need to set up an appeal mechanism for the re-domiciliation regime. In other words, there are different practices under the legal frameworks of re-domiciliation in other jurisdictions as to whether there are appeal mechanisms for the relevant authorities' decisions to refuse company re-domiciliation applications.

Judicial review

34. Members has also enquired whether the Registrar would be required to inform an intended re-domiciled company of the reasons for refusing its application under the proposed new section 820C(3) of Cap. 622 if the Registrar is of the opinion that the company may endanger national security, and whether the company may apply for a judicial review of the Registrar's decision.

35. According to the Administration, the general common law rule does not impose an obligation on the executive authorities to give reasons for their decisions. Whether reasons should be given depends on the circumstances of individual cases. For example, under certain circumstances, reasons for an administrative decision may need to be provided if the decision appears unusual or if the decision involves certain interests, such as personal freedom as accorded with high importance by the law, in which case the provision of reasons is regarded as a right based on the principle of fairness. If the Registrar refuses an application for re-domiciliation on the grounds that the Registrar is of the opinion that the intended re-domiciled company may endanger national security, the Registrar will, in light of the circumstances of each case, determine whether it is necessary to provide reasons for the decision to refuse the application after considering all relevant factors (including whether the disclosure of the relevant reasons would be detrimental to national security). A decision made by the Registrar in exercise of the powers conferred by the proposed new section 820C(3) of Cap. 622, whether or not it is on grounds of safeguarding national security, is subject to judicial review.

36. Expressing concern that a decision made by the Registrar on grounds of safeguarding national security is subject to judicial review, members have asked the Administration to further explain whether the arrangement that the Registrar's relevant decision is amenable to judicial review is appropriate, having regard to the provisions of Article 14 of NSL.

37. The Administration has emphasized that safeguarding national security is the Government's top priority. It proposes to introduce new provisions in the Bill to put in place appropriate safeguards for the processing of re-domiciliation applications of non-Hong Kong companies so as to effectively address potential national security risks therein. According to the common law principle, where an authority is given a power under legislation, such power must be exercised reasonably, in good faith, on proper grounds and in accordance with the principles of natural justice. The power must also be exercised only by those to whom it is given and not be hampered by improper constraints. In short, there must not be any abuse of statutory power. Hence, any decision taken pursuant to the exercise of statutory power is amenable to judicial review on established grounds. In relation to the Bill, the decision of the Registrar to refuse to register an applicant under the proposed new section 820C(2) or (3) of Cap. 622 is also amenable to judicial review.

38. The Administration has advised that under the common law, the fact that a public officer exercises his/her statutory power on the basis of national security considerations does not render the decision immune from judicial review. Meanwhile, the concept of judicial deference to the executive's evaluative assessment on national security is well-established at common law. The judgment on *Secretary for Justice v Persons Conducting Themselves in Any of the Acts Prohibited under Paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim* [2024] HKCA 442 points out that while the court is tasked to uphold the rule of law, administer justice and adjudicate disputes independently, in exercising its judicial function, the court must recognize the constitutional boundaries between executive, legislative and judicial powers. The executive has the responsibility for assessing and addressing risks to national security, and the requisite experience, expertise, resources and access to information and intelligence, which make it best suited to making evaluative judgments on national security.

39. The Administration has further advised that the Committee for Safeguarding National Security of HKSAR ("NSC") is established under NSL, which is a piece of national law enacted by the Standing Committee of the National People's Congress and added to Annex III to the Basic Law. It was promulgated to apply in HKSAR by the Chief Executive in accordance with the Basic Law. Article 14 of NSL clearly states that the decisions made by NSC are not amenable to judicial review.

Discretion

40. Some members reckon that the approach of setting out in detail the requirements and information to be submitted for a re-domiciliation application in the proposed new Schedules 6A, 6B and 6C to Cap. 622 lacks flexibility. The Administration has been requested to advise whether the authorities responsible for vetting and approving re-domiciliation cases in other jurisdictions are given discretion under their relevant laws to exempt an intended re-domiciled company from certain requirements in respect of its application and registration.

41. According to the Administration, the proposed new Schedules 6A, 6B and 6C to Cap. 622 specify the information and documents required for applications for re-domiciliation. The proposed new Schedule 6A provides for the information and statements to be contained in the re-domiciliation form in respect of the intended re-domiciled company; the proposed new Schedule 6B provides for the information and statements to be contained in the re-domiciliation form in respect of the directors and company secretary; and the proposed new Schedule 6C provides for the documents to accompany the re-domiciliation form. The proposed amended section 911 of Cap. 622 is to empower the Financial Secretary to amend the new Schedules 6A, 6B and 6C by notice published in the Gazette subject to negative vetting. This arrangement can provide maximum clarity on application requirements while leaving appropriate room for future revisions if necessary. The Administration has further advised that the laws on the inward company re-domiciliation mechanisms of Singapore, Australia, New Zealand, Bermuda, the British Virgin Islands and the Cayman Islands do not empower the authorities responsible for vetting and approving re-domiciliation cases to waive or modify the re-domiciliation application requirements; whereas section 364A(c) of the Companies Act 1967 of Singapore empowers its Minister for Finance to make regulations to waive the re-domiciliation requirements under the Act.

<u>Procedures for and effect of registration</u>

42. The Bills Committee notes that the proposed new Part 17A (sections 820A to 820H) of Cap. 622 seeks to provide for the application procedures for and the effect of registration as a re-domiciled company under that Part, as well as the duties of a re-domiciled company. In respect of the proposed new section 820D which provides for the effect of registration under the proposed new section 820C, the Administration has been requested to advise on the legislative intent of the proposed new section 820D and whether the section, as drafted, adequately reflects such legislative intent. Besides, in respect of legal proceedings involving a re-domiciled company, the Administration has also been requested to advise on the difference between the effect of the proposed new section 820D(1)(c) and the effect of the proposed new section 820D(2).

43. According to the Administration, the legislative intent of the proposed new section 820D of Cap. 622 is to provide certainty on the effect of re-domiciliation. The proposed new section 820D(1)(a) first clarifies that re-domiciliation does not create a new legal entity, so as to ensure that the re-domiciled company can retain its identity. On this basis, the proposed new section 820D(1)(b)(i) clarifies that re-domiciliation will not affect the identity or continuity of the company in its place of incorporation. That is, the registration of the company in the place of incorporation will not be automatically cancelled simply because it becomes a re-domiciled company in Hong Kong. Therefore, the company is required to complete the deregistration procedures in the place of incorporation and submit evidence in accordance with the requirements of the proposed new section 820E. The proposed new section 820D(1)(b)(ii) and (iii) further clarifies that re-domiciliation will not affect the other affairs of the company, including any contract, property, right, obligation or liability.

44. The Administration has explained that the proposed new section 820D(1)(c) and section 820D(2) of Cap. 622 respectively deal with: (a) legal proceedings arising before the re-domiciliation date in respect of the re-domiciled company, and (b) legal proceedings arising on or after the re-domiciliation date. In relation to (a), the proposed new section 820D(1)(c) clarifies that any legal proceedings that have been commenced or continued in relation to the re-domiciled company before the re-domiciliation date will not be affected by the re-domiciliation of the company. In other words, the relevant legal proceedings may continue according to the existing procedures. As regards (b), the proposed new section 820D(2) seeks to clarify that any legal proceedings which could have been commenced in respect of the company before the re-domiciliation date but have not been commenced may still be commenced or continued on or after the re-domiciliation date.

45. The Administration has added that the proposed new section 820D(3) of Cap. 622 clarifies the ownership of property of a company by providing that all property of a re-domiciled company continues to be the property of the company from the re-domiciliation date. The proposed new section 820D(4) seeks to clarify the related tax matters. Since re-domiciliation does not have the effect of transferring any of the company's assets or changing the beneficial ownership of any of those assets, no stamp duty liability will be incurred. The proposed new section 820D(5) provides that if a re-domiciled company is a registered non-Hong Kong company under Part 16 of Cap. 622 before the re-domiciliation date, the registration ceases to have effect on the re-domiciliation date. The proposed new section 820D is modelled on section 112ZJD of the Securities and Futures Ordinance (Cap. 571) which provides for the effect of re-domiciliation of an open-ended fund company, as well as section 361 of the Companies Act 1967 of Singapore which provides for the effect of re-domiciliation of a company. The proposed new section 820D, as currently drafted, reflects the legislative intent.

46. Members have also suggested that consideration be given to adding a new requirement in the proposed new section 820D of Cap. 622 to the effect that the courts in Hong Kong have the discretion to decide not to handle legal proceedings involving a re-domiciled company if the company fails to fulfil its obligations of deregistration from its original domicile. The Administration has responded that the Hong Kong court is generally guided by the "forum conveniens" principle when considering whether it has jurisdiction to try a case. It is also not the Administration's policy intent to provide in the proposed new section 820D that the Hong Kong court has the discretion not to handle legal proceedings involving a re-domiciled company that has not completed deregistration.

Time frame for deregistration in the place of incorporation

47. Under the proposed new section 820E of Cap. 622, within 120 days (or such period as may be extended by the Registrar) after the re-domiciliation date (i.e. the date of issue of the certificate of re-domiciliation) ("transitional period"), the re-domiciled company must be deregistered in its place of incorporation and submit to the Registrar a document evidencing the deregistration to the satisfaction of the Registrar. According to the Administration, this arrangement serves to ensure the effective preservation of the company's identity as a legal entity throughout the re-domiciliation process while facilitating its operation in Hong Kong as a re-domiciled company during the transitional period. Expressing concern about the potential impact of the excessively long transitional period on the company's legal proceedings, members have suggested that the Administration should, with reference to the relevant legislation of Singapore, adjust the time frame for deregistration to 60 days to reduce potential legal risks.

48. The Administration has advised that 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 Cap. 622 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 contracts, 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. The Administration considers that this provision effectively minimizes the potential legal risks in relation to the concerned companies. The Administration understands that the outward company re-domiciliation mechanisms 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.

49. The Administration has further advised that during the public consultation exercise, stakeholders including the professional sector (including accounting firms, the Hong Kong Federation of Insurers and the Hong Kong Corporate Governance Institute) indicated that the originally proposed 60-day period might not be sufficient for a company to complete the deregistration procedures in its place of incorporation and submit evidence to the Registrar. The reasons include that it would take time for the company to respond to requirements for outward re-domiciliation from the place of incorporation, e.g. notification to stakeholders on the outward re-domiciliation and tax clearance procedures. In addition, based on the past experience of the Companies Registry in handling applications for re-domiciliation of limited partnership funds, the duration between the issuance of the certificate of re-domiciliation and the submission of evidence of deregistration in the place of incorporation in many cases spans across two months or above. As there are more criteria and required documents for company re-domiciliation than for funds re-domiciliation, and the background, business nature, size and place of incorporation of companies re-domiciling to Hong Kong are expected to vary more significantly than those of funds, the time required for a re-domiciled company to complete the deregistration in the place of incorporation may be longer than that for a re-domiciled limited partnership fund to do so. The Administration has also drawn reference from the practices of other jurisdictions. Except for Singapore which expressly requires companies that have re-domiciled there to deregister in their place of incorporation and submit evidence within 60 days after the re-domiciliation date, the inward company re-domiciliation regimes of Australia, New Zealand and other traditional offshore jurisdictions do not have in place statutory requirements for deregistration in the place of incorporation.

Legal proceedings during the transitional period

50. To gain a better understanding of the impact of the transitional period on a re-domiciled company's legal proceedings, members have sought information on the mechanisms in other jurisdictions with re-domiciliation regimes for handling legal proceedings involving the following companies, including those already involved in the proceedings before re-domiciliation or those facing lawsuits only after the re-domiciliation date:

(a) a re-domiciled company which has not yet been deregistered in its place of incorporation; and

(b) a re-domiciled company which has been deregistered in its place of incorporation.

51. The Administration has advised the Bills Committee that the proposed new section 820D(1)(c) and (2) of Cap. 622 respectively deal with a re-domiciled company's legal proceedings arising before the re-domiciliation date, and legal proceedings arising on or after the re-domiciliation date. The Bill seeks to put in

place stringent safeguards to ensure that the company is not involved in legal procedures for winding up or liquidation during the application process, i.e. before the re-domiciliation date. Under the requirements of the proposed new Schedule 6C to Cap. 622, the applicant must submit a certificate signed by a director and issued within 35 days before the application date certifying that, among other things, the applicant has not been notified of any petition or order for winding up or liquidation against it, to be accompanied by a legal opinion of a legal practitioner who practises the law of the place of incorporation of the applicant that, among other things, there is no petition to wind up or liquidate the applicant in its place of incorporation; and that there is no order to wind up or liquidate the applicant in its place of incorporation. In other words, if at the time of application there are ongoing winding up or liquidation or relevant legal proceedings relating to the applicant, the applicant does not meet the re-domiciliation criteria.

Re-domiciled company not yet deregistered in the place of incorporation

52. As regards legal proceedings in respect of a re-domiciled company which has yet to be deregistered in its original domicile, the Administration has advised that under the proposed new section 820D(1)(c) of Cap. 622, any legal proceedings already commenced or continued in relation to a re-domiciled company will not be affected by the re-domiciliation of the company. The relevant legal proceedings may continue according to the existing procedures. This apart, under the proposed new section 820D(2), any legal proceedings that could have been commenced in respect of the company before the re-domiciliation date but have not been commenced may still be commenced on or after the re-domiciliation date. Most importantly, where a litigation in relation to a company is to be commenced or continued is not solely dependent on the company's place of registration. Other factors such as the nature of the subject matter of the litigation must also be taken into consideration. The court will determine whether it has jurisdiction over an individual case and the applicable law to try the case. When deciding whether it has jurisdiction to try a civil case,[2] the Hong Kong court is generally guided by the "forum conveniens" principle, which is to consider whether the Hong Kong court is the most appropriate forum to hear the case in the interests of all parties and for the ends of justice. Factors to be taken into account include (a) whether the claim is actionable in Hong Kong; (b) whether there is an appropriate remedy under Hong Kong laws to enforce the plaintiff's claim; (c) (if the proceeding involves contractual matters) the agreement between the parties to the contract on the governing law; and (d) the location of the property concerned in the proceeding. Hence, re-domiciliation per se does not automatically transfer proceedings in the place of incorporation of the re-domiciled company to Hong Kong.

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[2] In terms of criminal proceedings, generally speaking, the courts in Hong Kong have jurisdiction to try offences committed within the territory of Hong Kong and in violation of Hong Kong laws.

Re-domiciled company already deregistered in the place of incorporation

53. The Administration has advised that when a re-domiciled company has been deregistered in its place of incorporation, legal proceedings relating to it that have been commenced or continued will, similarly, not be affected according to the proposed new section 820D(1)(c) of Cap. 622; and legal proceedings that could have been commenced in respect of the company before the re-domiciliation date but have not been commenced may still be commenced under the proposed new section 820D(2). As mentioned above, where a litigation in relation to a company is to be commenced or continued is not solely dependent on the company's place of registration. Other factors such as the nature of the subject matter of the litigation must also be taken into consideration. The court will determine whether it has jurisdiction over an individual case and the applicable law to try the case.

54. In response to members' enquiries about overseas practices, the Administration has advised that the drafting of the proposed new section 820D(1)(c) and (2) of Cap. 622 is modelled on section 361(2) of the Companies Act 1967 of Singapore. The laws on the inward company re-domiciliation mechanisms of Australia, New Zealand, Bermuda, the Cayman Islands and the British Virgin Islands also contain provisions similar to the proposed new section 820D(1)(c) and (2)[3] to set out the effect of re-domiciliation on legal proceedings in relation to incoming companies. Moreover, traditional offshore jurisdictions including the Cayman Islands and the British Virgin Islands also have similar provisions in the laws on their outward company re-domiciliation mechanisms to make it clear that the outward re-domiciliation of a local company does not affect the company's legal proceedings.[4]

Meaning of "eligible member"

55. Under section 4(1)(e) and (f) of the proposed new Schedule 6A to Cap. 622, if the applicant is required to obtain consent from its members for the re-domiciliation under the law of the place of incorporation or the constitutional document of the applicant, such requirement must be complied with; but if there is no such requirement, a resolution for the re-domiciliation must be duly passed by at least 75% of the eligible members. Considering that section 4(2) of the proposed new Schedule 6A does not provide a clear explanation on the meaning

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[3] For details, please refer to section 601BM of the Corporations Act 2001 of Australia, section 349 of the Companies Act 1993 of New Zealand, section 132E(3) of the Companies Act 1981 of Bermuda, section 202(3)(j) of the Companies Act (2025 Revision) of the Cayman Islands and section 183(3)(b) of the Business Companies Act (2025 Revision) of the British Virgin Islands.

[4] For details, please refer to section 207(3)(f) of the Companies Act (2025 Revision) of the Cayman Islands and section 184(5)(c) of the Business Companies Law (2025 Revision) of the British Virgin Islands.

of eligible members, members have requested the Administration to review the drafting of the relevant provisions to provide more explicitly for the meaning of the term.

56. The Administration has advised that after taking into account members' views regarding the requirement of consent of 75% of members for a re-domiciliation application, it will propose an amendment to refine section 4(1)(f) of the proposed new Schedule 6A to Cap. 622, to more clearly reflect the policy intent of the requirement that if the law of the place of incorporation of the applying company or its constitutional document does not impose a members' consent requirement for a re-domiciliation application, the company must obtain a members' resolution passed by a majority of at least 75%. The resolution may be passed at a meeting or in written form. If passed at a meeting, the resolution may be passed by votes by members attending the meeting in person and duly appointed proxies. The Administration will also propose an amendment to make consequential amendments to the relevant provisions, including amending section 2(1)(f)(viii) of the proposed new Schedule 6C to Cap. 622 to reflect the policy intent that the re-domiciliation form must be accompanied by a legal opinion of a legal practitioner who practises the law of the place of incorporation of the applicant confirming that a resolution has been duly passed by the applicant in compliance with the relevant requirement.

Documents to accompany the re-domiciliation form

57. 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, the applicant must submit every other document that the Registrar required for determining the application. The Legal Adviser to the Bills Committee has requested the Administration's clarification as to what those documents would be and how to know the list of documents as required under section 2(1)(g) of the proposed new Schedule 6C.

58. The Administration has responded that section 2(1)(g) of the proposed new Schedule 6C to Cap. 622 is intended to provide flexibility for the Registrar to require further documents. Given that the proposed new section 820C(4) of Cap. 622 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 of 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, the Administration comes 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. The Administration will propose an amendment to remove section 2(1)(g) of the proposed new Schedule 6C to Cap. 622 and any references to that section.

59. Members opine that the Administration should consider amending section 2(1)(f) and 2(2) of the proposed new Schedule 6C to Cap. 622 to expressly provide that the legal opinion and certificate submitted by an intended re-domiciled company in respect of its re-domiciliation application must disclose and certify whether the intended re-domiciled company has been involved in any legal proceedings pertaining to its debts.

60. The Administration has advised that under section 2(1)(f)(ix) to (xii) and 2(2)(c), (d), (f) and (g) of the proposed new Schedule 6C to Cap. 622, the applicant is required to submit a legal opinion of a legal practitioner who practises the law of its place of incorporation as well as a certificate signed by its director to confirm, in relation to the place of incorporation and any other place respectively, that:

(a) there is no petition or similar proceedings to wind up or liquidate the applicant that is pending;

(b) there is no order to wind up or liquidate the applicant;

(c) no person is appointed or acting as a receiver or liquidator with respect to the applicant or any property of the applicant; and

(d) the applicant is not operating or carrying on business under any scheme, order, compromise or other similar arrangement, relating to the insolvency of the applicant that is entered into or made by the applicant with any other person.

The purpose of the above requirements is to ensure the solvency status of the applicant so as to avoid insolvent companies or companies which have already initiated procedures to cease business to re-domicile to Hong Kong. The proposed requirements in relation to solvency are the same as the company inward re-domiciliation requirements of Singapore, Australia and New Zealand.[5] As regards other legal proceedings related to the indebtedness of the applicant but not related to the winding up, liquidation or other related matters ("non-winding up debt matters"), the Administration considers that since one of the eligibility requirements under the proposed re-domiciliation regime is that the applicant must have been incorporated for at least one financial year, it is not uncommon for the applicant to have incurred debts. Given the legal proceedings on non-winding up

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[5] For details, please refer to section 7(h) to (l) of the Companies (Transfer of Registration) Regulations 2017 of Singapore; section 601BC(7) of the Corporations Act 2001 of Australia; and section 347 of the Companies Act 1993 of New Zealand.

debt matters do not directly reflect an applicant's solvency status, the Bill contains no provision that suggests requiring the applicant to disclose or confirm non-winding up debt matters when applying for re-domiciliation. Currently, Cap. 622 does not require local companies or registered non-Hong Kong companies to disclose legal proceedings on non-winding up debt matters in relation to them either. Similarly, other jurisdictions including Singapore, Australia and New Zealand do not require applicants to disclose or confirm their non-winding up debt matters.

61. Members also note that the Administration, having regard to the views expressed by deputations, will propose an amendment to the effect that the legal opinion required to accompany the re-domiciliation form under section 2(1)(f) of the proposed new Schedule 6C to Cap. 622 must be issued by a legal practitioner practising the law of the place of incorporation of the applicant within 35 days before the application date of the re-domiciliation. The above proposed amendment is in alignment with the arrangement for the director's certificate referred to in section 2(2) and (3) of the proposed new Schedule 6C.

Solvency

62. On solvency, members have enquired about the reasons for not requiring the applicant to prove that it is able to pay all its debts. The Administration has advised that the policy intent of section 2(2)(o)(ii) of the proposed new Schedule 6C to Cap. 622 is that the applicant will be able to pay its debts that will fall due within the 12-month period beginning on the application date. This is in line with the solvency requirement under the re-domiciliation regime in Singapore. In addition, the applicant is required to submit a certificate signed by a director certifying that, among other things, the applicant has not been notified of any petition or order for winding up or liquidation in any place and that the applicant has served on all its creditors notice of the applicant's proposal to become a re-domiciled company. As the current drafting of the provisions may be interpreted as requiring the applicant to be able to pay all its debts, regardless of the due date, within the 12-month period from the application, the Administration will propose an amendment to eliminate such ambiguity.

Insurance Ordinance

Re-domiciled insurer

63. The proposed new section 3BA of the Insurance Ordinance (Cap. 41) (clause 119 of the Bill), which relates to a non-HK insurer becoming a re-domiciled insurer, provides that a non-HK insurer who wishes to become a re-domiciled insurer must first obtain the approval of the Companies Registry for registration as a re-domiciled company, followed by deregistration from its place of incorporation. The proposed new section 3BA of Cap. 41 also requires a non-HK

insurer, before applying for registration as a re-domiciled company under the proposed new section 820B of Cap. 622, to apply for issuance of a letter of no-objection to the registration as a re-domiciled company from the Insurance Authority ("IA"). Members have enquired why non-HK insurers are required to complete re-domiciliation registration in Hong Kong and deregistration in their places of incorporation before they are regarded as re-domiciled insurers.

64. The Administration has advised that this arrangement is specifically designed for insurers and banks, and is intended to avoid the need to make corresponding changes in the regulation of insurers or banks within a short period of time in the event that an entity fails to deregister in its place of incorporation within 120 days after the re-domiciliation date, resulting in the loss of its registered status as a re-domiciled company. In response to further enquiries from members, the Administration has indicated that IA, in considering the issuance of a letter of no-objection, will examine whether a non-HK insurer can meet the same regulatory requirements as HK insurers once it has become a re-domiciled insurer.

Notification requirements

65. The Legal Adviser to the Bills Committee notes that under the proposed new section 43F(2) of the Banking Ordinance (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 the Monetary Authority ("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. However, no similar notification requirements are 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. In this connection, the Legal Adviser to the Bills Committee has sought clarification from the Administration on the reason(s) for not imposing similar notification requirements on re-domiciled insurers, and how IA can be informed of the fact that an authorized insurer has become a re-domiciled insurer and has been deregistered.

66. The Administration has explained that 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 Hong Kong Monetary Authority and IA based on the needs and practices of the respective regulated sectors, and may thus not necessarily be completely identical with each other. There are existing provisions in Cap. 41 that would enable 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 IA of any change in their particulars in a form specified by 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 IA for the purposes of section 14(1) of Cap. 41. 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 the proposed section 3BA(1) of Cap. 41 as there will be a change of domicile, i.e. when the non-HK insurer (a) 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 (b) is deregistered from its place of incorporation—at which point of time such place is no longer the domicile of the non-HK insurer.

67. The Administration has further advised that where a company (other than an authorized insurer) incorporated outside Hong Kong re-domiciles to Hong Kong and subsequently becomes a re-domiciled insurer upon IA's 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 becoming 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 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 been deregistered from its place of incorporation, and 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 IA of it having become a re-domiciled company or having been deregistered from its place of incorporation; this notification would in practice be provided to IA during the new authorization process, given that the new authorization application form specified by IA under section 7(2)(a) of Cap. 41 will include a question on the applicant's domicile and any change thereof.

Imposition of criminal sanction

68. The proposed new section 64P(2A) of Cap. 41 provides that if a licensed insurance intermediary that is a non-Hong Kong company later becomes a re-domiciled company, the licensed insurance intermediary must notify IA in writing of such fact within 14 days after it becomes a re-domiciled company. The Legal Adviser to the Bills Committee has enquired why no criminal sanction is proposed to be imposed for contravening the aforesaid provision.

69. According to the Administration, the rationale for asking licensed insurance intermediaries (which are non-Hong Kong corporations) to notify IA when they later become re-domiciled companies under the proposed new section 64P(2A) of Cap. 41 (i.e. to notify IA of a change of their places of domicile) is to

assist IA in maintaining a more complete and updated record of the intermediaries 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 the public. The same rules and regulations apply to the licensed insurance intermediaries regardless of their places of domicile. Therefore, IA does not consider a breach of the proposed new section 64P(2A) of Cap. 41 should constitute a criminal offence by the licensed insurance intermediary.

70. On the further enquiry of the Legal Adviser to the Bills Committee, the Administration has advised that if an insurance intermediary contravenes the proposed new section 64P(2A) of Cap. 41, IA will exercise the powers conferred on it to take disciplinary action against the intermediary.

Business Registration Ordinance

71. In respect of the proposed new section 7A(6) of the Business Registration Ordinance (Cap. 310) (relating to the refund of the paid business registration fee and levy to the body corporate by the Commissioner of Inland Revenue if the Registrar refuses to register a company incorporated outside Hong Kong), members have asked the Administration to explain the reasons for refunding the paid fee and levy to the body corporate instead of the person making the submission, and advise whether the implementation of the proposed refund arrangement would give rise to administrative difficulties.

72. The Administration has advised that with reference to the existing section 5A of Cap. 310 concerning the payment of business registration fee and levy in incorporation submissions as well as section 7A(4) concerning the refund of the relevant business registration fee and levy (which refer to the payer and party receiving the refund as "the person who made the submission"), the Administration will propose an amendment to specify in the proposed new section 7A(6) concerning the refund arrangement of business registration fee and levy in re-domiciliation applications that the refund is to be made to "the person who made the re-domiciliation application" so as to align with the reference to the payer in the proposed new section 5BB concerning the payment of business registration fee and levy in re-domiciliation applications.

Mandatory Provident Fund Schemes (General) Regulation

73. Clause 235 of the Bill proposes to amend section 62 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) to require an approved trustee of a registered scheme to give written notice to the Mandatory Provident Fund Schemes Authority ("MPFA") no later than three working days after

becoming aware of any change in its domicile. Members are concerned that the proposed notification requirement in Cap. 485A is different from that in the proposed new section 22(2)(b) of the Occupational Retirement Schemes Ordinance (Cap. 426), and have thus requested the Administration to advise whether the relevant provisions of Cap. 485A would be amended with reference to the proposed requirement in the relevant provisions of Cap. 426, so as to provide clearly that the approved trustee is only required to give the notice after the completion of deregistration in its original domicile.

74. The Administration has explained that MPFA is a statutory body established under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to regulate and supervise trustees and the operation of their Mandatory Provident Fund ("MPF") schemes. At the same time, MPFA also acts as the Registrar of Occupational Retirement Schemes under Cap. 426, and is mainly responsible for handling applications for registration and exemption of occupational retirement schemes ("ORSO schemes") and supervising relevant employers and administrators of ORSO schemes to ensure compliance with statutory requirements. Under the respective regimes under Cap. 485 and Cap. 426, the regulatory requirements imposed by MPFA on approved trustees, employers and administrators do not vary by the place of incorporation. In light of the introduction of a company re-domiciliation regime, MPFA is of the view that requiring the related persons to give notice regarding re-domiciliation to ensure completeness of information will sufficiently satisfy its regulatory needs. Given the different nature of MPF schemes and ORSO schemes, the statutory notification requirements applicable to these schemes under Cap. 485 and Cap. 426 are also different.

75. The Administration has added that with respect to the requirements of notifying MPFA, Cap. 485A currently provides that if a trustee becomes aware of the occurrence of an event of significant nature, the trustee must, not later than the third specified working day after becoming aware of the event, give notice to MPFA. Therefore, the Bill correspondingly requires that a trustee must notify MPFA of its proposed change as well as change of domicile no later than the third specified working day (i.e. a trustee is required to give notice on its plan to apply for re-domiciliation, its becoming a re-domiciled company, and its deregistration in the place of incorporation). As the Registrar of Occupational Retirement Schemes, MPFA shall keep a register of ORSO schemes as required by Cap. 426. Accordingly, section 22 of the Ordinance requires a designated person to notify MPFA of significant changes of the designated person or administrator within one month of the changes. In other words, when compared with Cap. 485A, Cap. 426 only requires the related persons to notify MPFA after the actual occurrence of the change for MPFA's updating of its register.

76. The Administration has further advised that the Bill correspondingly requires a designated person or an administrator to notify MPFA within one month

after its deregistration in its place of incorporation (i.e. the designated person or administrator will no longer have its registration as a re-domiciled company revoked by the Registrar because of non-compliance with the requirement to deregister in the place of incorporation). All in all, the currently proposed new requirements for notification of significant events in relation to re-domiciliation have already considered the existing notification mechanisms under Cap. 485A and Cap. 426, and serve to align with the current arrangements as well as to facilitate compliance.

Securities and Futures (Approved Securities Registrars) Rules

77. In briefing the Bills Committee on its draft proposed amendments, the Administration has advised that subsequent to the introduction of the Bill into the Legislative Council, the Securities and Futures (Approved Securities Registrars) Rules (Cap. 571AT) were gazetted on 14 February 2025. Section 2 of Part 1 of the Schedule to Cap. 571AT is modelled on Part 1 of Schedule 1 to the Securities and Futures (Licensing and Registration) (Information) Rules (Cap. 571S). Clause 254(2) of the Bill proposes to add to the meaning of "basic information" in section 2 of Part 1 of Schedule 1 to Cap. 571S information regarding the past and latest places of domicile of a corporation. As such, an amendment will be correspondingly proposed to amend Cap. 571AT such that "basic information" therein also includes similar information regarding the past and latest places of domicile of a corporation.

Proposed fees for re-domiciliation application

78. Clause 89 of the Bill proposes to amend Schedule 1 to the Companies (Fees) Regulation (Cap. 622K) to provide for the total application fee for company re-domiciliation at HK$6,050 (if lodged in electronic form) and HK$6,725 (if lodged in hard copy form). Members have suggested that the Administration consider adjusting upwards such fees. The Administration has advised that 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, the Administration has undertaken to, considering actual operational experience and costs for processing re-domiciliation applications, review the relevant fees and adjust the fee levels as necessary under the Government's fee review mechanism in due course.

Proposed new offences

79. The Legal Adviser to the Bills Committee has observed that 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) 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).

80. In response to the enquiry of the Legal Adviser to the Bills Committee, the Administration has clarified that its legislative intent is to make the proposed new offences as listed in paragraphs (a) to (l) above strict liability offences (i.e. the prosecution need not prove the existence of *mentes reae* of committing the offences). In respect of the proposed new offences that are not provided with a statutory defence (i.e. paragraphs (a), (b) and (d) above), the implied common law defence of "honest and reasonable mistaken belief" would be available to a person charged with such an offence. The Administration has remarked that 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. In respect of other proposed new offences (i.e. paragraphs (c), (e) to (l) above), the Administration has clarified that a defendant can only rely on the relevant statutory defence provided in the Bill or Cap. 155.

81. The Administration has further explained that in respect of the new offences under the proposed new sections 338A(7), 791(8) and 820G(2) of Cap. 622, if the person is charged with the offence based on the person being a responsible person (within the meaning of section 3 of Cap. 622) of a re-domiciled company/registered non-Hong Kong company, or being an agent who authorizes or permits the contravention (as the case may be), the prosecution is not required to prove that the defendant has the intention to knowingly and wilfully authorize or permit the contravention. However, the prosecution is still required to prove the defendant's actual knowledge, wilful blindness or recklessness.

82. 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, the Legal Adviser to the Bills Committee has asked the Administration to consider adding the reference to the proposed new section 791(8) of Cap. 622 to the proposed new section 791A(2)(b) of Cap. 622.

83. The Administration has advised that in the case where a re-domiciled company which is a registered non-Hong Kong corporation 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 for registration a

return containing the particulars of the change of the place of incorporation of the company as defined in the 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. The Administration will propose an amendment to this effect.

84. The offence under section 74(2) of Cap. 622 (failure to deliver director's written consent) is currently listed in Schedule 7 to Cap. 622. 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), both of which concern the failure of a director to deliver written consent to the Registrar. In this connection, the Legal Adviser to the Bills Committee has sought the reason(s) for not including the proposed new offence under sections 820G(2) of Cap. 622 (failure to deliver director's written consent) in Schedule 7 to Cap. 622 as a compoundable offence.

85. The Administration has advised that upon review, given the offence under section 74(2) of Cap. 622 is compoundable as listed in Schedule 7 to Cap. 622, it will propose an amendment to add the proposed new section 820G(2) of Cap. 622 to the said Schedule to render it a compoundable offence.

86. 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), the Legal Adviser to the Bills Committee has sought 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)).

87. The Administration has advised that the level of penalty for the new offences under 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, i.e. a fine at tier 8 (HK$1,000,000) and imprisonment for 2 years. The Administration will propose amendments to this effect.

<u>Benefits and promotion of the proposed company re-domiciliation regime</u>

88. Members have enquired how the proposed re-domiciliation regime would benefit the economic development of Hong Kong. The Administration has explained that in the light of international tax and regulatory developments in recent years, including the implementation of the 15% global minimum tax imposed on large in-scope multinational enterprise groups under BEPS 2.0 and the

economic substance requirements imposed on some companies incorporated or registered in certain jurisdictions in recent years, these companies face increasing compliance burden as they are subject to two sets of regulations in two jurisdictions, thus creating a market demand for re-domiciliation to Hong Kong. Hong Kong's simple tax regime and compliance requirements are also incentives for these companies to transfer their domicile to Hong Kong. Attracting non-Hong Kong incorporated companies to re-domicile to Hong Kong will bring greater demand for Hong Kong's professional services (such as company secretary and accounting services) and create more investment as well as skilled job opportunities as it is likely that re-domiciled companies would move some of their business operations to Hong Kong.

89. Members are of the view that the proposed company re-domiciliation regime would help attract foreign enterprises to set up their presence in Hong Kong, and they urge the Administration to step up publicity and promotion after the company re-domiciliation regime is established. Expressing the view that with the promulgation of the "Guidelines for Deregistration of Enterprises (Revised in 2023)" by the State Administration for Market Regulation, General Administration of Customs and State Taxation Administration, it could not be ruled out that the relevant Mainland authorities would draw up a mechanism for outward re-domiciliation, some members have suggested that the Administration publicize the proposed re-domiciliation regime of Hong Kong and its merits to the Mainland authorities and enterprises.

90. The Administration has advised that apart from gazettal of the enacted Ordinance, it will actively promote, through the Economic and Trade Offices, Invest Hong Kong and the Office for Attracting Strategic Enterprises, the proposed re-domiciliation regime to non-Hong Kong corporations operating in Hong Kong after the implementation of the proposed regime. To assist companies intending to re-domicile to Hong Kong in submitting their applications, the Companies Registry will also publish a "Guide on Company Re-domiciliation" to provide comprehensive information including the application requirements, application procedures, fees payable, filing obligations and obligations after re-domiciliation. Such Guide will also be made available on the Companies Registry's website.

91. Pointing out that there are more than 15 000 non-Hong Kong companies registered under Part 16 of Cap. 622, members have suggested that the Administration proactively reach out to these companies and consider providing them with incentives, such as tax concessions or waiver of re-domiciliation fees, so as to attract them to re-domicile to Hong Kong and become a new driving force for the development of the local economy.

92. The Administration has advised that upon successful registration under the proposed amended Cap. 622, re-domiciled companies will be able to preserve their identity, i.e. no new legal entity is created throughout the re-domiciliation

process. The re-domiciliation process would not affect the re-domiciled companies' tax obligations in the jurisdiction of their original domicile. Since the process will not entail any transfer of the company's assets, no stamp duty liabilities will arise from the process. Upon approval of the re-domiciliation application, a re-domiciled company is to be treated in the same way as a Hong Kong-incorporated company. As stamp duty is payable on the transfer of shares by a Hong Kong-incorporated company, the re-domiciled company is treated as a Hong Kong-incorporated company from the re-domiciliation date and is therefore required to pay stamp duty on the transfer of shares in the same way as any other Hong Kong companies, so as to achieve a level playing field.

Other drafting issues

Overall drafting approach

93. Members have pointed out that apart from amending Cap. 622, the Bill also entails amendments to the subsidiary legislation under Cap. 622 and other enactments, but the overall drafting approach is too cumbersome to achieve simplicity and readability. In this connection, members have suggested that the Administration consider making related or consequential amendments to Cap. 622 by adopting a concise and generalized drafting approach with reference to the relevant legislation of other jurisdictions, and in particular, in respect of the relevant transitional provisions, consider including all the situations to which Cap. 622 applies in a general provision. Members have also urged the Administration to use concise and easily understandable terminology and drafting approach in drafting other bills in future, in particular those with greater impact on people's livelihood.

94. The Administration has advised members that the law drafting approaches of the inward company re-domiciliation regime of other jurisdictions vary. Australia and the Cayman Islands both provide for the detailed requirements for inward re-domiciliation applications in the primary legislation of their company laws; [6] Singapore provides for the application requirements and forms by regulation; [7] while Bermuda and the British Virgin Islands provide for the requirements for inward re-domiciliation applications in their primary legislation and empower the relevant authorities to separately determine the format of application documents. [8] Statutes must be clear and certain. The transitional provisions contained in the Bill clearly set out the continuing obligations of a registered non-Hong Kong company turned re-domiciled company to ensure

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6 For details, please refer to section 601BC of the Corporations Act 2001 of Australia and section 201 of the Companies Law (2025 Revision) of the Cayman Islands.

7 For details, please refer to the Companies (Transfer of Registration) Regulations 2017 of Singapore.

8 For details, please refer to section 132C of the Bermuda Companies Act 1981 and section 181 of the British Virgin Islands Business Companies Act (2025 Revision).

clarity and certainty of the law. These transitional provisions further clarify whether a company or a relevant person will incur criminal liability if the company fails to meet such continuing obligations.

95. The Administration has further explained that if the transitional provisions in the Bill (such as the proposed new sections 339A and 340A of Cap. 622) only provide in general terms that the relevant provisions of Cap. 622, with adaptation or necessary modifications, apply to a re-domiciled company that is formerly a registered non-Hong Kong company, but do not clearly specify the circumstances under which a company must continue to perform certain obligations under certain provisions (such as sections 339 and 340), the company or relevant persons will not be able to know or ascertain what the continuing obligations are, what the legal consequences will be if they fail to perform them, or who will bear criminal liability. Furthermore, difficulties and problems will arise in enforcement and prosecution. It is therefore necessary to make comprehensive transitional provisions.

Reference to "company"

96. Some members note that there is inconsistency in the references to the term "company" in Cap. 622, as "corporation" is used in the proposed new Part 17A while "body corporate" is used in other provisions. To avoid confusion, members have suggested aligning the wordings by using "company" as a reference to a company.

97. According to the Administration, in the existing Cap. 622, the term "corporation" is generally used to refer to a corporation as defined in Cap. 571, and its usage is similar to that of a proper noun. For instance, section 5 of Cap. 622 provides that a qualified private company may, by passing a special resolution specified for the purpose of that section, declare that it is dormant and deliver the resolution to the Registrar for registration so as to become a dormant company from the date specified in the resolution. Section 5(7) provides that the meaning of a qualified private company does not include a "corporation" licensed under Part V of Cap. 571 to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance. As for the term "body corporate", it is defined in section 2(1) of Cap. 622 to include a company and a company incorporated outside Hong Kong, but does not include a corporation sole. Its meaning is broader than that of the term "company".

98. The Administration has further advised that section 2(1) of Cap. 622 also defines the term "company". Unless the context otherwise requires, the term "company" means a company formed and registered under that Ordinance or a company formed and registered under the former Companies Ordinance. The reference to "company" in sections 464 and 652 of Cap. 622 is to be construed in this sense. Subject to the passage of the Bill, the definition will also cover

re-domiciled companies. Individual provisions of Cap. 622 should adopt/refer to "body corporate" or "company" with consideration to the policy intent and the applicability to the provisions concerned.

"Material date" and "specified date"

99. Under the existing section 334 of Cap. 622, a specified charge means a charge created on or after the commencement date of section 334. Clause 16 of the Bill proposes to add a definition of "material date" to section 334, which seeks to provide that for a re-domiciled company, a specified charge means a charge created on or after the re-domiciliation date. Some members note that the definition of "specified date" in the proposed amended section 139(6) of Cap. 622 is the same as the above definition of "material date". To avoid confusion, members have suggested that the Administration consider aligning the wordings of the two definitions. The Administration has explained that the proposed amended section 334 of Cap. 622 adopts the term "material date" instead of "specified date" with consideration that the term "specified charge" is used in that section, thus "material date" may facilitate differentiation by readers. Taking into account members' views, the Administration will propose an amendment to replace the term "specified date" in the proposed amended section 139(6) with "material date" so as to align the two defined terms.

Definition of "non-Hong Kong company"

100. Given that the Bill proposes to amend the definition of "non-Hong Kong company" and add a definition of "re-domiciled company" under Cap. 622, as well as to add the definition of "re-domiciled company" correspondingly in other enactments (e.g. Cap. 485 and Cap. 571), some members have sought explanation on why it is still necessary to amend certain provisions of Cap. 485, Cap. 571, Cap. 622 (including the relevant subsidiary legislation) and other enactments to provide that a re-domiciled company is not included as "a company incorporated outside Hong Kong".

101. The Administration has explained that section 2(1) of Cap. 622 defines a "non-Hong Kong company" as a company incorporated outside Hong Kong that——

(a) establishes a place of business in Hong Kong on or after the commencement date of Part 16 of Cap. 622; or

(b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date.

Clause 3(4) of the Bill proposes to amend the definition of "non-Hong Kong company" to exclude a re-domiciled company. In other words, after the amendment, in order to be covered by the revised definition of "non-Hong Kong company", a company, in addition to being incorporated outside Hong Kong, must also meet the descriptions in (a) or (b) above and must not be a re-domiciled company. The reference to "a company incorporated outside Hong Kong" in Cap. 622 and other Ordinances is not synonymous with the aforementioned defined term "non-Hong Kong company". The former has a wider scope than the latter. Therefore, even though some enactments (such as Cap. 485 and Cap. 571) define "non-Hong Kong company" as having the meaning given by Cap. 622 as amended under the Bill, a re-domiciled company still needs to be expressly carved out from the references to "a company incorporated outside Hong Kong" to reflect the policy intent.

Use of "established" and "incorporated"

102. With reference to the drafting of the Financial Institutions (Resolution) Ordinance (Cap. 628), members have suggested that the Administration consider replacing "incorporated" with "established or incorporated" in the proposed new section 2(5B)(b) of Cap. 622.

103. The Administration has advised that the proposed new section 2(5A) of Cap. 622 is a general deeming provision intended to state the policy intent 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 achieve the said policy intent, the Bill introduces amendments and modifications to individual provisions of Cap. 622 and other enactments to clarify how the policy intent is to be applied specifically under different contexts, such that the general deeming provision and the amendments and modifications of individual provisions complement each other to ensure that the policy intent of the re-domiciliation regime can be fully and effectively applied in different policy areas.

104. The Administration has reiterated that the key effects of the amendments and modifications to individual provisions in the Bill include:

(a) rendering provisions that apply to a company or body corporate incorporated in Hong Kong also applicable to a re-domiciled company (see the proposed new section 2(5B)(a) of Cap. 622); and

(b) rendering provisions that apply to a company or body corporate incorporated outside Hong Kong not applicable to a re-domiciled company (see the proposed new section 2(5B)(b) of Cap. 622) ("the Modifications").

The proposed new section 2(5B) of Cap. 622 provides that the proposed new section 2(5A) is subject to any amendment in the Bill that has the effect of the Modifications.

105. Members have pointed out that the Bill introduces amendments to certain provisions to exclude a re-domiciled company, and those provisions refer to certain companies or body corporates incorporated outside Hong Kong as "established or incorporated". It is thus suggested that the Administration consider replacing "incorporated" with "established or incorporated" in the reference to "a company or body corporate incorporated outside Hong Kong" in the proposed new section 2(5B)(b) of Cap. 622. The Administration has advised that the proposed new section 2(5B)(b) of Cap. 622 refers to "any amendment … to a provision … that has the effect that …" in the Bill. The amended provision is not strictly required to contain the wording of the Modifications in order for the proposed new section 2(5B)(b) to be applicable. In other words, so long as the Modifications have the effect of rendering a provision that applies to a company or a body corporate incorporated outside Hong Kong not applicable to a re-domiciled company, the proposed new section 2(5B)(b) of Cap. 622 will apply regardless of whether it adopts the wording "incorporated" or "established or incorporated".

106. The Administration has further explained by citing examples that clause 98(3) of the Bill amends section 41Y(1)(b)(iii) of the Trustee Ordinance (Cap. 29) by adding "that is not a re-domiciled company" after the reference to "a body corporate incorporated or established outside Hong Kong". Although the wording of the provision (i.e. "a body corporate incorporated or established outside Hong Kong") is different from the wording of the proposed new section 2(5B)(b) of Cap. 622 (i.e. "a company or body corporate incorporated outside Hong Kong"), the effect is to exclude a re-domiciled company. Therefore, the proposed new section 2(5B)(b) of Cap. 622 will apply, meaning the applicability of the proposed new section 2(5A) of Cap. 622 to section 41Y(1)(b)(iii) of Cap. 29 will be subject to the Modifications to section 41Y(1)(b)(iii) of Cap. 29 under the Bill. In summary, as the proposed new section 2(5B)(b) of Cap. 622 refers to an amendment having the effect of the Modifications, the wording of this proposed new section that describes the Modifications will not have any substantive impact on its applicability. Thus, there is no need to replace the word "incorporated" with "established or incorporated" in this proposed new section.

Proposed amendments to the Bill

107. In addition to the proposed amendments referred to in paragraphs 30, 56, 58, 61, 62, 72, 77, 83, 85, 87 and 99 above, the Administration will also propose a number of textual and technical amendments to the Bill. The Bills Committee has no objection to these proposed amendments.

108. The Bills Committee will not propose any amendments to the Bill.

Consultation with the House Committee

109. The Bills Committee reported its deliberations to the House Committee on 11 April 2025.

Council Business Divisions
Legislative Council Secretariat
7 May 2025

Appendix 1

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

Membership list

Chairman	Hon Edmund WONG Chun-sek
Deputy Chairman	Hon Adrian Pedro HO King-hong
Members	Hon CHAN Kin-por, GBS, JP Hon Paul TSE Wai-chun, JP Hon MA Fung-kwok, GBS, JP Dr Hon Junius HO Kwan-yiu, BBS, JP Hon Doreen KONG Yuk-foon Hon LAM San-keung, JP Hon CHAN Pui-leung Hon Benson LUK Hon-man Hon Carmen KAN Wai-mun, JP (Total: 11 members)
Clerk	Ms Jessica CHAN
Legal Adviser	Ms Clara WONG

Appendix 2

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

List of organizations that have given views to the Bills Committee

1. Society of Chinese Accountants and Auditors
2. The Law Society of Hong Kong
3. KPMG Tax Services Limited
4. Deloitte Advisory (Hong Kong) Limited
5. Davis Polk & Wardwell