

Companies (Amendment) (No. 2) Bill 2024

Debate and voting arrangements

Object of the Bill :

To:

- (a) amend the Companies Ordinance (Cap. 622) (“the Ordinance”) (including its subsidiary legislation) to provide for a regime to enable a company incorporated outside Hong Kong (“non-HK corporation”) to transfer its domicile to Hong Kong;
- (b) provide for related matters; and
- (c) make related or technical amendments to the Ordinance and other enactments.

Joint debate : Clauses with no amendments, and clauses with amendments, and a new heading and new clauses proposed by the Secretary for Financial Services and the Treasury (“SFST”)	— Clauses 1 to 287, the proposed new heading of Division 31A of Part 4, and proposed new clauses 45A and 260A
---	--

Joint debate on the original clauses and the amendments (including the proposed new heading and new clauses).

SFST’s amendments**Proposed new offences****Clause 66**

- To add the reference to the proposed new section 791(8) to the proposed new section 791A(2)(b) of the Ordinance to the effect that **the consequence of non-compliance with the proposed new section 791(8) is also applicable to non-compliance with the requirement under section 791(1)** (i.e. deliver to the Registrar of Companies (“Registrar”) a return containing the particulars of the change within one month after the date of the change in the company’s place of incorporation) **by a re-domiciled company**.

Clause 77

- Given that the nature of the offence provided under the proposed new section 820G(2) of the Ordinance is the same as that under section 74(2) of the Ordinance (both of which concern the failure to deliver director’s written consent), to **add the proposed new section 820G(2) to Schedule 7 to the Ordinance to render it a compoundable offence** as section 74(2).

Clause 157

- To amend the proposed new sections 43D(3)(a), 43E(5)(a), 43F(4)(a) and 43G(5)(a) of the Banking Ordinance (Cap. 155) to **specify the level of penalty for the proposed new offences under these new sections, upon conviction on indictment, at a fine at tier 8 (HK\$1,000,000) and imprisonment for 2 years**, so as to be consistent with the level of penalty for existing offences of the same nature in the Banking Ordinance.

Approval of applications for registration

Clause 68

- To reflect that **safeguarding national security is of top priority among policy considerations behind the proposed company re-domiciliation regime**, to replace the reference to “may refuse” with the reference to “must refuse” in the proposed new section 820C(3) of the Ordinance to make it certain that **the Registrar must refuse the re-domiciliation 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).**

Meaning of “eligible member”

Clause 76 and the proposed new section 45A

- To amend section 4(1)(f) of the proposed new Schedule 6A to the Ordinance and to add the new section 4(3) and (4) of the proposed new Schedule 6A to the Ordinance, so as to more clearly reflect the policy intent of the requirement that if the law of the place of incorporation of the non-Hong Kong corporation (“applicant”) or its constitutional document does not impose a members’ consent requirement for a re-domiciliation application, **the applicant must confirm that a resolution of members is duly passed for the re-domiciliation and that the resolution is 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 entitled to vote and who vote in person on the resolution of the re-domiciliation and duly appointed proxies of members who are entitled to vote and who vote as proxy on it.**
- To make consequential amendments to section 2(1)(f)(viii) of the proposed new Schedule 6C to the Ordinance 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.**
- To add the proposed new section 45A to amend the Chinese text of the existing section 564(3) of the Ordinance, so as to ensure consistency between the Chinese and English renditions.

Documents to accompany the re-domiciliation form

Clause 76

- To amend section 2(1)(f) of the proposed new Schedule 6C to the Ordinance to provide that **the legal opinion required to accompany the re-domiciliation form 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.**

- To **delete** section 2(1)(g) of the proposed new Schedule 6C to the Ordinance, which provides for **the Registrar’s power to require the applicant to accompany the re-domiciliation form with other documents relevant to the application**, given that the proposed new section 820C(4) of the Ordinance already empowers that the Registrar may, 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 to make consequential drafting amendments to sections 2(1)(f)(xiv) and 2(1)(h).

Solvency

Clause 76

- To amend section 2(2)(o)(ii) of the proposed new Schedule 6C to the Ordinance to clarify the policy intent that the applicant should be **able to pay its debts that will fall due within the 12-month period beginning on the application date of the re-domiciliation**.

Refund arrangement of business registration fee and levy

Clause 199

- To amend the proposed new section 7A(6) of the Business Registration Ordinance (Cap. 310) to **specify the party receiving the refund of business registration fee and levy is “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 business registration fee and levy that a re-domiciled company is required to pay at the time of making a simultaneous business registration application.

Consequential amendment to the Securities and Futures (Approved Securities Registrars) Rules

The proposed new clause of Division 31A (i.e. the proposed new clause 260A)

- Subsequent to the introduction of the Bill into the Legislative Council, the Securities and Futures (Approved Securities Registrars) Rules (Cap. 571AT) (“Approved Securities Registrars Rules”) were gazetted on 14 February 2025. Section 2 of Part 1 of the Schedule to the Approved Securities Registrars Rules is modelled on Part 1 of Schedule 1 to the Securities and Futures (Licensing and Registration) (Information) Rules (Cap. 571S) (“Information Rules”). 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 the Information Rules information regarding the past and latest places of domicile of a corporation. The proposed new clause 260A seeks to correspondingly amend the Approved Securities Registrars Rules such that **“basic information” therein also includes similar information regarding the past and latest places of domicile of a corporation**.

Drafting or technical amendments

Clause 15

- To amend the proposed amended section 139(2) and the proposed new section 139(6) of the Ordinance by replacing the term “specified date” with “material date”, so as to **align the use of the term “material date”** in the proposed new section 139(6) and section 334(5) of the Ordinance.

Clauses 83 to 87

- To amend the proposed amended section 2 of the Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) by replacing the term “成立地” with “成立為法團所在地方”, **such that the proposed new defined term would be the same as the proposed new defined term “成立為法團所在地方” under section 774(1) of the Ordinance**, and to make consequential amendments to the proposed amended sections 3, 4, 7 and 9 of the Companies (Non-Hong Kong Companies) Regulation.

Clauses 68, 76, 119, 242, 246 and 271

- To make drafting or technical amendments to the provisions.

Voting order : 1. Clauses with no amendments (i.e. clauses 1 to 14, 16 to 65, 67, 69 to 75, 78 to 82, 88 to 118, 120 to 156, 158 to 198, 200 to 241, 243 to 245, 247 to 270 and 272 to 287) standing part of the Bill
2. SFST’s amendments (to amend clauses 15, 66, 68, 76, 77, 83 to 87, 119, 157, 199, 242, 246 and 271)
3. Clauses 15, 66, 68, 76, 77, 83 to 87, 119, 157, 199, 242, 246 and 271 with or without amendments standing part of the Bill
4. Proposed new heading of Division 31A of Part 4, and proposed new clauses 45A and 260A be read the second time and added to the Bill

SFST’s amendments

(set out in LC Paper No. CB(2)724/2025(1) issued on 23 April 2025)

Council Business Divisions

Legislative Council Secretariat

12 May 2025