

立法會
Legislative Council

LC Paper No. LS1/2025

**Paper for the House Committee Meeting
on 10 January 2025**

**Legal Service Division Report on
Companies (Amendment) (No. 2) Bill 2024**

I. SUMMARY

1. The Bill

The Bill seeks to:

- (a) amend the Companies Ordinance (Cap. 622) (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 Cap. 622 and other enactments.

2. Public Consultation

The Administration conducted a public consultation from March to May 2023, during which it reached out to various stakeholders. According to the Administration, the public generally supported the legislative proposal, and the stakeholders’ suggestions on streamlining the application requirements and procedures have been accepted.

3. Consultation with LegCo Panel

The Panel on Financial Affairs was consulted on the legislative proposal on 3 July 2023. Members generally supported the legislative proposal and discussed various issues with the Administration.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a new regime for non-HK corporations to re-domicile to Hong Kong, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 January 2025. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: CO/2/3C) issued by the Financial Services and the Treasury Bureau on 18 December 2024 for further details.

Object of the Bill

2. The Bill seeks to:
- (a) amend the Companies Ordinance (Cap. 622) (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 Cap. 622 and other enactments.

Background

3. At present, apart from the re-domiciliation regime for overseas funds established as companies or limited partnerships, there is no straightforward statutory regime to facilitate a non-HK corporation to re-domicile to Hong Kong. According to paragraphs 3 to 6 of the LegCo Brief, the Administration considers that the introduction of a company re-domiciliation regime for non-HK corporations (especially those with a business focus in the Asia-Pacific region) will, among others, 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. There are also demands from the insurance sector for a re-domiciliation regime.

4. As announced in paragraph 55 of the 2023 Policy Address, paragraph 36 of the 2024-2025 Budget and paragraph 62 of the 2024 Policy Address, a legislative proposal will be introduced to facilitate non-HK corporations to re-domicile to Hong Kong. The Bill is therefore introduced into LegCo to establish a new regime for re-domiciliation of non-HK corporations.

Provisions of the Bill

Proposed new regime for re-domiciliation of companies incorporated outside Hong Kong (Part 2 of the Bill)

5. Clauses 68 and 76 of the Bill propose to add a new Part 17A (proposed new

sections 820A to 820H) and new Schedules 6A, 6B and 6C to Cap. 622 to enable a non-HK corporation (“applicant”) to transfer its domicile to Hong Kong by registering as a re-domiciled company under Cap. 622. Key features of the proposed new regime are summarized in the ensuing paragraphs.

Legal effect of the re-domiciliation

6. A re-domiciled company would, for the purposes of the laws of Hong Kong, be regarded as a company incorporated in Hong Kong with effect from the re-domiciliation date (proposed new section 2(5A) of Cap. 622 as added under clause 3(7) of the Bill). This provision, however, would be subject to the proposed amendments under the Bill to various provisions of other items of legislation (see paragraph 19 below) and would not be applicable, or would not have effect, under specified circumstances or in relation to certain provisions of the Ordinances as specified in the proposed new Schedule 12 to Cap. 622 (as added under clause 79 of the Bill) (e.g. where a re-domiciled company is an airline) (proposed new section 2(5B) and (5C) of Cap. 622).

7. Registration as a re-domiciled company would not have the effect of creating a new legal entity and would not affect the applicant’s identity or continuity. Such registration would not, among others, affect any contract made, and any function, property, right, privilege, obligation or liability acquired, accrued or incurred, by or to the applicant. It would not render defective any legal proceedings commenced or continued by or against the applicant. With effect from the date on which the registration as a re-domiciled company takes effect (i.e. the re-domiciliation date) (see paragraph 14 below), all property of the applicant would be the property of the re-domiciled company (proposed new section 820D of Cap. 622).

Some of the key eligibility requirements

8. One of the key eligibility requirements is that an applicant must be of the same or substantially the same type as that of the intended type of the re-domiciled company, namely, a public or private company limited by shares, or a public or private unlimited company with a share capital (section 4(1)(a) of the proposed new Schedule 6A to Cap. 622).

9. Another requirement is that there is, under the law of the applicant’s place of incorporation, a regime allowing the applicant to deregister in the place of incorporation for the purpose of its registration in another jurisdiction as a company. Further, neither the law of the place of incorporation nor the constitutional document of the applicant prohibits the applicant to become a re-domiciled company (section 4(1)(c)(i) and (ii) of the proposed new Schedule 6A to Cap. 622).

10. If under the law of the place of incorporation or the constitutional document of the applicant, the applicant is required to obtain consent from its members for the re-domiciliation, such requirement must have to be complied with. If, however, there is

no such requirement, a resolution for the re-domiciliation must have to be duly passed by at least 75% of its members who are entitled to vote on the resolution for the re-domiciliation (section 4(1)(e) and (f) of the proposed new Schedule 6A to Cap. 622).

11. The applicant must have been incorporated for at least one financial year, and must be able to pay its debts in full within the period of 12 months beginning on the application date for registration as a re-domiciled company (section 2(2)(m) and (2)(o)(ii) of the proposed new Schedule 6C to Cap. 622).

Application procedures

12. An application for re-domiciliation should be made to the Registrar of Companies (“Registrar”) by delivering (a) a re-domiciliation form in the specified form to be signed by one of its directors, (b) a copy of its proposed articles of association, and (c) documents specified in the proposed new Schedule 6C to Cap. 622 (proposed new section 820B of Cap. 622). Documents specified in the proposed new Schedule 6C include the applicant’s accounts or (if applicable) audited accounts, a legal opinion of a legal practitioner who practises the law of the place of incorporation of the applicant that, among others, there is no pending petition, and there is no order, to wind up or liquidate the applicant in its place of incorporation, and a certificate signed by a director, and issued by the board of directors, of the applicant certifying that, among others, the application is not intended to defraud its existing creditors and is made in good faith (section 2(1)(e), (1)(f)(ix) and (x), and (2)(n) of the proposed new Schedule 6C to Cap. 622).

13. The re-domiciliation form should contain the information and statements specified in the proposed new Schedule 6A (e.g. the name and place of incorporation of the applicant), and a statement of compliance certifying that all of the applicable requirements under the proposed new section 820B of, and the proposed new Schedules 6A, 6B (i.e. regarding the directors and company secretary who would be or would not be, directors and company secretary of the intended re-domiciled company) and 6C to, Cap. 622 have been complied with, and that the information and statements contained therein are accurate and consistent with those in its proposed articles of association (proposed new section 820B(3) of Cap. 622).

14. An application for registration could be refused if the Registrar is of the opinion that the intended re-domiciled company would be likely to be used for an unlawful purpose or for a purpose contrary to public interest (proposed new section 820C(3) of Cap. 622). Upon fulfilling the applicable requirements and on payment of the prescribed registration fee, the Registrar could register the applicant as a re-domiciled company (proposed new section 820C(1) of Cap. 622). A certificate of re-domiciliation would be issued to the applicant (proposed new section 820C(5)(c) of Cap. 622). If the applicant has previously been registered as a non-Hong Kong company under Part 16 of Cap. 622, such registration would cease to have effect on the re-domiciliation date (i.e. the date on which the certificate of re-domiciliation is issued) (proposed new section 820D(5) of Cap. 622).

Deregistration in place of incorporation and revocation of registration

15. Under the proposed new section 820E of Cap. 622, the applicant must be deregistered in its place of incorporation within 120 days after the re-domiciliation date or within a period as extended by the Registrar, failing which the Registrar could, by order, revoke the registration of the re-domiciled company (proposed new section 820F of Cap. 622).

Related matters (Part 2 of the Bill)

16. Other clauses in Part 2 of the Bill propose to make related or consequential amendments to various provisions of Cap. 622 that would be required as a result of the introduction of the proposed new re-domiciliation regime.

17. Pursuant to the proposed amended section 911(1) of Cap. 622, the Financial Secretary may, by notice published in the Gazette, amend the proposed new Schedules 6A, 6B and 6C to Cap. 622 (see paragraphs 8 to 13 above) (clause 71 of the Bill). Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Related or technical amendments to the Companies Ordinance (Cap. 622) and other enactments (Parts 3 and 4 of the Bill)

18. Part 3 of the Bill contains the proposed related amendments to five items of subsidiary legislation made under Cap. 622. For example, clause 89 of the Bill proposes to amend Schedule 1 to the Companies (Fees) Regulation (Cap. 622K) to provide for the fees payable in relation to the lodging of a re-domiciliation form etc.¹ under the proposed new section 820B of Cap. 622 and the registration of the applicant as a re-domiciled company² under the proposed new section 820C(1) of Cap. 622.

19. Part 4 of the Bill proposes to make related or technical amendments to 39 other enactments that would be necessitated by the introduction of the proposed new re-domiciliation regime.

Commencement

20. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

¹ The proposed fees payable are HK\$1,030 for delivering the form and other documents in electronic form, and HK\$1,145 for delivering the same in hard copy form.

² The proposed fees payable are HK\$5,020 if the required documents are delivered in electronic form, and HK\$5,580 if those documents are delivered in hard copy form.

Public Consultation

21. As stated in paragraph 27 of the LegCo Brief, the Administration conducted a public consultation exercise from March to May 2023, during which it reached out to various stakeholders (including business chambers, professional associations and relevant advisory bodies). According to the Administration, the public generally supported the introduction of a company re-domiciliation regime, and the Administration notes that there is a strong demand from the insurance sector for the proposed regime. Further, the Administration has considered and accepted suggestions from stakeholders on streamlining the application requirements and procedures under the proposed regime.

Consultation with LegCo Panel

22. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on the legislative proposal at its meeting on 3 July 2023. While members generally supported the legislative proposal, they discussed various issues including the implementation timetable, application eligibility and requirements, and tax arrangements of the proposed regime. Members expressed concerns on the measures to attract and facilitate non-HK corporations to re-domicile to Hong Kong, and urged the Administration to step up publicity and promotion of the proposed regime upon its implementation.

Conclusion

23. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a new regime for non-HK corporations to re-domicile to Hong Kong, Members may wish to form a Bills Committee to study the Bill in detail.

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