

Legislative Updates of the Companies Registry

Ms Carol Hau
Solicitor (Company Law Reform)

22 November 2024



公 司 註 冊 處
COMPANIES REGISTRY

Part 1

Company Re-domiciliation Regime



公司註冊處
COMPANIES REGISTRY

Company Re-domiciliation Regime

Amend the Companies Ordinance (Cap. 622) (“CO”) and its sub-legislations

- ✓ To introduce an inward company re-domiciliation regime in Hong Kong

Background (1)

- Demand for a company re-domiciliation regime:
 - Increasing cost to set up and maintain offshore companies in traditional offshore jurisdictions under latest tax and regulatory developments
 - Calls from the insurance sector for a regime enabling overseas domiciled insurers largely operating in Hong Kong to re-domicile to Hong Kong
- Re-domiciliation regime for Open-Ended Fund Companies and Limited Partnership Funds in Hong Kong have been operating smoothly since their launch in November 2021

Background (2)

- Current procedures for companies domiciled overseas to achieve similar objectives:
 - Winding up in the original domicile and incorporating a new body corporate in Hong Kong; or
 - Entering into a court-sanctioned scheme of arrangement to convert into a wholly-owned subsidiary of a Hong Kong incorporated company
- Issues:
 - Complicated procedures and substantial costs involved
 - Unable to preserve the companies' assets, intellectual property, contracts and corporate history
 - Cannot completely eliminate the possibilities of being subject to two sets of regulations in two jurisdictions

Benefits of establishing a full-fledged re-domiciliation regime in Hong Kong

For overseas companies	For overseas companies already active in Hong Kong	For Hong Kong's financial market
<ul style="list-style-type: none">• Preserve legal identity and operational continuity• Enjoy Hong Kong's open and efficient company governance regime, simple taxation system, world class professional services and better access to vibrant economies of Mainland and Asian region	<ul style="list-style-type: none">• Better align the geographical coverage of business activities with domicile	<ul style="list-style-type: none">• Increase investment, demand for professional services, and skilled job opportunities• Strengthen Hong Kong's position as a global business and financial hub and an open and competitive economy

Key Features (1)

Scope	<p>An inward re-domiciliation regime applicable to 4 types of companies that could be formed in Hong Kong or their comparable overseas incorporation types</p> <ul style="list-style-type: none">• Private companies limited by shares• Public companies limited by shares• Private unlimited companies with a share capital• Public unlimited companies with a share capital
Legal identity	<p>Re-domiciliation does not have the effect of creating a new legal entity and will not affect:</p> <ul style="list-style-type: none">• the business continuity of the body corporate• any property, rights, obligations and liabilities acquired, accrued or incurred• any contract made by or in relation to the body corporate• any legal proceedings commenced or continued by or against the body corporate

Key Features (2)

Economic substance test

No economic substance test will be imposed to ensure inclusiveness of the regime to different companies (e.g. holding companies)

Tax obligations

- **Companies' tax obligation** in the original domicile should not be affected
- **Transitional arrangements on the tax obligations of the incoming companies** will be in place to provide certainty on the prospective tax-related changes

Eligibility Criteria (1)

General background

- The **type of company** under the law of its original domicile is the same or substantially the same as the proposed type in the re-domiciliation application
- The law of the company's original domicile **allows outward re-domiciliation** and the company **has complied with the relevant requirements**
- As at the date of re-domiciliation application, the company's **first financial year since its incorporation has passed**

Integrity

The re-domiciled company **will not be used for unlawful purposes or purposes contrary to the public interest**

Eligibility Criteria (2)

Member and creditor protection

- The re-domiciliation application is made **in good faith and not intended to defraud existing creditors of the company**
- **Members' consent to the re-domiciliation** has been obtained in accordance with the law of the original domicile and the constitutional document of the company. If there is no such requirement, the company has obtained members' consent according to the requirements to be stipulated in the CO

Proof of compliance

The company should submit a legal opinion confirming that the proposed re-domiciliation is allowed under the law of its original domicile

Eligibility Criteria (3)

Solvency

- The company is **able to pay its debts** as they fall due during the period of 12 months after the application date
- The company is **not in liquidation or being wound up** and **no proceeding for liquidation or winding up** against the company is ongoing or pending
- The company is not subject to any other proceedings relating to **insolvency, adjustment of debt, compromise or arrangement**
- The company should submit (i) **accounts as at a date no more than 12 months prior to the application date** and (ii) a **legal opinion in relation to its solvency**. The accounts are required to be audited only if such have been prepared for compliance with the requirements in the company's original domicile, relevant stock exchange or regulatory bodies

Application procedures (1)

- The Registrar of Companies (“R of C”) will administer and approve applications for company re-domiciliation
- The application procedures are as follows:
 - Applicant makes an application with the required documents and application fee (e.g. a completed application form with particulars of the company, certified copies of certificate of incorporation and constitutional documents, proposed articles of association, accounts etc)
 - R of C considers information and documents submitted and, when satisfied that the requirements for registration are met, approves the application
 - R of C issues a certificate of re-domiciliation and the applicant becomes a re-domiciled company on the same date

Application procedures (2)

- The re-domiciled company shall de-register from its original domicile within 120 days after the issuance of the certificate of re-domiciliation
- Documents evidencing the deregistration be submitted to R of C
- Failure to comply with the deregistration requirement will result in revocation of the re-domiciliation registration
- Once the re-domiciliation registration is revoked, the company will revert to become a non-Hong Kong company



Effect of re-domiciliation

- Once redomiciled, the re-domiciled companies will have the same rights and obligations as any other Hong Kong-incorporated companies of their kind and will be required to comply with the relevant requirements under the CO
- If the re-domiciled company, prior to its re-domiciliation, has been registered as a registered non-Hong Kong company under Part 16 of the CO, such registration shall cease upon it becomes a re-domiciled company

Part 2

Promoting Paperless Corporate Communication for Hong Kong Companies



Promoting Paperless Corporate Communication for Hong Kong Companies

Amend the Companies Ordinance (Cap. 622) (“CO”)

- ✓ To introduce an implied consent mechanism for dissemination of corporation communication by means of website

Background

- In December 2023, HKEX amended the Listing Rules to further progress to a paperless listing regime. Listed companies are mandated to disseminate corporate communication to shareholders **electronically** to the extent permitted under their applicable laws and regulations
- HKEX removed mandatory requirements for listed companies to make use of the existing consent mechanisms (i.e. **express** or **deemed consent**) in disseminating corporate communication electronically, including via websites
- Listed companies may choose to rely on **implied consent** for disseminating corporate communication if allowed under their respective local laws

Consent mechanisms

➤ **Express Consent:**

- Expressly obtaining shareholders' consent individually

➤ **Deemed Consent:**

- A company may individually request a shareholder to agree that the document or information be supplied to him/her by means of website, and such request states clearly the effect of a failure to respond within 28 days of the request and the shareholder fails to so respond

➤ **Implied Consent:**

- Shareholders' consent is implied provided that the articles of association of the companies contain a provision permitting dissemination of corporate communication by means of website. There is no need to seek consent from each shareholder individually

Existing requirements under the CO

Communication by means of website (section 833 of the CO)

- Prior **express or deemed consent** must be obtained from the shareholders
 - The company should send separate notification to shareholders whenever new corporate communication is made available on website
 - The separate notification above may be sent in hard copy or electronically (with shareholders' express consent obtained)
-
- In addition, shareholders may request companies to provide **hard copy form** of document or information under section 837 of the CO

Legislative proposals (1)

1. Implied consent mechanism

- Both listed and unlisted companies incorporated in Hong Kong may choose to rely on **implied consent** provided that the articles of association of the companies contain a provision permitting dissemination of corporate communication by means of website
- The implied consent mechanism is **additional** to the existing express and deemed consent mechanisms under section 833 of the CO

Legislative proposals (2)

2. Separate notification requirement

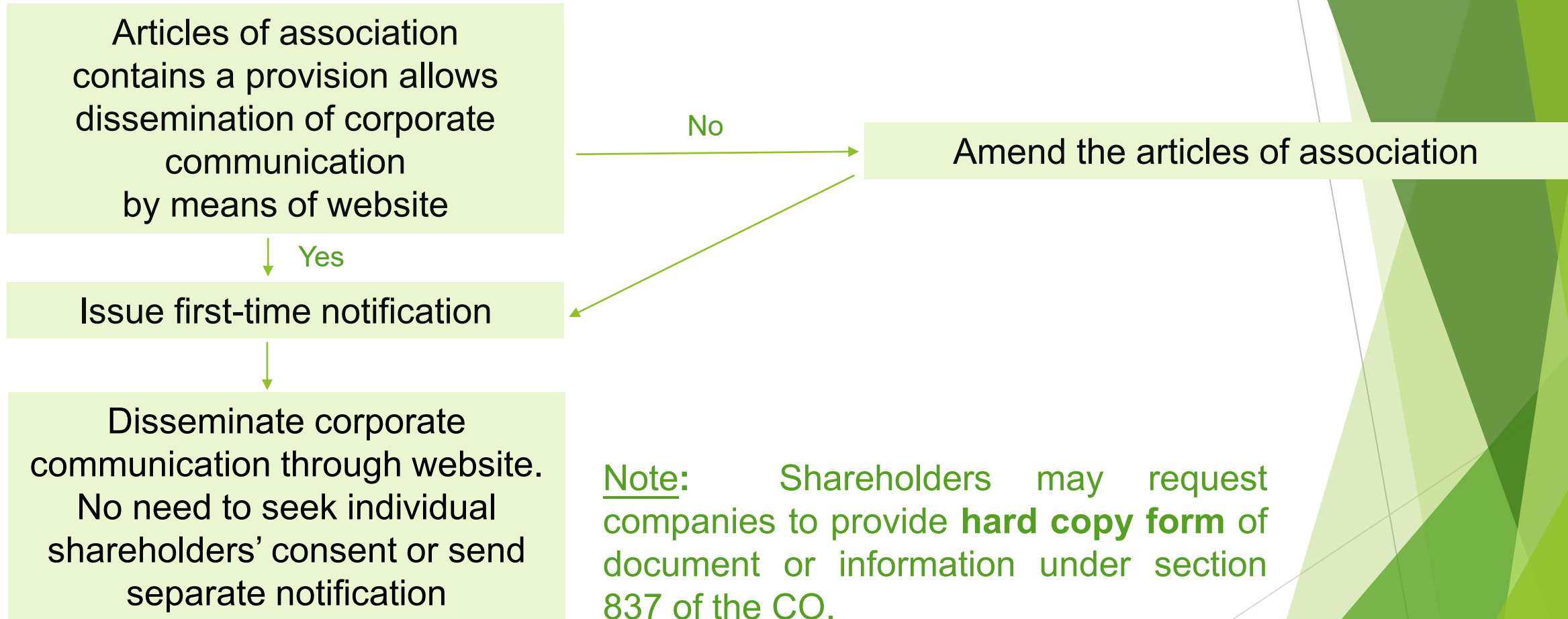
- If **listed companies** choose to adopt the implied consent mechanism, they need not send separate notifications to shareholders when new corporate communication is uploaded to website
 - Shareholders are encouraged to make use of the News Alert service provided by HKEX to receive instant notification of the listed companies' information by way of email or mobile alerts
- If **unlisted companies** choose to adopt the implied consent mechanism, companies are required to obtain **one-off prior express consent** from shareholders for obviating the separate notification to shareholders when new corporate communication is uploaded to website
 - HKEX's News Alert service is not applicable to unlisted companies

Legislative proposals (3)

3. Safeguards to protect interest of shareholders

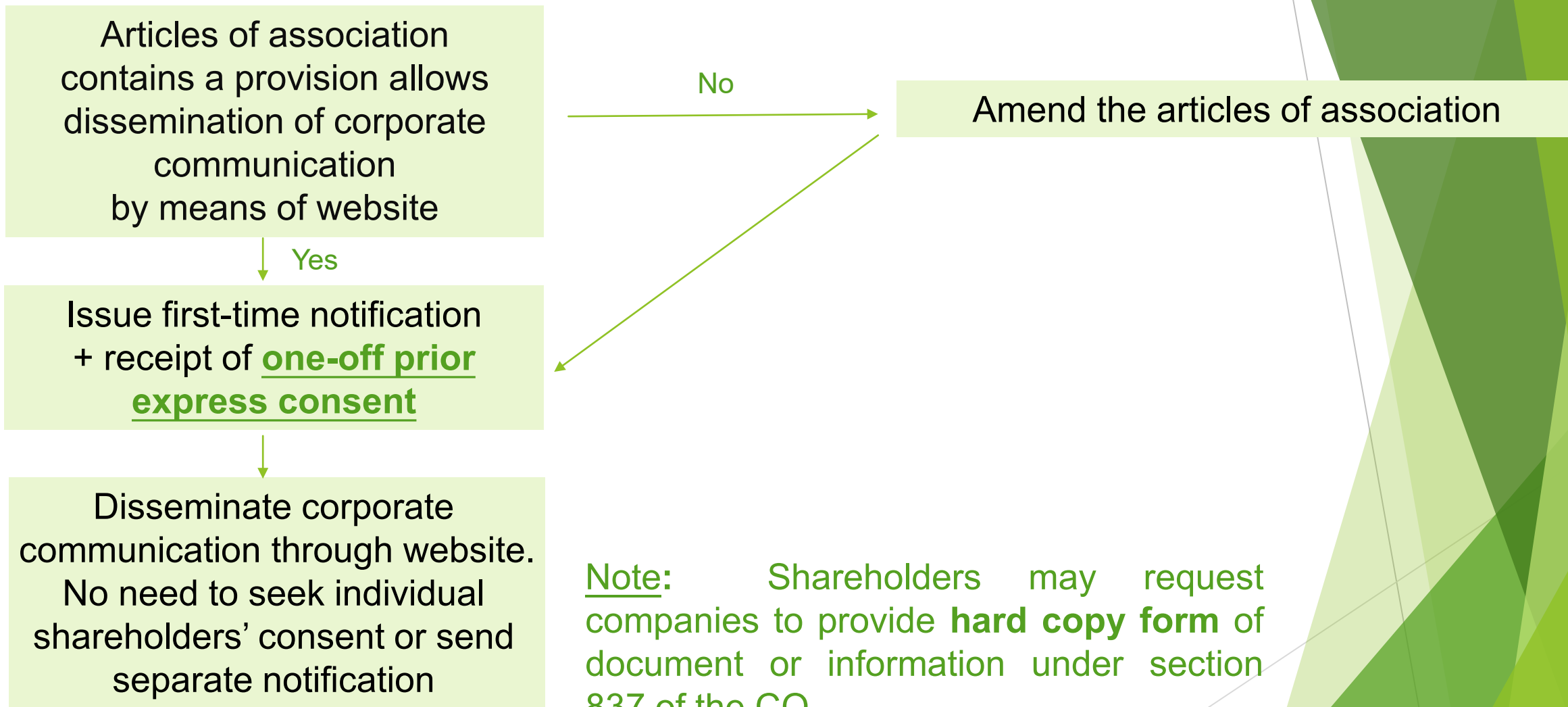
- Both listed and unlisted adopting the implied consent mechanism to issue **first-time notification** to shareholders individually (in hard copy or electronically) to inform them of the new arrangements before implementation
- The right of shareholders to request hard copy of the corporate communication under section 837 of the CO will not be affected
- Shareholders in need may also request free electronic copies of corporate communication

Listed companies



Note: Shareholders may request companies to provide **hard copy form** of document or information under section 837 of the CO.

Unlisted companies



Note: Shareholders may request companies to provide **hard copy form** of document or information under section 837 of the CO.

Thank you!

Companies Registry

公司註冊處

www.cr.gov.hk



公司註冊處
COMPANIES REGISTRY