

# Legislative Updates of the Companies Ordinance

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公司註冊處  
COMPANIES REGISTRY

# Companies Amendment (No.1) Ordinance 2025



# Companies Amendment (No.1) Ordinance 2025 (the “Amendment Ordinance”)

To amend the Companies Ordinance (Cap. 622) (“CO”) and its sub-legislation, effective on **17 April 2025**

- ✓ To promote paperless corporate communication for companies by introducing an implied consent mechanism for dissemination of corporation communication by means of website
- ✓ To introduce a new treasury share regime for listed companies to enable them to hold shares bought back in treasury and dispose of them under certain restrictions

# Part 1A

## Promoting Paperless Corporate Communication for Hong Kong Companies



# 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 individually requests 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

# Requirements under the CO before the Amendment Ordinance

## 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)
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- In addition, shareholders may request companies to provide **hard copy form** of document or information under section 837 of the CO

# Implied Consent Mechanism for Communication by Means of Website (1)

## 1. Implied consent mechanism

- Conditions:
  - (1) the **articles of association contain a provision** permitting dissemination of corporate communication by means of website; **AND**
  - (2) a **first-time notification** is issued to shareholders individually (in hard copy or electronically) to inform them of the new arrangements before implementation
- The implied consent mechanism is **additional** to the existing express and deemed consent mechanisms under section 833 of the CO

# Implied Consent Mechanism for Communication by Means of Website (2)

## 2. Separate notification requirement

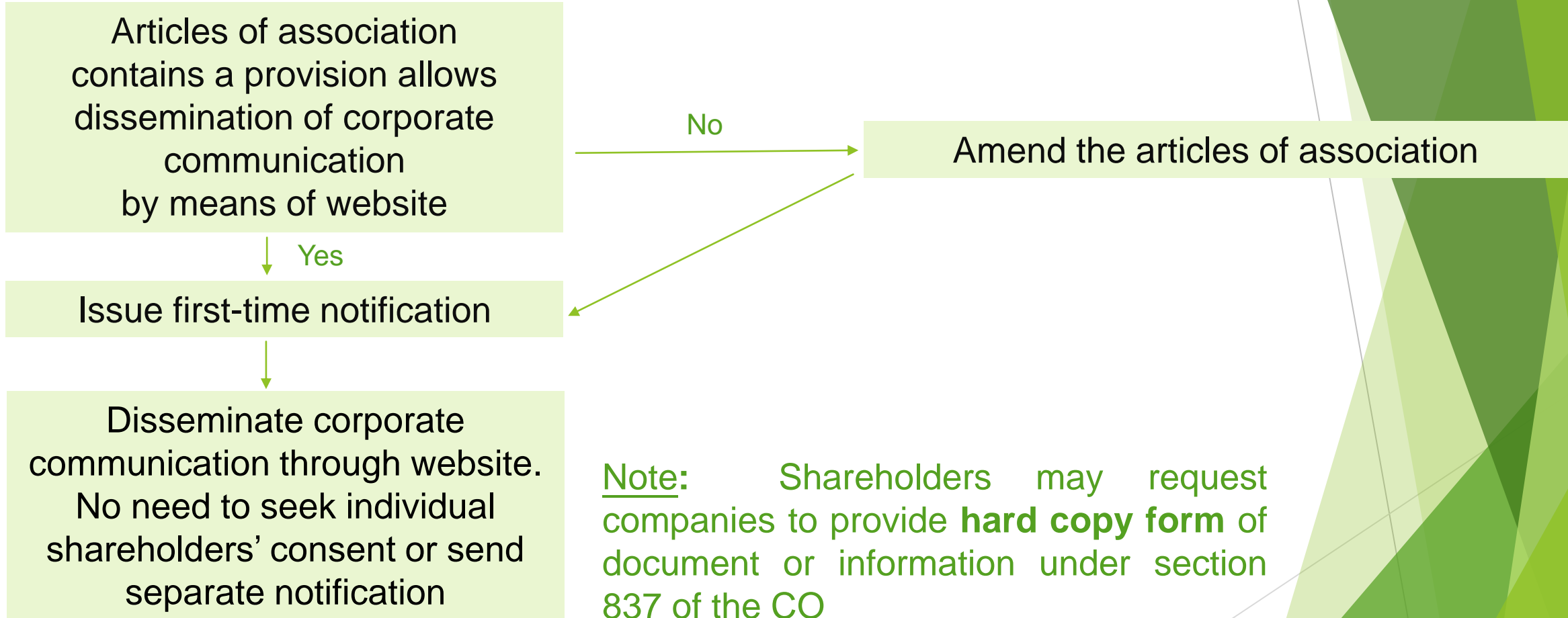
- If **listed companies** choose to adopt the implied consent mechanism, they need not send separate notifications to shareholders when new corporate communication is uploaded to website
  - Shareholders are encouraged to make use of the News Alert service provided by HKEX to receive instant notification 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

# Implied Consent Mechanism for Communication by Means of Website (3)

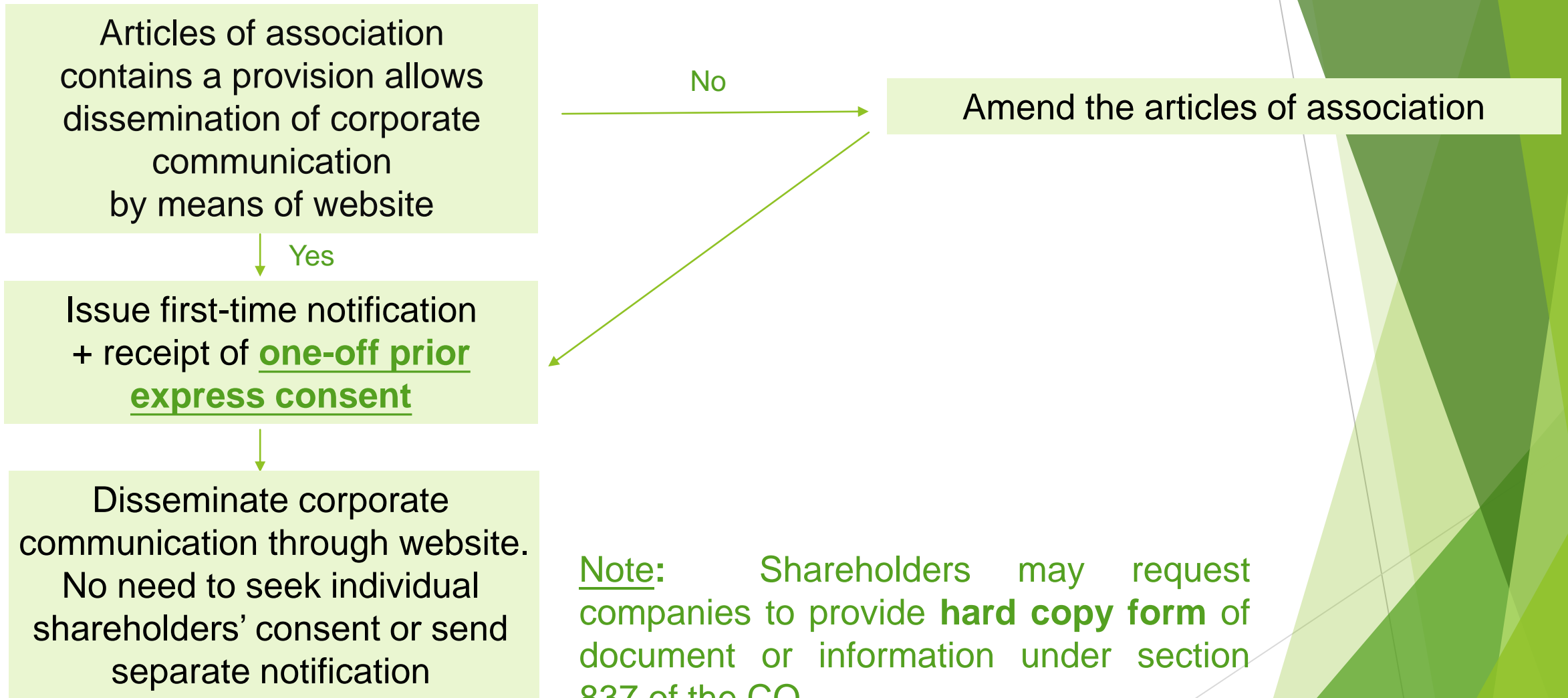
## 3. Safeguards to protect interest of shareholders

- The requirement for a **first-time notification** to be sent to each and every shareholder before adopting the implied consent mechanism
- 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 electronic copies of corporate communication at no cost

# Listed companies



# Unlisted companies



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

# Part 1B

## Introduction of Treasury Share Regime



# Background (1)

## Public consultation in 2023 by HKEX

- Remove the Listing Rules requirement to cancel shares bought back
- Enable listed companies to hold them in treasury subject to the laws of their places of incorporation and their constitutional documents
- Allow resale and transfer of treasury shares on or off the exchange with requirements similar to the allotment of new shares

# Background (2)

## Amended Listing Rules came to effect

- With majority public support, the amended Listing Rules came to effect in June 2024

## Restriction in the CO before the Amendment Ordinance

- Section 269 of the CO requires companies (both listed and unlisted) to cancel all shares bought back
- Listed companies cannot make use of the treasury share regime under the amended Listing Rules

# Justifications (1)

## Effective safeguards under Securities and Futures Ordinance (Cap. 571) (the “SFO”)

- Parts XIII and XIV of the **SFO** contain **civil and criminal provisions** regarding market misconduct
- Market misconduct including insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transactions, and stock market manipulation is covered
- All activities, including any dealings by a listed company in its treasury shares, which amount to **stock market manipulation and insider dealing, are restricted by the SFO**

# Justifications (2)

## Amended Listing Rules provide additional safeguards

- The sale and transfer of treasury shares is subject to **requirements similar to those for the allotment of new shares**, given their similar effect on shareholders
- A **30-day moratorium** is imposed, restricting:
  - (i) the resale of treasury shares (on or off exchange) after a share buy-back; and
  - (ii) on-exchange share buy-backs after an on-exchange resale of treasury shares
- Any on-exchange resale of shares by a listed company when there is undisclosed inside information or during the 30-day period preceding results announcement is prohibited

# Justifications (3)

## Strengthening competitiveness

- Listed companies are granted greater flexibility to efficiently adjust their capital through the repurchase, holding, sale, and transfer of treasury shares for specific purposes
- Listed companies may conduct share buy-backs as needed

## Aligning with international practice

- The treasury share regime may:
  - (i) align Hong Kong with the jurisdictions where most HKEX-listed companies are incorporated; and
  - (ii) enhance the attractiveness of Hong Kong as a jurisdiction for incorporation of listed companies

# Key features of the treasury share regime (1)

<b>Applicability</b>	The treasury share regime is only applicable to listed companies
<b>Holding of treasury shares</b>	Listed companies may, upon buy-back, hold those shares as treasury shares (in their own name or via a nominee)
<b>Disposal options</b>	Treasury shares can be cancelled, transferred or sold, subject to the same approval requirements as allotment of new shares
<b>Rights attached to treasury shares</b>	All rights attached to treasury shares (voting, dividends, asset distributions) are suspended, except the right to allotment of shares as fully paid bonus shares (such fully paid bonus shares are to be regarded as being bought back on their allotment)

## Key features of the treasury share regime (2)

<b>Registration &amp; Membership Status</b>	<p>A listed company holding treasury shares in its name or through a nominee must enter its name or the name of its nominee in the register of members.</p> <p>However, save for certain exception, the listed company/nominee holding the treasury shares should not be regarded as a member for the purpose of the CO</p>
<b>Exclusion of treasury shares</b>	<p>For corporate matters (e.g. passing resolutions, calling general meetings, making applications to court, exercising the right by minority shareholders in a takeover offer), treasury shares are excluded when calculating the relevant thresholds</p>
<b>Reporting Requirements</b>	<p>A listed company is required to deliver to the Registrar a return of particulars upon</p> <ul style="list-style-type: none"><li>• buy-back of shares (state the number of shares bought back and held as treasury shares) (Revised Form NSC2)</li><li>• sale or transfer of treasury shares (New Form NSC22)</li><li>• cancellation of treasury shares (New Form NSC23)</li></ul>

# Impact on the amount of issued share capital and the total number of issued shares

<b>Impacts on the issued share capital and number of issued shares</b>	
<b>Timing</b>	<b>Impact</b>
<b>(a) At the time of shares buy-back (out of capital)</b>	
Number of issued shares	No change
Amount of issued share capital	Decrease
<b>(b) Holding of treasury shares</b>	
Number of issued shares	No change
Amount of issued share capital	No change
<b>(c) Sale/Transfer of treasury shares for a consideration</b>	
Number of issued shares	No change
Amount of issued share capital	Increase
<b>(d) Cancellation of treasury shares</b>	
Number of issued shares	Decrease
Amount of issued share capital	No change

# Part 2

## Companies Amendment (No.2) Ordinance 2025



# Companies Amendment (No.2) Ordinance 2025

To amend the Companies Ordinance (Cap. 622) (“CO”) and its sub-legislations and other related enactments, effective on **23 May 2025**

- To introduce an inward company re-domiciliation regime in Hong Kong
- To provide clarity on the applicability of existing legislation to a re-domiciled company
- To expand the scope of application of existing legislation to also covering a re-domiciled company

# Introduction of the Re-domiciliation Regime



# Background (1)

- Demand for a company re-domiciliation regime in Hong Kong
  - Rising costs and regulatory hurdles in traditional offshore jurisdictions drive demand for re-domiciliation
  - **Insurance sector** seeks a regime enabling overseas domiciled insurers largely operating in Hong Kong to re-domicile to Hong Kong
  - **Successful precedents:** Re-domiciliation for Open-Ended Fund Companies (OFCs) and Limited Partnership Funds (LPFs) has been smooth since their launch in 2021

# Background (2)

## Current Challenges in Re-domiciling to Hong Kong

### ➤ Existing Methods

- 1. **Wind up & reincorporate** – Liquidate overseas entity and form a new Hong Kong company
- 2. **Court-approved scheme** – Convert into a wholly-owned subsidiary of a Hong Kong incorporated company via complex restructuring

### ➤ Key Issues

- High complexity & cost
- Loss of continuity – Corporate history, contracts, IP, and assets may not transfer seamlessly
- Regulatory overlap – Risk of dual-jurisdiction compliance burdens

# 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"> <li>• Preserve legal identity and operational continuity</li> <li>• 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</li> </ul>		<ul style="list-style-type: none"> <li>• Increase investment, demand for professional services, and skilled job opportunities</li> </ul>
	<ul style="list-style-type: none"> <li>• Better align the geographical coverage of business activities with domicile</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthen Hong Kong's position as a global business and financial hub and an open and competitive economy</li> </ul>

# Key Features (1)

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

# Key Features (2)

## Economic substance test

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

## Tax obligations

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

# Eligibility Criteria (1)

## General background

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

## Integrity

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

# Eligibility Criteria (2)

<b>Member and creditor protection</b>	<ul style="list-style-type: none"><li>➤ The re-domiciliation application is made <b>in good faith and not intended to defraud existing creditors</b></li><li>➤ <b>Members' consent to the re-domiciliation</b> has been obtained in accordance with the law of the original domicile and the constitutional document of the applicant. If there is no such requirement, a resolution of members approving the re-domiciliation has been duly passed by a majority of at least 75%</li></ul>
<b>Solvency</b>	<ul style="list-style-type: none"><li>➤ The applicant will be <b>able to pay its debts</b> which fall due within the period of 12 months beginning on the application date</li><li>➤ The applicant is <b>not in liquidation or being wound up and no proceeding for liquidation or winding up</b> against the applicant is ongoing or pending</li></ul>

# 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.
    - completed re-domiciliation form which contains information of (i) the applicant, (ii) the intended re-domiciled company, and (iii) the directors and company secretary of the re-domiciled company, statements of the applicant and statement of compliance
    - proposed articles of association of the intended re-domiciled company
    - other documents of the applicant such as certified copies of certificate of incorporation and constitutional documents, accounts, legal opinion, directors’ certificate, etc
    - a Notice to Business Registration Office (IRBR5)
  - 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)

- As soon as practicable after the re-domiciliation date, the re-domiciled company must take all reasonable steps to procure its deregistration in its original domicile
- The re-domiciled company must submit to R of C a document evidencing its deregistration to the satisfaction of R of C within 120 days after the re-domiciliation date, failing which its registration as a re-domiciled company will be revoked
  - Application may be made to R of C to have the 120-day period extended, subject to any condition that R of C considers appropriate
- Once the re-domiciliation registration is revoked, the company will revert to become a non-Hong Kong company

# Effect of re-domiciliation (1)

## ➤ Regarded as Hong Kong-incorporated companies

- Once re-domiciled, a re-domiciled company will generally be regarded as a company incorporated in Hong Kong
- A re-domiciled company is required to comply with **all** the relevant filing requirements under the CO in the same manner as a company formed and registered under the CO unless otherwise specified
- **Specific** filing obligations imposed on a re-domiciled company include:
  - ❑ Consent to be a Director (Re-domiciled Company) (*new Form NNC3RD*)
  - ❑ Return of Particulars of Members of Re-domiciled Company as at Re-domiciliation Date (*new Form NSC21*)
  - ❑ Statement of Particulars of Charge (For Re-domiciled Company - Charges before Re-domiciliation Date) (*new Form NM10*)

# Effect of re-domiciliation (2)

## ➤ Part 16 Registration Ceases

- If a re-domiciled company was previously registered as a registered non-Hong Kong company under Part 16 of the CO, its registration under Part 16 of the CO **ceases to have effect on the date of issuance of the Certificate of Re-domiciliation**
- If immediately before the re-domiciliation, the company is required, but has yet, to comply with any requirement under the CO, the company is required to comply with the requirement as if the re-domiciliation had not taken place and it were still a registered non-Hong Kong company
  - Examples

charges created which have yet to be registered under sections 336 and 339

annual return which has yet to be delivered for registration under section 788

a return reporting a change in the constitutional document/ directors or company secretary or authorized representative (or the particulars of such persons) etc which has yet to be delivered for registration under section 791

# Thank you!

Companies Registry

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