Company Re-domiciliation

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Companies Amendment (No.2) Ordinance 2025 (the "Amendment Ordinance")

The Amendment Ordinance was effective on 23 May 2025

- Introducing an inward company re-domiciliation regime in Hong Kong
- Providing clarity on the applicability of existing legislation to a re-domiciled company
- Expanding the scope of application of existing legislation to also covering a re-domiciled company



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
Preserve legal identity and operational continuity		 Increase investment, demand for professional
 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 		services, and skilled job opportunities
		 Strengthen Hong Kong's position as a
	 Better align the geographical coverage of business activities with domicile 	global business and financial hub and an open and competitive economy



Key Features (1)

Scope

An inward re-domiciliation regime applicable to 4 types of companies that could be formed in Hong Kong or their comparable overseas incorporation types

- 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

Re-domiciliation does not have the effect of creating a new legal entity and will not affect:

- 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

No economic substance test to ensure inclusiveness of **substance test** 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 redomiciliation 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)

Member and creditor protection

- ➤ The re-domiciliation application is made in good faith and not intended to defraud existing creditors
- ➤ Members' consent to the re-domiciliation 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%

Solvency

- The applicant will be **able to pay its debts** which fall due within the period of 12 months beginning on the application date
- The applicant is **not in liquidation or being wound up** and **no proceeding for liquidation or winding up** against the applicant is ongoing or pending



Application procedures (1)

- The Registrar of Companies ("R of C") will administer and approve redomiciliation applications
- Documents to be delivered on application
 - Form NN6 Re-domiciliation Form
 - □ The Re-domiciliation Form contains information of (i) the applicant, (ii) the intended re-domiciled company, and (iii) the directors and company secretary of the redomiciled company, statements of the applicant and statement of compliance
 - □ The Re-domiciliation Form must be signed by one of the directors of the applicant
 - A copy of the proposed articles of association of the intended re-domiciled company
 - Other documents to accompany the Re-domiciliation Form
 - □ Includes (a) a certified copy of certificate of incorporation, (b) a certified copy of constitutional documents, (c) accounts, (d) a legal opinion, and (e) a directors' certificate



Application procedures (2)

- Documents to be delivered on application
 - Notice to Business Registration Office (IRBR5)
 - "one-stop approach" will be provided for application for re-domiciliation of companies and business registration
 - Where an applicant is a registered non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622) (the "CO") holding a valid BR Certificate, the applicant must provide its BRN in the Re-domiciliation Form. There is no need to apply for a new BR Certificate and no new Business Registration Certificate will be issued



Application procedures (3)

Application fee

Delivered in electronic form	Delivered in hard copy form
(i) HK\$6,050 (including the lodgment fee of HK\$1,030 which is non-refundable if the application is unsuccessful); and	(i) HK\$6,725 (including the lodgment fee of HK\$1,145 which is non-refundable if the application is unsuccessful); and
(ii) Prescribed business registration fee and levy (Only applicable to those non-Hong Kong corporations which have not yet registered their businesses under the Business Registration Ordinance, Cap. 310)	(ii) Prescribed business registration fee and levy (Only applicable to those non-Hong Kong corporations which have not yet registered their businesses under the Business Registration Ordinance, Cap. 310)



Application procedures (4)

- If R of C is satisfied that the requirements for registration are met
 - The Re-domiciliation Form (Form NN6) and the copy of the proposed articles will be registered
 - A certificate of re-domiciliation will be issued
- Time required for processing re-domiciliation applications
 - If all documents and particulars required for the re-domiciliation application are in order, it is generally estimated that the applicant may be registered as a redomiciled company in 2 weeks' time



Application procedures (5)

- As soon as practicable after the re-domiciliation date, the re-domiciled company <u>must</u> take all reasonable steps to procure its deregistration in its place of incorporation
- The re-domiciled company <u>must</u> 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
 - If the company has established a place of business in Hong Kong, the company <u>must</u> apply for registration under Part 16 of the CO as a registered non-Hong Kong company within 1 month after the revocation order is made



Effect of re-domiciliation (1)

Regarded as Hong Kong-incorporated companies

- Applicant becomes a re-domiciled company on the date of issue of the certificate of re-domiciliation
- 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 <u>all</u> 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 immediately before the redomiciliation date, 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

公司註冊處

www.cr.gov.hk

