Legislative Updates of the Companies Ordinance

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Companies Amendment (No.2) Ordinance 2025

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Companies Amendment (No.2) Ordinance 2025 (the “Amendment Ordinance”)

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

<table>
<tr><th>For overseas companies</th><th>For overseas companies already active in Hong Kong</th><th>For Hong Kong’s financial market</th></tr>
<tr><td colspan="2">• Preserve legal identity and operational continuity</td><td rowspan="3">• 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</td></tr>
<tr><td colspan="2">• 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</td></tr>
<tr><td></td><td>• Better align the geographical coverage of business activities with domicile</td></tr>
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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 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**

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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 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 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
  - **<u>Specific</u>** 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

Key Changes for Non-Hong Kong Companies under the Amendment Ordinance

Updates on “Place of Incorporation” Definition & Compliance Obligations

Background

- **Before the amendment**:
  - “**place of incorporation"** is not defined under the CO
  - The phase should be given its **natural and ordinary** meaning, i.e. the place where a company was incorporated
- **The Amendment Ordinance**:
  - Introduces a **re-domiciliation** regime for non-Hong Kong companies to re-domicile to Hong Kong
  - A holistic review of the CO and its sub-legislation has been conducted to ascertain whether references to “**place of incorporation**” and “**certificate of incorporation**” refer to
    - the place where a company was incorporated and the certificate evidencing its incorporation, **OR**
    - the place where the company is currently domiciled and the certificate evidencing its registration as a company in its current domicile, **OR**
    - both

New Definition of "Place of Incorporation“ (1)

- **Section 774(1) of the CO:**
  - (a) The jurisdiction outside Hong Kong in which a non-Hong Kong company is incorporated and under the law of which it is registered as a company is the place of incorporation of the non-Hong Kong company.
  - (b) If, at any time after the incorporation of a non-Hong Kong company, the non-Hong Kong company has transferred its domicile to a jurisdiction outside Hong Kong and is registered as a company under the law of that jurisdiction, the jurisdiction under the law of which the non-Hong Kong company is currently so registered is the place of incorporation of the non-Hong Kong company.
- **Cap. 622J** (Companies (Non-Hong Kong Companies) Regulation) *(renamed by the Amendment Ordinance No.2 as “Companies (Non-Hong Kong Companies and Other Companies to which Part 16 of Ordinance Applies) Regulation”)*:
  - A new definition of “place of incorporation” has been added to Cap. 622J where the meaning of “place of incorporation” given by section 774(1) of the CO is adopted

Therefore
“place of incorporation” in the CO and Cap. 622J =
the place of the **latest domicile** of the non-Hong Kong company if it has transferred its domicile after its incorporation

New Definition of "Place of Incorporation“ (2)

- **Cap. 622M** (Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation
  - A new definition of "place of incorporation" has also been added to Cap. 622M, a reference to a non-Hong Kong company's place of incorporation –
    - (a) is a reference to the jurisdiction outside Hong Kong in which the non-Hong Kong company is incorporated and under the law of which it is registered as a company; **and**
    - (b) if, at any time after the incorporation of a non-Hong Kong company, the non-Hong Kong company has transferred its domicile to a jurisdiction outside Hong Kong and is registered as a company under the law of that jurisdiction — **includes** the jurisdiction under the law of which the non-Hong Kong company is currently so registered.

Therefore

"place of incorporation" in Cap. 622M =

both the original place of incorporation **and** the place of the latest domicile of the non-Hong Kong company if it has transferred its domicile after its incorporation

Change in Compliance Obligations (1)

(1) New Filing Obligation (the CO)

- Section 791(2)(e) of the CO:
  - A registered non-Hong Kong company must deliver a return for registration within 1 month of any change in “place of incorporation” (i.e. any change of domicile)
  - New Form NN16 *(Return of Change of Place of Incorporation of Registered Non-Hong Kong Company)*

(2) Change in Continuing Obligation (Cap. 622M)

- Display requirements under Cap. 622M:
  - A registered non-Hong Kong company must show **all** places of incorporation (i.e. original place of incorporation + latest domicile) at:
    - Business venues
    - Communication documents
    - Transaction instruments
- Example:
  - "Incorporated in **Cayman Islands**, continued in **Singapore**"

Change in Compliance Obligations (2)

(3) New Documents Required for Part 16 Applications (Cap. 622J)

- Certificate of Incorporation
  - For Part 16 applications, one of the accompanying documents specified in section 4(1)(b) of Cap. 622J, namely, a certified copy of the company's **certificate of incorporation**, was substituted by a certified copy of **each of the company's specified certificate**
  - According to the newly added sections 4(5), 4(6) and 4(7) of Cap. 622J, specified certificate refers to
    - (i) the certificate of incorporation (or the equivalent) (the "Certificate of Incorporation") issued under the law of the jurisdiction outside Hong Kong in which a non-Hong Kong company is incorporated; **and**
    - (ii) if, at any time after the incorporation, the non-Hong Kong company has transferred its domicile to a jurisdiction outside Hong Kong and is registered as a company under the law of that jurisdiction, the certificate or other document (the "Certificate of Registration") issued under the law of that jurisdiction certifying that the non-Hong Kong company is registered as a company under the law of that jurisdiction

Therefore

"**specified certificate**" in Cap. 622J =

both the Certificate of Incorporation **and** the Certificate of Registration if the non-Hong Kong company has transferred its domicile after its incorporation

  - For multiple change of domicile, only the Certificate of Registration issued in the ***latest*** jurisdiction

Change in Compliance Obligations (3)

(3) New Documents Required for Part 16 Applications (Cap. 622J)

- Certified Translation of Certificate of Incorporation Showing Domestic Name
  - Where a certified translation of a domestic name is contained in a Part 16 application and a certified translation (in the same language as the certified translation of the domestic name) of the relevant part of the company's Certificate of Incorporation is required to be submitted under section 7(1) of Cap. 622J, the newly added section 7(1A) of Cap. 622J provides that
    - For the purposes of subsection (1), the certificate (or its equivalent) issued under the law of the company's place of incorporation certifying that the company is registered as a company under the law of that place is the certificate of incorporation of the company

Therefore

"certified translation of certificate of incorporation showing domestic name "
in Cap. 622J =
certified translation of the relevant part of the **Certificate of Registration (issued in the latest domicile)**, if the non-Hong Kong company has transferred its domicile after its incorporation

Thank you!

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