



PROPOSED COMPANY RE-DOMICILIATION REGIME IN HONG KONG

SUBMISSIONS

1. The Financial Services and Treasury Bureau (“FSTB”) released in March 2023 a public consultation paper on “*Proposed Company Re-domiciliation Regime in Hong Kong*” (“Consultation Paper”) for views and comments.
2. The Law Society of Hong Kong has reviewed the Consultation Paper and provides this submission in response.

GENERAL OBSERVATIONS

3. The Government intends to introduce a fully-fledged company re-domiciliation regime to Hong Kong. We in principle welcome the policy objectives that underpin this proposal to strengthen Hong Kong’s position as a global business and financial hub and an open and competitive economy. There is however not much information from the Consultation Paper on the proposal; more details needed to be worked out, before the proposed regime could deliver economic benefits to Hong Kong.
4. Without prejudice to our rights to further comment on the proposal and the amendment legislation to be put forward, we are going to set out below our preliminary comments.
5. From a company law perspective, a fundamental issue that underscores the proposal of re-domiciliation is whether the proposal aims at only companies incorporated in common law jurisdictions or whether the regime would be extended to civil law jurisdictions. This issue is central to the policy of positioning Hong Kong as the financial hub.

6. It is therefore relevant to consider whether and if so, how companies in civil jurisdictions such as Mainland China can make use of the proposed regime of re-domiciliation. On the other hand, the Government should consider how receptive Hong Kong should be, with respect to those countries which are subject to sensitive geopolitical conflicts. A “whitelist” setting out the acceptable jurisdictions for re-domiciliation may have to be considered.
7. At the moment, the Government is putting forward a proposal for inbound re-domiciliation, i.e. for companies to be re-domiciled to Hong Kong. It is useful to also consider a “two-ways regime” i.e. a regime that also allows for exit of the re-domiciled companies from Hong Kong. A re-domiciling company might more likely to choose to be re-domiciled to Hong Kong, if it could easily move out after re-domiciliation. That provides flexibility; perception of flexibility is important to the business sector. A clear policy direction in this regard would be helpful.
8. There are technical issues that underline the proposed regime in the Consultation Paper, and those should be thoroughly considered. Those include how to reconcile the differences in the company laws of the jurisdictions where the company looking for re-domiciliation is situated; the compliance of different corporate governance rules and standards; the logistics of de-registration; as well as the reconciliation of different accounts reports and audits reports.
9. There is also the consideration of licence requirement. If a business requires a licence to do business (e.g. a licence from SFC), the company applying for re-domiciliation to Hong Kong must obtain that licence (in principle or otherwise) from the regulator in Hong Kong before the re-domiciliation. How the regulators work and coordinate with the Company Registry as well as the company would have to be carefully considered. Experience in other jurisdictions in this regard would be useful.
10. Insofar as insurance industry is concerned, a re-domiciliation regime is likely to be welcomed by key participants in the insurance industry, in particular life insurers which currently operate in Hong Kong as branches of Bermuda-incorporated entities. Allowing insurers or insurance groups to redomicile to Hong Kong would strengthen Hong Kong’s role as a regional and global insurance hub.
11. However, in order to make the implementation of the regime attractive for insurers, it is important that the implications of re-domiciliation under the Insurance Ordinance (Cap. 41, Laws of Hong Kong) are considered and addressed in the legislative proposal. Under the current law, re-domiciliation would create a number of “transitional” issues for re-domiciling insurers, such

as with regard to the approval of controllers, directors and other key persons. Some of these issues may be addressed through the new concept of “designated insurer” under the changes introduced by the Insurance (Amendment) Bill 2023, but a full assessment of the transitional issues should be carried out before the re-domiciliation legislation is finalised. We would be pleased to assist with such assessment.

12. Another key issue is how the re-domiciliation regime will operate for insurers who are currently authorised in other jurisdictions, but do not have an existing presence in Hong Kong. As alluded to in paragraph 9 above, an authorization (at least of an in-principle nature) by the Insurance Authority should be required before such an insurer is permitted to re-domicile under the new regime. The details and timing of such authorisation will have to be carefully considered since the re-domiciliation will also typically involve the Company Registry and regulator of the original jurisdiction.
13. Given the technical details involved in the re-domiciliation of insurers to Hong Kong, we would be pleased to assist with the relevant aspects of the re-domiciliation legislation.
14. Apart from legislative amendments to company law and insurance law, as we have outlined in the above, we note there will also be consequential amendments to the Inland Revenue Ordinance (Cap. 112, Laws of Hong Kong) to provide certainty to the re-domiciled companies on their tax obligations, and to empower the Inland Revenue Department to address transitional tax matters (see paragraph 11 of the Consultation Paper).
15. We ask to be further engaged for views and comments on the proposed legislative amendments to the Inland Revenue Ordinance, once they are available.

CONCLUDING REMARK

16. The issues that we have identified above are important policy and technical issues that the Government needs to carefully look into. We note that the Government is considering a comprehensive legal arrangement on re-domiciliation and shall look forward to a more detailed proposal for further deliberation.

The Law Society of Hong Kong
4 July 2023