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## New Re-domiciliation Regime for overseas companies



Re-domiciliation of a company is the process by which a non-Hong Kong incorporated company transfers its company registration to Hong Kong.

The Hong Kong government ("**HK Government**") is considering a comprehensive regime which will enable non-Hong Kong companies to re-domicile to Hong Kong (the "**Re-domiciliation Regime**"). This follows the fund re-domiciliation regime implemented in November 2021 which established a simplified fund re-domiciliation regime for Open-Ended Fund Companies and Limited Partnership Funds.

Any company which is comparable to the five types of companies which can be formed in Hong Kong under the Companies Ordinance (the "**CO**") (Cap. 622 of the Laws of Hong Kong) is captured under the regime. To this end, the government has published a proposal detailing the Re-domiciliation Regime and inviting comments on the regime. Any interested parties may submit written comments on or before 13 May 2023 to the Financial Services and the Treasury Bureau.

## What is re-domiciliation?

Re-domiciliation enables a foreign incorporated company to change its place of incorporation to Hong Kong. Comparative to other methods of "moving" a company across jurisdictions (e.g., winding up the company in its original place of incorporation (the "**Original Jurisdiction**") and re-incorporating in Hong Kong), re-domiciliation has the following features:

1. the company so re-domiciliated maintains the same legal identity;
2. the company retains its corporate history, management structure, assets, intellectual property and other property rights;
3. the company retains its existing contractual relationships; and
4. re-domiciliation does not affect the company's tax obligations in the Original Jurisdiction.

Other than the features above which may be desirable for companies considering moving its place of incorporation to Hong Kong, the HK Government also suggests that the Re-domiciliation Regime will be less costly, simpler and more effective.

## Eligibility for re-domiciliation under the regime

Companies must satisfy the following requirements to be eligible to apply for transfer (the "**Application**") under the Re-domiciliation Regime:

Types of factors	Requirements
<b>Company types</b>	<p>The company seeking to re-domicile to Hong Kong should be one of the following five types of companies that can be formed in Hong Kong, or their comparable types in the Original Jurisdiction:</p> <ol style="list-style-type: none"> <li>1. private companies limited by shares;</li> <li>2. public companies limited by shares;</li> <li>3. companies limited by guarantee with a share capital;</li> <li>4. private unlimited companies with a share capital; and</li> <li>5. public unlimited companies with a share capital.</li> </ol>
<b>General</b>	<ol style="list-style-type: none"> <li>1. The proposed type of company after re-domiciliation should be the same or substantially the same as its type of the company in the Original Jurisdiction;</li> <li>2. Compliance with the requirements (if any) of the law of the Original Jurisdiction for the transfer of its incorporation; and</li> <li>3. The company has existed for at least one financial year as at the date of the Application.</li> </ol>
<b>Integrity</b>	<ol style="list-style-type: none"> <li>1. Compliance with the requirements of the CO in respect of the incorporation of a local company; and</li> <li>2. The intended company will not be used for an unlawful purpose, contrary to public interest or endangering national security.</li> </ol>

<p><b>Member and creditor protection</b></p>	<ol style="list-style-type: none"> <li>1. The Application is made in good faith and not intended to defraud existing creditors of the company; and</li> <li>2. If the requirements of the law of the Original Jurisdiction do not include consent to the transfer of incorporation by members of the company, the members: <ul style="list-style-type: none"> <li>• have consented to the transfer by a resolution passed by at least 75% of the votes cast by members entitled to; and</li> <li>• were given at least 21 days' notice of the meeting and the proposed resolution.</li> </ul> </li> </ol>
<p><b>Solvency</b></p>	<ol style="list-style-type: none"> <li>1. The company is able to pay its debts as they fall due during the period of 12 months after the date of the Application;</li> <li>2. 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;</li> <li>3. No receiver, or receiver and manager, is in possession of, or has control over, any property of the company and no relevant proceeding is ongoing or pending; and</li> <li>4. No compromise or arrangement made between the company and another person(s) is being administered and no relevant proceeding is ongoing or pending.</li> </ol>
<p><b>Discretion of the Registrar of Companies</b></p>	<p>The Registrar of Companies (the "<b>Registrar</b>") is also empowered to impose any other conditions on a case-by-case basis.</p>

## Application Process under the Re-domiciliation Regime

The Registrar will be responsible for the administration and approval of application under the Re-domiciliation Regime. For the purposes of applying for a re-domiciliation to Hong Kong, a company should submit the following documents and pay the requisite fee (amount of which has not been announced):

Documents/ Fees required	Details
<b>Application Form</b>	<p>The company to provide information on:</p> <ol style="list-style-type: none"> <li>1. place of incorporation;</li> <li>2. name of the company in the Original Jurisdiction at the time of the Application;</li> <li>3. whether the company has registered as a registered non-Hong Kong company under Part 16 of the CO;</li> <li>4. proposed name of the intended Hong Kong company;</li> <li>5. address of the proposed registered office of the intended company;</li> <li>6. particulars of each person who is to be a director and company secretary of the intended company;</li> <li>7. details of the share capital and members of the intended company (Other than an intended company that is a company limited by guarantee); and</li> <li>8. if the intended company is a company limited by guarantee, the number of members.</li> </ol>
<b>Certified copy of the certificate of incorporation</b>	As issued under the law of the Original Jurisdiction.
<b>Certified copy of the company's constitution</b>	Any instrument constituting the company's constitution in the Original Jurisdiction (e.g., the company's charter, statute, constitution or memorandum or articles).
<b>Copy of new articles of association</b>	Copy of the proposed articles of association of the intended company.
<b>Latest audited financial statements</b>	The audited financial statements should be within three months from the date of the Application.
<b>Certified copy of members' special resolutions</b>	Members' special resolutions to authorise the transfer of incorporation.
<b>Statements and Consent to Act</b>	The statement and consent to act to be signed by each proposed director.

<b>Statement/certificate issued by directors</b>	The directors confirming that all the requirements for re-domiciliation under the CO will be met on the re-domiciliation date.
<b>Statement/certificate issued by directors</b>	The directors confirming that the company has complied with the requirements of the law of the Original Jurisdiction in relation to the transfer.
<b>Statement/certificate issued by directors</b>	The directors confirming that all reasonable steps will be taken as soon as practicable to procure the deregistration of the company in the Original Jurisdiction after the company is re-domiciliated.
<b>Notice to Business Registration Office (IRBR1)</b>	Notice together with the prescribed business registration fee and levy.
<b>Document evidencing that the company has been deregistered</b>	After the Application is approved, a document evidencing that the company has been deregistered in the Original Jurisdiction within 60 days.

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