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Hong Kong's Proposed Company Re-domiciliation Regime

In July 2024, Hong Kong's Financial Services and Treasury Bureau (**FSTB**) published its Consultation Conclusions¹ on its proposed introduction of an inward re-domiciliation regime to allow companies incorporated outside Hong Kong to re-domicile to Hong Kong as set out in its March 2023 Consultation Paper.²

Chief Executive, John Lee, has since announced in his 2024 Policy Address³ delivered on 16 October 2024 that the FSTB will introduce a bill this year to implement the Hong Kong re-domiciliation regime as part of the Hong Kong Government's efforts to attract more offshore companies to establish headquarters or corporate divisions in Hong Kong. For further details of the Chief Executive's 2024 Policy Address, please see our October 2024 newsletter and for details of the FSTB's Consultation Paper on Proposed Company Re-domiciliation Regime in Hong Kong, please see our June 2023 newsletter.

Following its introduction of fund re-domiciliation regimes to allow offshore funds established as companies or limited partnerships to re-domicile to Hong Kong as open-ended fund companies or limited partnership funds, the Hong Kong Government is proposing a legislative regime to allow companies incorporated in overseas jurisdictions to migrate their place of incorporation to Hong Kong while maintaining their legal identity and the validity of their corporate actions prior to the re-domiciliation. The intention is to provide a streamlined and cost-effective way for overseas companies to move their place of incorporation to Hong Kong which avoids the need to wind-up the company in its original domicile and set up a new company in Hong Kong.

The proposed regime will be administered by the Hong Kong Registrar of Companies, who will approve or reject applications for re-domiciliation to Hong Kong.

Legal Effect after Re-domiciliation to Hong Kong

Under the proposed regime, the legal identity, property, rights, obligations and contracts of re-domiciled companies will be preserved. Additionally, re-domiciled companies will benefit from the same rights and be subject to the same obligations under Hong Kong company laws as other Hong Kong-incorporated companies. The FSTB has clarified that these obligations include appointing a company secretary under section 474 of the Hong Kong Companies Ordinance (Cap. 622 of the Laws of Hong Kong) (**Hong Kong Companies Ordinance**) which may not be required under the law of the company's original jurisdiction of incorporation.

Inward Re-domiciliation only

The FSTB confirmed in its Consultation Conclusions that an outward re-domiciliation regime to allow Hong Kong-incorporated companies to re-domicile out of Hong Kong will not be introduced at this stage given the lack of demand for an outward re-domiciliation regime.

No Economic Substance Test for Hong Kong Company Re-domiciliation

Applicant companies will not be subject to an economic substance test under the proposed regime. The FSTB intends the re-domiciliation regime to be accessible to a wide range of companies in terms of size and hierarchies, including holding companies.

Eligibility Requirements for Companies Re-domiciling to Hong Kong

The key eligibility criteria for companies re-domiciling to Hong Kong are summarised below.

Company Type

The company will need to be in the same or substantially the same form as one of the following types of companies that can be incorporated under the Companies Ordinance:

- private companies limited by shares;
- public companies limited by shares;
- private unlimited companies with a share capital; and
- public unlimited companies with a share capital.

Companies limited by guarantee without a share capital, which are typically non-profit making organisations, will not be eligible to re-domicile to Hong Kong.

Given the aim of preserving the legal identity of the re-domiciled company, the FSTB has clarified that companies will not be allowed to change their company type during the re-domiciliation process.

Re-Domiciling Company's Compliance with the Laws of its Jurisdiction of Incorporation

The law of the company's original place of incorporation must allow outward re-domiciliation to other jurisdictions. For example, companies originally incorporated in the Cayman Islands may be eligible to re-domicile to Hong Kong as the Cayman Limited Liability Companies Act permits outward re-domiciliation, whereas Singapore does not have an outward re-domiciliation regime. Some other jurisdictions allow outward re-domiciliation to specified jurisdictions. For example, Bermuda permits outward re-domiciliation to "appointed jurisdictions", which do not currently include Hong Kong.

Re-domiciling companies will have to fulfil all the requirements for outward re-domiciliation under the laws of the original place of incorporation. These may include shareholder approval, creditor notification and other approval requirements.

Company Age

The company must have been incorporated for at least one financial year before submitting an application for re-domiciliation to Hong Kong.

Integrity Requirement

There must be no intention to use the re-domiciled company for unlawful purposes, or for engaging in activities that are against the public interest or would endanger national security in Hong Kong. Under the proposed regime, re-domiciling companies will have to comply with the requirements of the Hong Kong Companies Ordinance relating to re-domiciliation, which will be substantially the same as the registration requirements for locally incorporated companies.

Solvency

A company will need to be solvent and not in liquidation to apply for re-domiciliation. As discussed further below, the company will be required to submit financial statements and other documents to prove the company's solvency.

Creditor Protection and Shareholders' Consent to Re-domiciliation to Hong Kong

Under the proposed regime, the application for re-domiciliation must be made in good faith and the arrangement must not be intended to defraud the company's creditors.

The company's re-domiciliation will need to be approved by its shareholders. If neither the law of the original jurisdiction of incorporation nor the constitutional documents of the company require shareholders to approve the company's re-domiciliation, then the re-domiciliation must be approved by way of a special resolution passed by at least 75% of the shareholders entitled to vote. Otherwise,

shareholders' approval must be given in accordance with the requirements of the company's jurisdiction of incorporation and/or constitutional documents.

Application Documents for Company Re-domiciliation to Hong Kong

In order to apply for re-domiciliation to Hong Kong, a company will need to submit the following documents to the Hong Kong Registrar of Companies:

- Application form setting out: (i) the company's original and proposed name; (ii) the company's original place of incorporation; (iii) whether the company is a registered non-Hong Kong company under Part 16 of the Hong Kong Companies Ordinance; (iv) the company type; (v) the proposed registered office address; (vi) particulars of the proposed directors and company secretary; and (vii) details of the share capital and shareholders;
- A copy of the Articles of Association that the re-domiciled company proposes to adopt;
- A certified copy of the company's certificate of incorporation issued under the law of its original place of incorporation. If the company has undergone re-domiciliation before, a certified copy of its certificate of registration will also be required;
- A certified copy of the company's constitutional documents in its original place of incorporation;
- A certified copy of the resolution approving the company's re-domiciliation passed by at least 75% of the eligible shareholders. This can be a resolution passed at a meeting or a written resolution. The FSTB has said that this document is required only if neither the law of the original place of jurisdiction nor the constitutional documents of the company require shareholders' approval of the company's re-domiciliation;
- A legal opinion from a legal practitioner qualified in the original place of jurisdiction confirming, among others:
 - that the company is duly registered in its original place of jurisdiction;
 - that the proposed re-domiciliation is allowed under the law of the original place of jurisdiction;
 - the company type in the original place of jurisdiction and the proposed company type subsequent to re-domiciliation;
 - the company's solvency;
 - that the company has obtained shareholders' approval for the re-domiciliation;
 - the intended name of the re-domiciled company; and
 - adoption of the proposed articles of association submitted with the application;
- The company's latest financial statements or audited financial statements containing financial information up to a date that is not more than 12 months before the application date. In the Consultation Conclusions, the FSTB relaxed the requirement for the financial statements to be audited if the laws of the original place of jurisdiction, the rules of the relevant stock exchange, or other similar regulatory rules do not require audited financial statements to be prepared;
- A certificate signed by a director confirming that the company is duly registered in its original place of jurisdiction and its solvency. The certificate should also confirm that the company's shareholders have approved the re-domiciliation and explain the reasons for the re-domiciliation.

The list of documents required to be submitted as set out in the Consultation Paper also includes other documents such as the notice to the Business Registration Office, business registration fee and an application fee. The FSTB also noted in the Consultation Conclusions that the one-stop business registration arrangement between the Hong Kong Companies Registry and the Inland Revenue Department will apply to re-domiciliation applications.

Application Procedures for Company Re-domiciliation to Hong Kong

All application documents should be addressed to the Hong Kong Registrar of Companies. Although the processing time for applications will vary according to the type and circumstances of the

company, the FSTB expects that approvals will generally be granted within two weeks of receipt of all the required application documents.

Tax Arrangements for Companies Re-domiciling to Hong Kong

According to the Consultation Conclusions, the tax obligations of the company in its original place of domiciliation will not be affected by the re-domiciliation process. This will prevent companies from using the company re-domiciliation regime as a means of tax evasion. The re-domiciled company's liability to Hong Kong profits tax will also remain unchanged. This is because the position under the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong) (**Inland Revenue Ordinance**) is that, irrespective of the place of incorporation or tax residency, profits tax is charged on profits arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.

However, the FSTB is proposing to amend the Inland Revenue Ordinance to allow the Inland Revenue Department to address transitional tax matters such as fair deduction for trading stock, specified types of expenditures and depreciation allowances. The FSTB has said that it will propose comprehensive amendments in due course and will reference the arrangements adopted by other jurisdictions during the drafting process.

To eliminate double taxation, the FSTB proposes to provide re-domiciled companies with unilateral tax credits for tax payable on actual profits derived in Hong Kong after re-domiciliation, if similar profits have been taxed in an unrealised form in the original jurisdiction of incorporation at the time of exit.

As regards stamp duty implications, the FSTB has said that since the re-domiciliation process will not generally involve the transfer of the company's assets, it should not give rise to a charge to Hong Kong stamp duty. The FSTB has not however addressed whether, after re-domiciliation, a transfer of the re-domiciled company's shares will attract Hong Kong stamp duty.

Preservation of Business Continuity

The FSTB expects that many of the companies that will apply to re-domicile to Hong Kong will be non-Hong Kong companies with an established place of business in Hong Kong that are already registered as non-Hong Kong companies under Part 16 of the Hong Kong Companies Ordinance. One of the stated aims of the proposed re-domiciliation regime is to allow companies to preserve their business and legal identity after migrating their place of domiciliation to Hong Kong. In line with this policy intent, the FSTB is proposing to make arrangements under the Hong Kong Companies Ordinance and the Business Registration Ordinance (Cap. 310 of the Laws of Hong Kong) to allow registered non-Hong Kong companies applying to re-domicile to Hong Kong to keep their existing company name and business registration number after the re-domiciliation process.

For re-domiciliation applicant companies that are not registered non-Hong Kong companies, the filings and records of the company prior to re-domiciliation will be regulated by the law of its original place of jurisdiction. The company will only be required to observe the record-keeping and filing requirements under the Hong Kong Companies Ordinance from the date of its re-domiciliation.

Deregistration Period

A company will be regarded as having re-domiciled to Hong Kong on the date the certificate of re-domiciliation is issued by the Hong Kong Registrar of Companies. Re-domiciled companies must then provide evidence of deregistration in their original place of domicile to the Companies Registry within 120 days from the date of re-domiciliation. If a company fails to do so within that timeframe, the registration in Hong Kong will be revoked and the re-domiciliation application will be deemed unsuccessful. The FSTB will also allow companies to apply for a time extension where necessary.

Arrangements for Overseas Financial Institutions Re-domiciling to Hong Kong

Regarding companies with business operations in regulated sectors in Hong Kong, such as banks and insurance companies, the FSTB will also propose amendments to the Insurance Ordinance (Cap. 41 of the Laws of Hong Kong) and the Banking Ordinance (Cap. 155 of the Laws of Hong Kong) to include re-domiciled insurance companies and authorised institutions in their regulatory frameworks. The intention is to ensure that insurance companies and authorised institutions that re-domicile to Hong Kong will be subject to the same rules and regulations as insurance companies and authorised institutions incorporated in Hong Kong. In the Consultation Conclusions, the FSTB also advises insurance companies and authorised institutions looking to re-domicile to Hong Kong to consult the Insurance Authority or the Hong Kong Monetary Authority to ascertain whether they meet the requirements for locally incorporated insurance companies or authorised institutions before submitting their re-domiciliation application. The FSTB noted in the Consultation Conclusions that it will look into administrative arrangements to enhance coordination between the Companies Registry and the financial regulators in relation to the authorisation process of financial institutions.

Safeguarding National Security

The Safeguarding National Security Ordinance (Instrument A305 of the Laws of Hong Kong) that came into effect on 23 March 2024 gives the Chief Executive the power to order companies incorporated in Hong Kong to be struck off if the company is believed to engage in activities that may endanger national security in Hong Kong. The FSTB will propose amendments to the relevant provisions to extend that power to cover re-domiciled companies in addition to Hong Kong incorporated companies.

Next Steps

The FSTB is preparing an amendment bill to amend the Hong Kong Companies Ordinance and other ordinances mentioned in the Consultation Conclusions and aims to submit the bill to the Legco by the end of this year.

1 FSTB. Consultation Conclusions and Legislative Proposals – Proposed Company Re-domiciliation Regime in Hong Kong, July 2024

2 FSTB. Public Consultation on Proposed Company Re-domiciliation Regime in Hong Kong, March 2023

3 The Chief Executive's 2024 Policy Address, October 2024

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