



FSTB Consults on Company Re-domiciliation Regime for Hong Kong

On 31 March 2023, the Financial Services and the Treasury Bureau issued a [public consultation](#) on proposed amendments to the Hong Kong Companies Ordinance to introduce an inward company re-domiciliation regime in Hong Kong. The consultation period ended on the 31 May 2023.

Company re-domiciliation in Hong Kong at present

Since 2021, Hong Kong has put in place re-domiciliation regimes for Open-Ended Fund Companies (**OFCs**) and Limited Partnership Funds (**LPFs**). The regimes allow a non-Hong Kong fund corporation to apply for registration as an OFC with the Securities and Futures Commission, and the general partner of a non-Hong Kong fund to apply to the Registrar of Companies to be the general partner of a Hong Kong LPF (for further information, please see [the Companies Registry External Circular No.2/2021](#)).

Currently, no re-domiciliation regime exists for other types of companies. At present, a company can change its place of incorporation to Hong Kong either by winding up its original incorporation and establishing a new entity in Hong Kong or by entering into a court-sanctioned scheme of arrangement to become a wholly-owned subsidiary of a Hong Kong-incorporated company with the approval of its shareholders and other stakeholders. However, both methods are costly and cause disruption to a company's operations.

The proposed regime would allow non-Hong Kong companies to change their place of incorporation to Hong Kong while preserving their legal status as body corporates, their property, rights, obligations, liabilities and contracts.

Re-domiciliation regimes in other Common Law jurisdictions

Re-domiciliation regimes have been introduced in other common law jurisdictions such as Canada, New Zealand and Singapore. The first two jurisdictions, under their respective companies acts (the Canada Business Corporations Act and the New Zealand Companies Act), have provisions for both inward and outward re-domiciliation (or Continuance (export) and (import) as it is known in Canada). Singapore's regime, on the other hand, only covers inward re-domiciliation under its Companies (Amendment) Act 2017. Requirements for outward re-domiciliation include shareholders' approvals, a letter of satisfaction that the export will not be prejudicial to creditors or shareholders, and a certificate for discontinuance. As for the import of companies, all three jurisdictions require documentation indicating the approval of the re-domiciliation from the company's original regulators, as well as the submission of application forms detailing the re-domiciling company's particulars and status. Both New Zealand and Canada have a local residency requirement for the company's directors, while the Singapore regime imposes size and solvency criteria. Jurisdictions such as the BVI, Bermuda and the Cayman Islands also have inward and outward re-domiciliation mechanisms in place.

Hong Kong's proposed inward re-domiciliation regime

Hong Kong inward re-domiciliation regime: Considerations and conditions

The Registrar of Companies will administer the proposed regime and approve applications for company re-domiciliation. The factors the Registrar of Companies will take into account in reviewing applications are:

- whether the type of Hong Kong company (i.e. a private company limited by shares, a public company limited by shares, a company limited by guarantee with a share capital, a private unlimited company with a share capital, or a public unlimited company with a share capital) the applicant company seeks to re-domicile as is the same or substantially the same as the applicant's company type in its place of incorporation;
- whether the applicant company has complied with the legal requirements of its jurisdiction of incorporation for the transfer of its incorporation;
- whether, at the date of the re-domiciliation application, the applicant company's first financial year end in its place of incorporation has passed;
- whether the applicant company will comply with the requirements for the incorporation of a local company under the Hong Kong Companies Ordinance (e.g. the requirements for company names);
- if there is no requirement for the applicant's members to consent to the transfer of incorporation under the laws of its jurisdiction of incorporation, whether a resolution for the transfer of incorporation has been approved by at least 75% of the votes cast by members entitled to vote on the resolution at a meeting of which members were given at least 21 days' notice which included notice of the resolution to approve the transfer of incorporation; and
- whether the applicant company is able to pay its debts as they fall due in the 12 months after the application date.

Other conditions for the grant of approval include that:

- the intended re-domiciled company must not be used for purposes that are unlawful or contrary to public interest or endanger national security;
- the application must be made in good faith and not with the intention of defrauding the applicant company's creditors;
- the applicant company is not in liquidation, being wound up or in receivership; and
- the applicant company has not entered into any compromise or other arrangement with any other person and there are no such ongoing or pending proceedings.

The Registrar of Companies will be able to impose other conditions based on the circumstances of individual cases.

The FSTB does not intend to impose an economic substance test on applicant companies.

The Inland Revenue Department will be empowered to address transitional tax matters such as fair deduction for trading stock, bad debts, impairment losses on financial assets and depreciation etc.

The application process for the proposed Hong Kong inward re-domiciliation regime

Companies applying for re-domiciliation to Hong Kong will need to pay an application fee and submit the following:

- an application form containing the information specified in the Appendix to the consultation paper;
- their statutory documents and latest audited financial statements issued within three months before the application date;
- a certified copy of the members' resolution approving the transfer of incorporation; and
- statements/certificates of their directors confirming that: the requirements for re-domiciliation under the Hong Kong Companies Ordinance will be met, the company has complied with the

requirements for its re-domiciliation under the laws of its jurisdiction of incorporation and will take all reasonable steps to procure its deregistration in its jurisdiction of incorporation as soon as practicable after its re-domiciliation to Hong Kong.

For a full list of the documents required, please see the Appendix to the consultation paper.

Once the application is approved, the applicant company must provide the Registrar of Companies with evidence of its de-registration in its place of incorporation within 60 days of its registration in Hong Kong. Failure to do so will result in the revocation of the application and the termination of the re-domiciliation process. Once re-domiciled, the company will have the same rights and obligations as other locally incorporated companies of its type and will need to comply with the relevant Companies Ordinance provisions. If the company needs to be licensed to conduct certain businesses in Hong Kong, it will need to apply for the relevant licences separately.

Applicant companies who are already registered with the Companies Registry as registered non-Hong Kong companies will cease to be registered as such once they have been granted their certificate of re-domiciliation.

Next Steps

The FSTB envisages developing the relevant amendment instrument for submission to the Legislative Council in 2023 to 2024.

[1] <https://ised-isde.canada.ca/site/corporations-canada/en/business-corporations/policy-continuance-import-body-corporate-canada-business-corporations-act-cbca> and <https://ised-isde.canada.ca/site/corporations-canada/en/business-corporations/policy-continuance-export-federal-corporation>

[2] <https://companies-register.companiesoffice.govt.nz/help-centre/managing-an-overseas-company-in-nz/how-to-transfer-incorporation-to-nz/>

[3] <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/inward-re-domiciliation-regime-in-singapore>

[4] Ibid.

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