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WEBINAR:

**HONG KONG STOCK EXCHANGE TREASURY
SHARES REGIME AND PROPOSED COMPANY RE-
DOMICILIATION REGIME IN HONG KONG**

October 2024

Background to HKEX treasury shares regime

- **Previously, Listing Rules** prevented repurchased shares from being held by Listco in treasury for future resale
 - safeguard against risks of market manipulation & insider trading
- 92% of HKEX-Listcos are incorporated in jurisdictions permitting holding of treasury shares
 - e.g. Mainland China, Bermuda & Cayman Islands
- **HK Companies Ordinance (CO)** requires HK-incorporated Listcos to cancel repurchased shares
- Treasury shares regime is not applicable to HK-incorporated Listcos, but Government considering amending the CO to allow HK-incorporated Listcos to benefit

Benefits of treasury share regime

Holding of treasury shares & permitted use governed by Listco's laws of incorporation & constitutional documents

Depending on local laws, treasury shares can offer Listcos

- ✓ **Greater flexibility** – allow repurchase of shares for the following reasons:
 - returning cash to shareholders;
 - adjusting debt-to-equity ratio;
 - increasing earnings per share;
 - facilitating the exit of shareholders; or
 - signaling to the market that its shares are undervalued

- ✓ **Alternative fund-raising means to placings**
 - Companies can resell the treasury shares in small lots on the market at full market price
 - new shares typically sold at a discount to market price
 - allow more flexibility in adjusting share capital & potentially reduces cost of capital

LR requirement to cancel repurchased shares removed

- Listcos can hold repurchased shares in treasury for future resale if allowed under laws of jurisdiction of incorporation (**home laws**) & constitutional documents
- Treasury shares remain listed shares if allowed under home laws

“Treasury Shares” definition

- **Rule 1.01** – *“shares repurchased and held by an issuer in treasury, as authorised by the laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on the Exchange”*
 - treasury shares can be held by Listco’s subsidiary, or an agent or nominee of Listco or its subsidiary, if permitted by home laws and constitutional documents
 - Note: under Bermuda & Cayman Islands laws, treasury shares must be held in Listco’s own name
 - PRC – treasury H shares can be held in the name of Listco or a nominee
- Treasury shareholders’ rights as shareholders (e.g. voting rights & rights to distributions) usually suspended under home laws until resale/transfer out of treasury
- **Rule 10.06(5)** – listed companies must ensure that treasury shares are clearly identified and segregated

Holding treasury shares in CCASS

Segregated CCASS account

- **GL 119-24** – Listed companies can hold treasury shares that they intend to resell with CCASS registered in the name of HKSCC Nominees Limited (**HKSCCN**) as a common nominee
 - must be held in a segregated CCASS account

Home laws require repurchased shares to be held in Listco's own name

- Listco should
 - withdraw repurchased shares from CCASS on completion of repurchase & register them in its own name
 - only re-deposit treasury shares into CCASS if there's imminent plan to resell
- Shares cease to be classified as treasury shares on transfer to HKSCCN → but will still be treated as treasury shares under the Listing Rules
- Pending resale, Listco must ensure shares treated as treasury shares & not exercise any shareholders' rights

Home laws allow repurchased shares to be held in name of Listco or nominee

- Rights attached to shares will be suspended under home laws
- Treasury shares must be held in segregated account
- Listco must give instructions to share registrar & broker to identify repurchased shares held in CCASS as treasury shares

LR Restrictions on Share Repurchases

Restrictions on on-Exchange share repurchases

1

Listco must have shareholders' approval to repurchase shares on-exchange under general or specific mandate

2

Mandate to limit repurchase of shares to 10% of Listco's issued shares (excluding treasury shares) at date of repurchase mandate (LR 10.06(c)(i))

3

Price Limit

- No on-exchange repurchase at a price higher by 5% or more than the shares' average closing price for 5 preceding trading days

Resale/transfer of treasury shares treated as new share issue

- Resale/transfer of treasury shares subject to pre-emption under **Rule 13.36** - must be
 - offered to shareholders pro rata or
 - be approved by shareholders under specific or general mandate
- General mandate must specifically authorise resale of treasury shares
- General mandate limit
 - is aggregate of (1) 20% of Listco's issued shares (excluding treasury shares) on date of resolution granting mandate and (2) no. of shares repurchased under general mandate since date of general mandate up to 10% of Listco's issued shares (excluding treasury shares) at date of share repurchase mandate
 - applies to new share issues & sale/transfer of treasury shares

Resale of treasury shares treated as new share issue (cont'd)

- An on-exchange resale under general mandate is subject to maximum price discount of 20% of the higher of:
 - 1.the closing price on the trading day immediately prior to the resale; and
 - 2.the average closing price in the 5 trading days immediately prior to the resale (LR 13.36(5A))
- Off-market resale under general mandate for cash consideration subject to maximum price discount of 20% of higher of:
 - 1.the closing price on date of agreement for resale; and
 - 2.the average closing price in the 5 trading days prior to the earlier of (a) the announcement of the resale (b) the date of the agreement for resale and (c) the date the price is fixed (LR 13.36(5))

PRC-incorporated Listcos

- Governed by **Rules 10.05 and 10.06**
 - not covered by Rule 13.36
- Under PRC law – A+H issuers do not need to cancel their treasury A shares
 - can hold and use repurchased A shares with board approval
- The resale of treasury A shares is not subject to the Listing Rules' shareholders' mandate requirement

Resale of treasury shares

1 Resale of treasury shares through agents or nominees

- Rule 1.01 – resale of treasury shares by a listed company or its subsidiary includes resale of treasury shares through their agents or nominees

2 Resale of treasury shares to connected persons

- Resale or transfer of treasury shares subject to same connected transaction requirements under Ch. 14A as a new share issue
- Resale or transfer of treasury shares to connected person require independent shareholders' approval unless exempt under LR 14A.92 (exemptions for pro rata issues to shareholders and shares issued under a share scheme that complies with Ch. 17)
- On-exchange sales of treasury shares exempt from all Ch 14A requirements if connected person does not know they are purchasing from Listco (LR 14A.92B)

Share schemes

- Share schemes can use treasury shares to satisfy share grants if specifically allowed under scheme rules

Amending scheme rules to allow use of treasury shares to satisfy grants not regarded as a material alteration requiring shareholders' approval

- Share schemes using treasury shares to satisfy share grants → treated as share schemes funded by new shares under **Ch 17**

- Grants subject to the scheme mandate limit

- Listcos must:

- publish an announcement of the grant of share awards or options under a share scheme
- file a next day disclosure return on transfer of treasury shares to a director under a share scheme
- file a next day disclosure return on transfer of treasury shares to non-director participants only if transfer alone or with other events under LR 13.25A(2)(b) results in change of $\geq 5\%$ of Listco's issued shares since last next day or monthly return

Dealing Restrictions

Dealings in treasury shares subject to restrictions on insider dealing & market manipulation under SFO

1 Moratorium on resales & transfers of treasury shares after share repurchase (LR 10.06(3)(a))

- 30-day moratorium on: resale/transfer of treasury shares after an on- or off-exchange share repurchase
- subject to carve-outs for sales or transfers of treasury shares:
 1. under capitalisation issues;
 2. upon vesting or exercise of share awards or options under a share scheme complying with Ch. 17; or
 3. pursuant to exercise of warrants, share options or similar that require Listco to transfer treasury shares that were outstanding before the share repurchase

2 Moratorium on on-exchange share repurchases after on-exchange resale or transfer of treasury shares (LR 10.06(3)(b))

- 30-day moratorium on on-exchange share repurchases after on-exchange sale or transfer of treasury shares



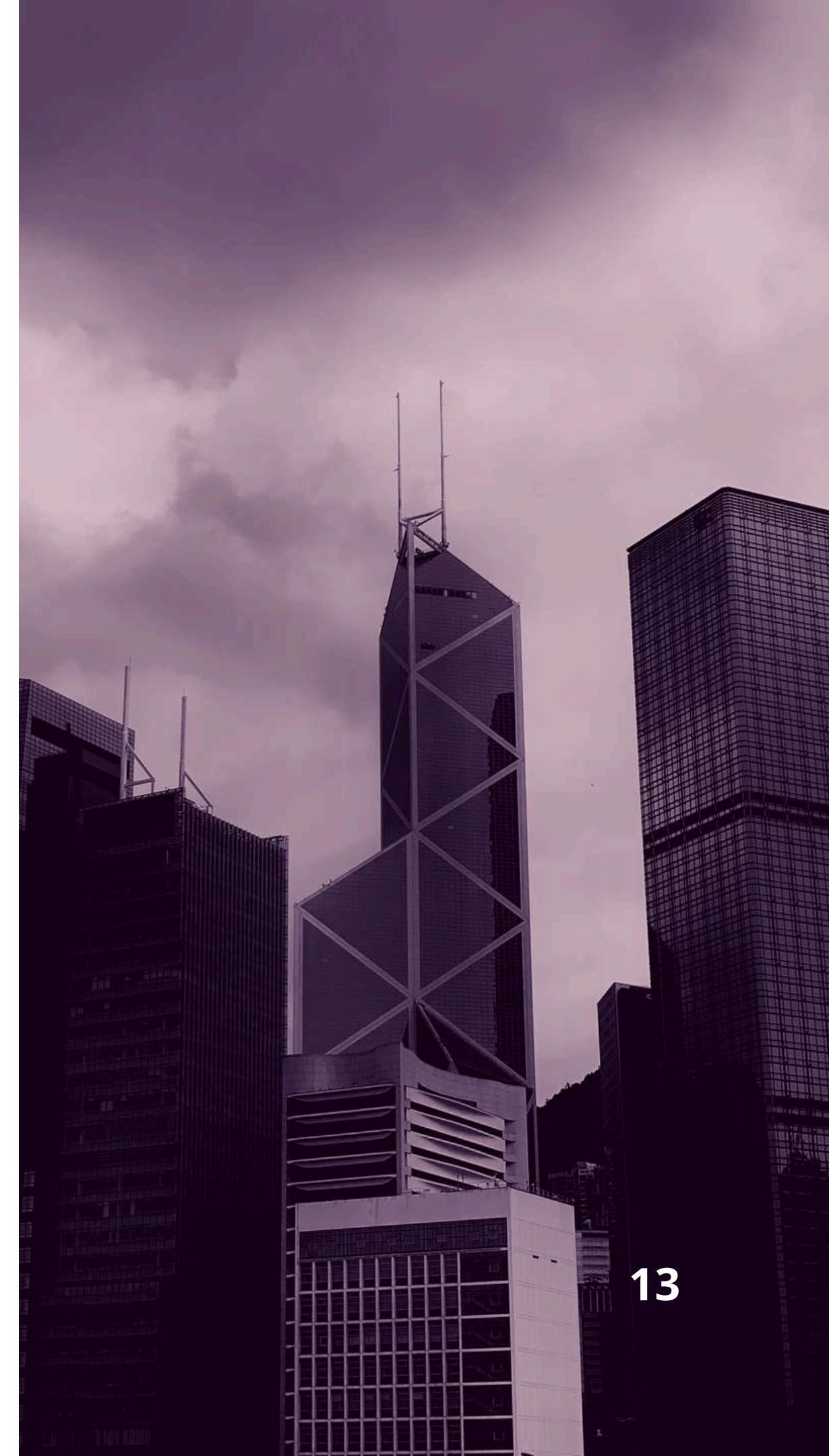
Other Dealing Restrictions

- LR 10.06(2)(e) & LR 10.06(A)(3) – Listcos prohibited from repurchasing shares on-exchange or reselling treasury shares on-exchange:
 - during period starting 30 days before earlier of board approval of financial results & deadline for publishing announcement of financial results & ending on date of results announcement
 - at any time when they have undisclosed inside information
- LR 10.06(2)(c) & 10.06(A)(1)
 - Listcos must not knowingly purchase shares from or sell treasury shares to a core connected person on-exchange
 - Core connected person must not knowingly sell shares to or buy treasury shares from Listco on-exchange
- LR 10.06(2)(d) & 10.06(A)(2) – if Listco appoints a broker to effect a repurchase of its shares or a sale of its treasury shares, must procure that the broker provides Stock Exchange with any information it requests re. the share repurchase or sale of treasury shares



New listing applicants

- New listing applicants can retain treasury shares after listing
 - must disclose details of treasury shares in the prospectus
- **LR 10.08** – resale or transfer of treasury shares (or agreeing to resell or transfer) not allowed within 6 months of a new listing except for
 - a transfer under a Chapter 17 share scheme or
 - a transfer by a Listco that transferred its listing from GEM to the Main Board & disclosed plan to raise funds within 6 months of transfer in its listing document or announcement of transfer under Ch. 9B



Disclosure Obligations

Disclosure of the listed company's intention to hold treasury shares

- LR 10.06(1)(b) – Listcos must state whether they intend to cancel the repurchased shares or hold them in treasury in the explanatory statement for a proposed share repurchase mandate
 - Listed company can later change this decision
- LR 10.06(4)(a) – Disclosure of share repurchases in next day disclosure return to state whether shares to be cancelled or held in treasury & reasons for any deviation from intention stated in explanatory statement

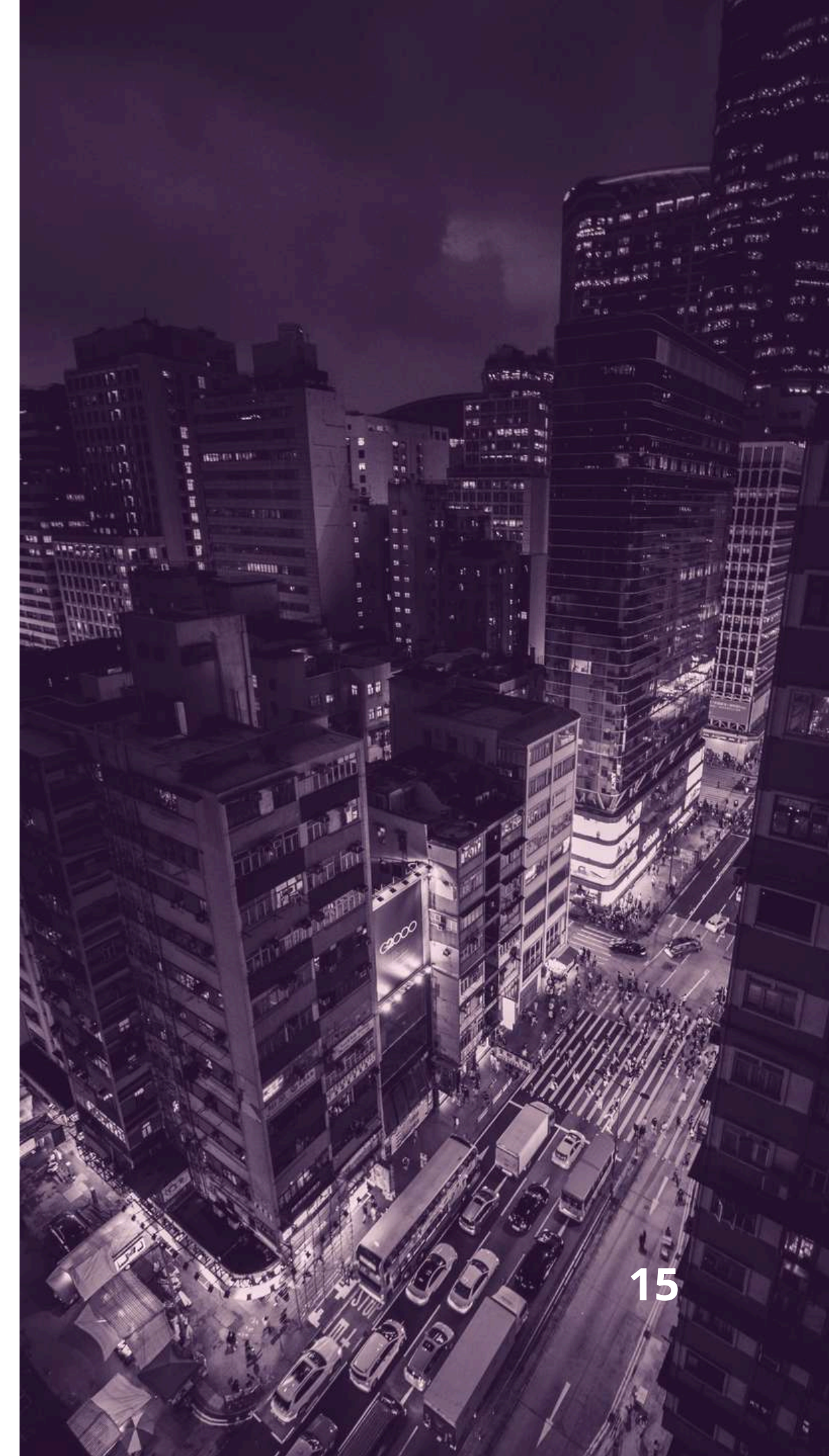
Disclosure Obligations

On-exchange resale of treasury shares

- Must be disclosed in next day return including key information (LR 10.06B(1))
- Separate announcement required if the resale (together with unannounced resales w/in previous 12 months) = $\geq 5\%$ of Listco's issued shares (excluding treasury shares) (LR 10.06B(2))
- Annual & interim reports must disclose on-exchange resales of treasury shares for cash with details of:
 - monthly breakdown of resales
 - selling price & total funds raised
 - use of proceeds
 - reasons for resales

Cancellation of treasury shares

- Must be disclosed in next day return under LR 13.25A(2)(b)(vii) if (alone or with other events in LR 13.25A(2)(b)) results in change of $\geq 5\%$ in Listco's issued shares since last return filed



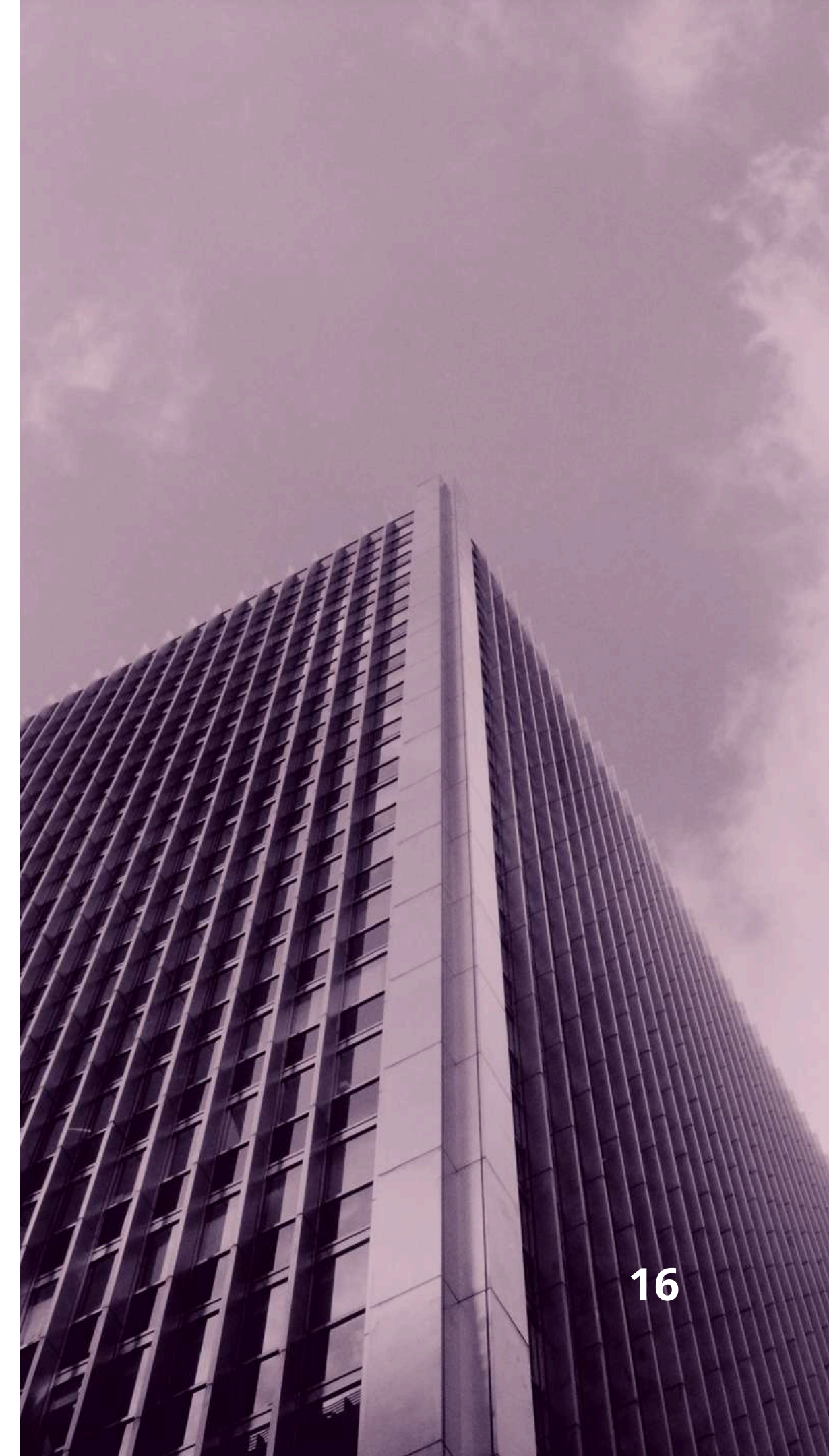
Other Listing Rule provisions

1 Voting rights attached to treasury shares

- **LR 1.01** – Listcos holding treasury shares must abstain from voting on matters that require shareholders' approval under the Listing Rules

2 Excluding treasury shares when calculating issued shares

- Treasury shares excluded
 - from Listco's issued shares when calculating public float, market capitalisation, mandate limits, size tests
 - when calculating % of rights to vote (e.g. for definitions of controlling & substantial shareholders)



Takeovers Code and Share Buy-backs Code (Codes)

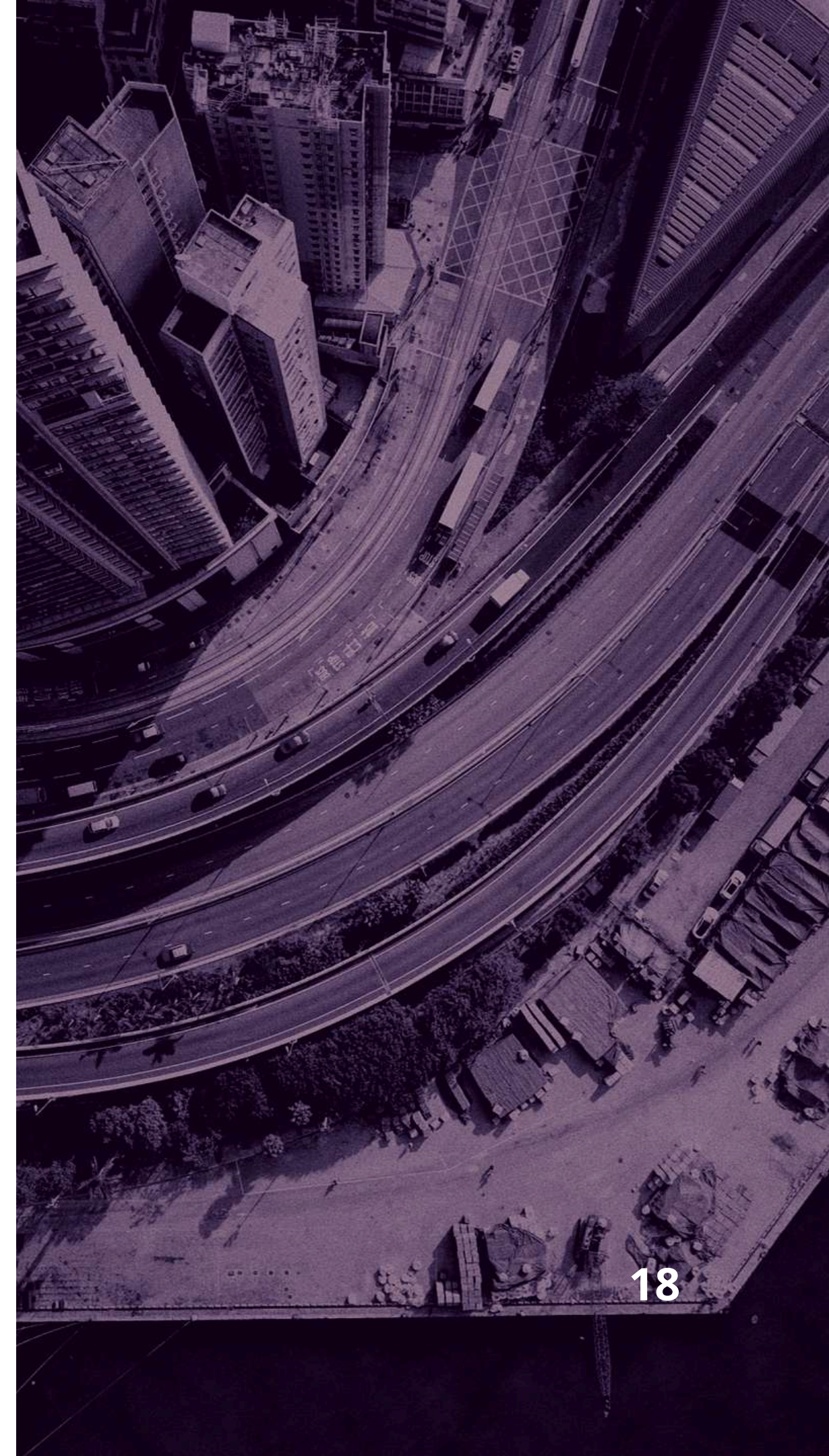
- Codes concerned with “voting rights” - typically suspended for treasury shares under home laws
- Codes’ definition of “voting rights” excludes voting rights attached to treasury shares
- Treatment of treasury shares under Codes generally not affected by treasury share regime
- Treasury shares are disregarded in calculating mandatory general offer, voting, approval & acceptance thresholds
- Listco’s repurchase of shares will result in increase in shareholders’ voting rights whether shares are cancelled or held in treasury
- Treasury shares are not outstanding share capital - offers do not need to include them
- Treasury shares are not “disinterested shares”
- Detailed guidance in SFC Practice Note 26

Disclosure of Interests Regime under Part XV SFO

- Treasury shares remain issued voting shares despite suspension of voting rights
- Treasury shares must be included in Listco's shares in issue when calculating % figure of a person's interest
- No change to shareholders' interests when Listco holds repurchased shares as treasury shares or resells treasury shares
- Listco must file substantial shareholder notice if it holds $\geq 5\%$ of its shares as treasury shares
 - will need to file notice of change in level of interest on further repurchases & resale/transfer of treasury shares

Stamp Duty Ordinance

- Resale of treasury shares in secondary market = disposal of shares for valuable consideration subject to stamp duty





**PART II - PROPOSED COMPANY RE-
DOMICILIATION REGIME IN HONG KONG**

Background

Schemes of re-domiciliation

- 1984 – Jardine Matheson’s shift from Hong Kong to Bermuda

Examples of methods of achieving re-domicile in Hong Kong at present

- No inward re-domiciliation regime
- **Option 1: set up a new company in Hong Kong and:**
 - a. transfer assets from the overseas company to the new Hong Kong company and wind up the overseas company; **OR**
 - b. shareholders of overseas company transfer their shares of overseas company to the Hong Kong company so the overseas company becomes the 100% subsidiary of the Hong Kong company which issues shares pro rata to the shareholders (Note 1)
 - may disrupt business operations
- **Option 2: court-sanctioned scheme to approve restructuring so that the overseas-incorporated company becomes a wholly-owned subsidiary of a Hong Kong-incorporated company** (Note 1)
 - approval of the shareholders and other stakeholders required
 - costly & extensive court procedures

Note 1: the overseas company subsidiary remains subject to overseas regulations whereas the Hong Kong company will be subject to Hong Kong company law

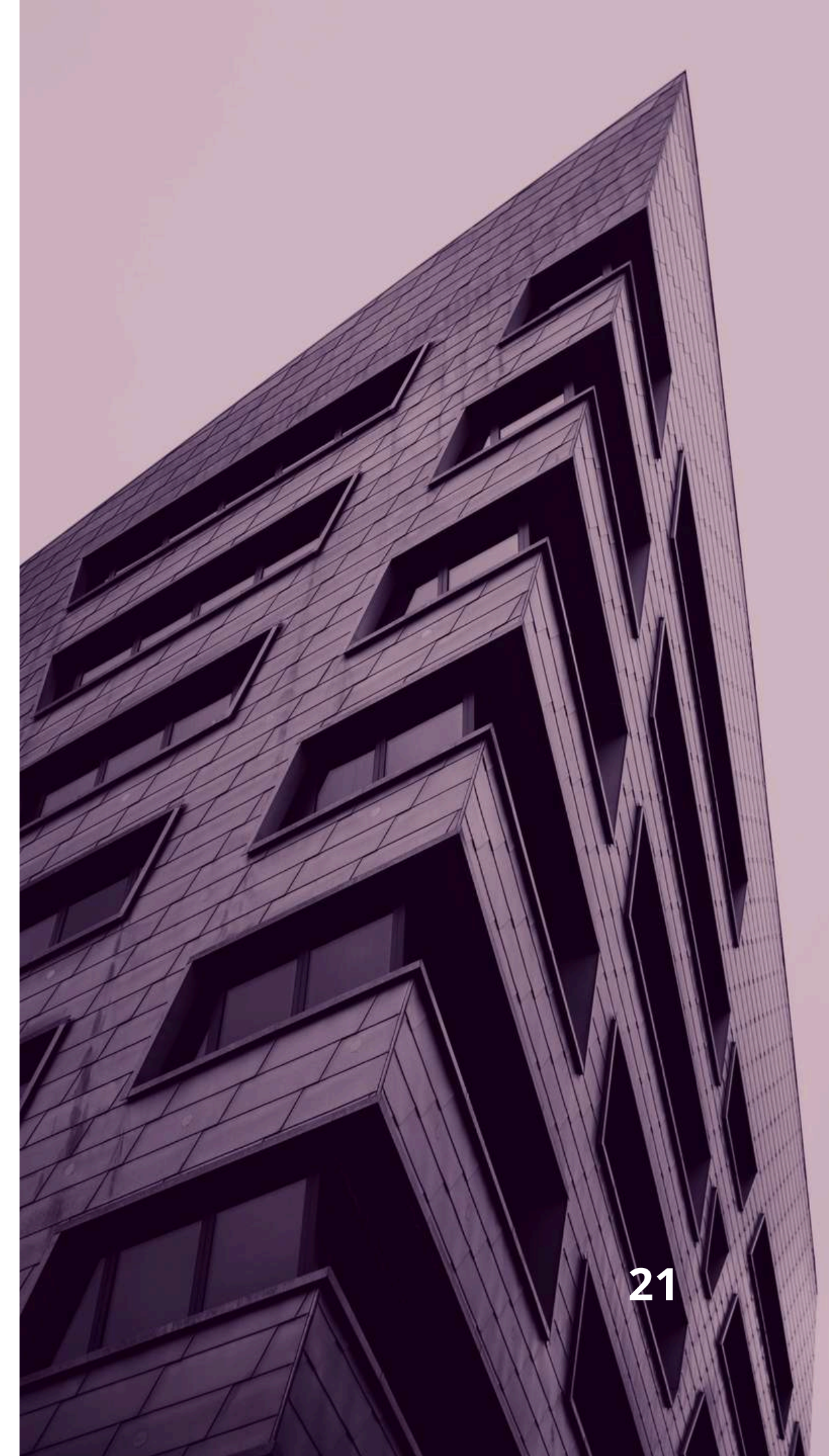
Background (cont'd)

Benefits noted by the FSTB

- Secretary for Financial Services and the Treasury statement on proposed re-domiciliation regime:
 - >140 jurisdictions have accepted the OECD's BEPS 2.0
 - increased economic substance requirements and compliance costs for jurisdictions with low or no tax
- opportunities for overseas-incorporated companies with business operations in Hong Kong to re-domicile in Hong Kong

Consultation on proposed re-domiciliation regime

- **Consultation Paper:** published in March 2023
 - consultation period ended on 31 May 2023
- **Consultation Conclusions:** published on 3 July 2024
- The bill is planned to be introduced into the LegCo by the end of this year



Legal effect after re- domiciliation

Continuity of re-domiciled company:

- Legal identity of the re-domiciled companies will be preserved and re-domiciliation will not create a new legal entity
 - continuity of the company's business, rights and legal identity
 - avoids complex and expensive legal process
- All property, rights, obligations, and contracts entered into would still be effective against re-domiciled companies even if accrued before re-domiciliation

Benefits and obligations under Companies Ordinance would apply to re-domiciled company:

- e.g. CO s474: requirement for the appointment of a company secretary

Outward re-domiciliation

- FSTB confirmed that an outward re-domiciliation will not be introduced at this stage
 - no current demand for re-domiciliation from Hong Kong to overseas jurisdictions

Eligibility

1 Company type

- Must be of the same or substantially the same company type as those that can be incorporated under the Companies Ordinance
 - The company cannot change its company type during the re-domiciliation process
- only 4 types of companies would be permitted:
 1. private companies limited by shares;
 2. public companies limited by shares;
 3. private unlimited companies with a share capital; and
 4. public unlimited companies with a share capital
- Companies limited by guarantee without a share capital are not eligible

Eligibility (cont'd)

1 Company type (Cont'd)

- Applicant companies are not subject to an economic substance test under the proposed regime
 - FSTB intends re-domiciliation regime to be accessible to a wide range of companies of various hierarchies (e.g. holding companies)
 - economic substance tests are not common among other jurisdictions

Eligibility (cont'd)

2

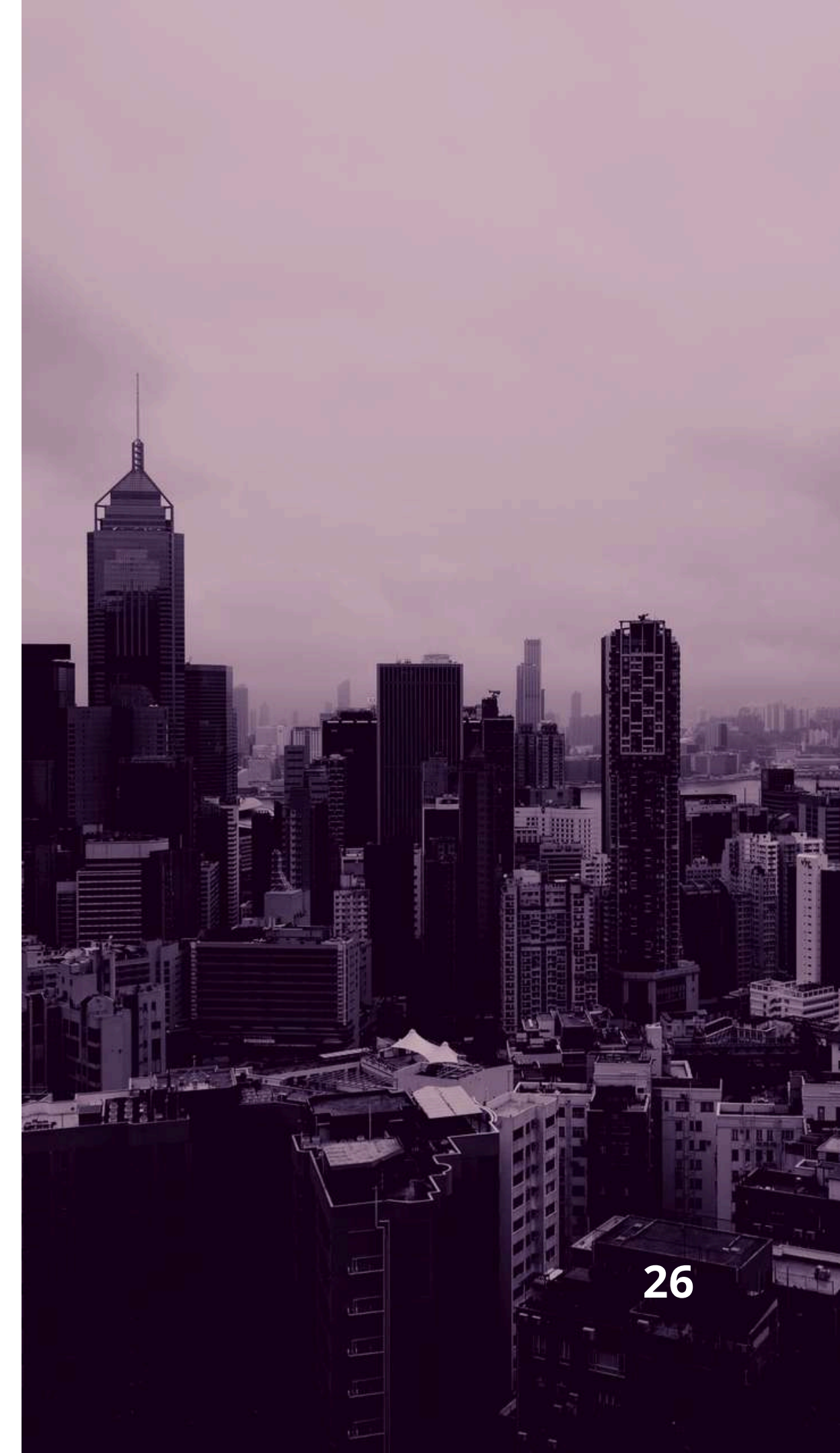
General requirements

Legal Compliance

- Law of original domicile must allow re-domiciliation to other jurisdictions
 - outward re-domiciliation is permitted for Cayman companies but not Singaporean companies
- Companies must meet all requirements under the laws of the original domicile on outward re-domiciliation

Company age

- Companies must have been incorporated for at least one financial year before application





Eligibility (cont'd)

3 Integrity requirements

- Companies must comply with the registration and incorporation requirements for HK companies under the Companies Ordinance
 - Re-domiciled company must not be intended to serve unlawful purposes, or engage in activities that are against public interest or would endanger national security

4 Solvency

- Applicant company must be solvent and not in liquidation
 - must submit financial statements and other documents to prove the company's solvency

Eligibility (cont'd)

5 Creditor protection and members' approval

- Application must be in good faith and not intended to defraud the company's creditors
- Company's re-domiciliation must be approved by members
- If neither the law of the original place of domiciliation nor the constitutional documents of the company require members' approval
 - re-domiciliation must be approved by way of a special resolution passed by at least 75% of the members entitled to vote



Application documents

1

Duly completed and signed application form – including following information:

- company's original and proposed name;
- company's original place of incorporation;
- whether the company is a registered non-Hong Kong company under CO Part 16;
- the company type;
- the proposed registered office address;
- particulars of the proposed directors and company secretary; and
- details of share capital and shareholders

2

Proposed articles of association of the re-domiciled company

3

Certified copy of the certificate of incorporation

- If the company undergone re-domiciliation before, must also submit the certificate of registration

4

Certified copy of the company's constitutional document

- e.g. charter, statute, constitution, memorandum or articles of association

Application documents (cont'd)

5 Certified copy of the resolution passed by at least 75% of the eligible members

- required only if members' approval of the re-domiciliation is not required under the law of the original place of domicile or the constitutional documents of the company

6 Legal opinion from a legal practitioner qualified in the original place of domiciliation – confirming the following

- the company is duly registered in its original place of domiciliation;
- the proposed re-domiciliation is allowed under the law of the original place of domiciliation;
- the company type in the original place of domiciliation and the proposed company type subsequent to re-domiciliation;
- the company's solvency;
- the company has obtained members' approval of its re-domiciliation;
- intended name of the re-domiciled company; and
- adoption of the proposed articles of association submitted with the application

Application documents (cont'd)

7

Latest financial statements or audited financial statements

- financial information up to a date not more than 12 months before the application
- statements need not be audited if the laws of the original place of domiciliation, the rules of the relevant stock exchange, or other similar regulatory rules do not require preparation of audited financial statements

8

Certificate signed by a director including:

- confirmation that the company is duly registered in its original place of domiciliation;
- confirmation of the company's solvency;
- confirmation that members' approval of the re-domiciliation has been obtained; and
- explain the intention behind the proposed re-domiciliation

Other documents – notice to the Business Registration Office, business registration fee & application fee

- one-stop business registration arrangement between Companies Registry and Inland Revenue Department will apply



Application procedure

- All application documents should be addressed to the Registrar of Companies
- Expected processing time: around 2 weeks from receipt of all application documents
 - NB: processing time will vary depending on the type and circumstances of the company

Tax arrangements

- Tax obligations in the original place of domiciliation will not be affected by re-domiciliation
 - preventing companies from using the regime as a means of tax evasion

Transitional tax matters

- amendments will be made to the Inland Revenue Ordinance to allow Inland Revenue Dept. to address matters such as fair deduction for trading stock, specified types of expenditures & depreciation allowances

Tax credits

- unilateral tax credits to eliminate double taxation
- applicable to tax on actual profits derived in Hong Kong after re-domiciliation if similar profits were taxed in unrealised form in the original domicile on exit

Liability to HK profits tax

- HK profits tax charged on profits arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong regardless of the place of domicile of the company

Stamp duty

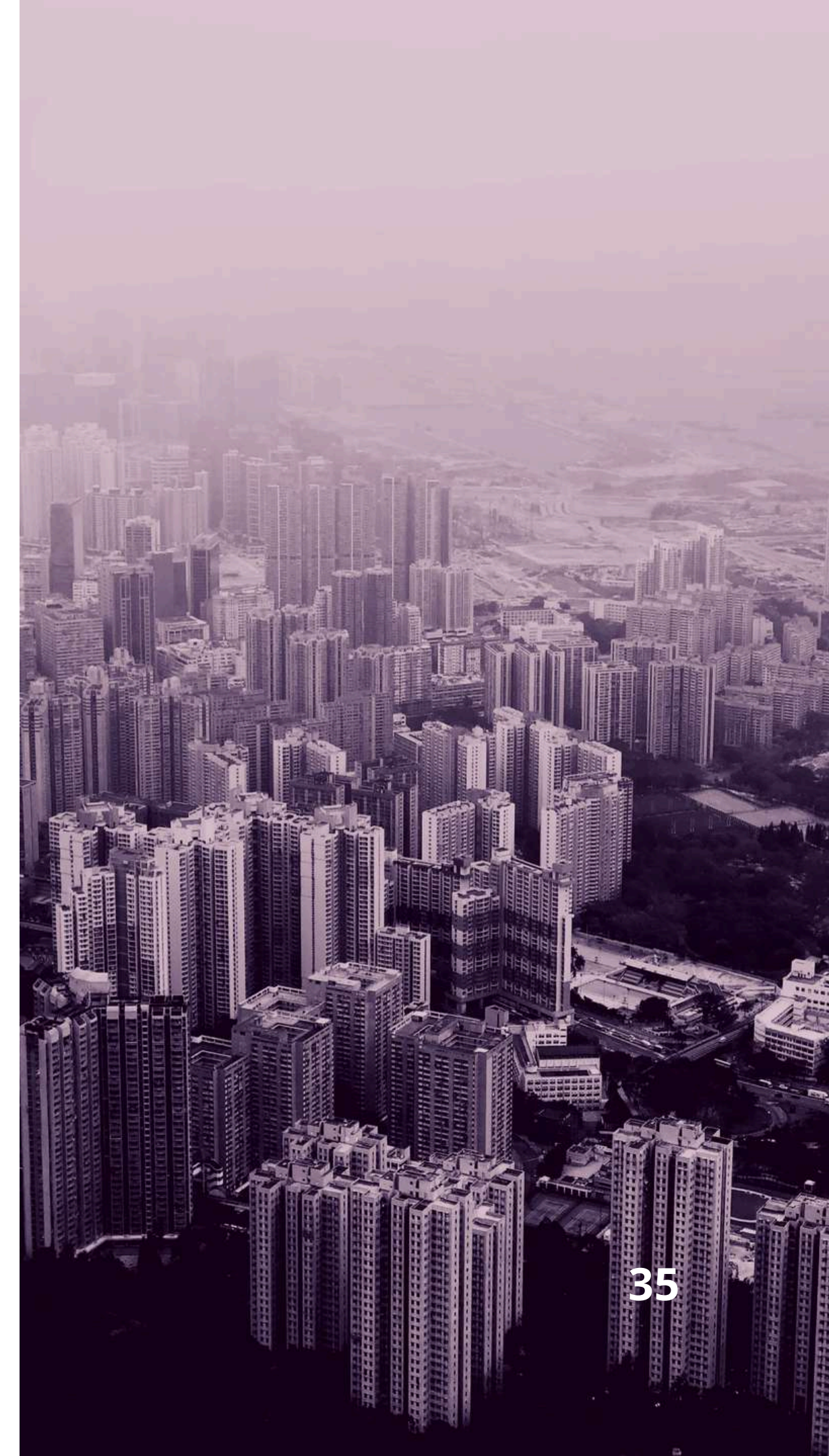
- re-domiciliation process will generally not involve transfer of assets
 - stamp duty will generally not be triggered
- FSTB has not said whether transfers of re-domiciled companies' shares will attract stamp duty

Preservation of business continuity

- Proposed arrangements under the CO and Business Registration Ordinance:
 - to allow non-Hong Kong companies registered under Part 16 CO to keep existing company name and business registration number after re-domiciliation

Deregistration period

- Re-domiciliation to Hong Kong will be effective on the date of issue of the certificate of re-domiciliation
- Re-domiciled companies must provide evidence of deregistration in original place of domicile to Registrar of Companies within 120 days from the date of re-domiciliation
 - if a company fails to do so → registration in Hong Kong will be revoked + re-domiciliation application deemed unsuccessful
 - can apply for a time extension where necessary



Other implications

Existing financial institutions

- Proposed to amend the Insurance Ordinance and the Banking Ordinance
 - re-domiciled financial institutions will be regulated
 - subject to the same regulations as insurance companies and authorised institutions incorporated in Hong Kong
- FSTB advises insurance companies and authorised institutions looking to re-domicile to Hong Kong to consult Insurance Authority / HKMA to ascertain whether they meet the relevant requirements
- FSTB will explore administrative arrangements to enhance coordination between the Companies Registry and financial regulators in relation to the authorisation process

Safeguarding National Security

- Safeguarding National Security Ordinance:
 - Chief Executive has the power to order Hong Kong companies to be struck off if the company is believed to engage in activities that may endanger national security in Hong Kong
 - Amendments will extend that power to re-domiciled companies



Next steps

- FSTB is preparing an **amendment bill** to amend the CO and other ordinances
- Aim is to introduce the bill to LegCo by the end of this year

Comparison with other selected jurisdictions

	Inward re-domiciliation	Outward re-domciliation
Hong Kong	Pending	No
United Kingdom	Pending (Note 1)	Pending(Note 2)
Singapore	Yes	No
Canada	Yes	Yes
Cayman Islands	Yes	Yes
British Virgin Islands	Yes	Yes
Delaware, the United States of America	Yes	Yes
Bermuda	Yes	Yes (Note 3)
Switzerland	Yes	Yes
Luxembourg	Yes	Yes
Bahamas	Yes	Yes

Notes:

1. The UK Consultation on the proposed regime has ended in January 2022. Currently there is no indication by the UK Government as to timing of the implementation of the proposed new regime.
2. The UK Government will consider whether an outward re-domiciliation regime should be introduced after reviewing responses to the Consultation Paper.
3. In Bermuda, outward re-domiciliation is only permitted if the destination jurisdiction is one of the appointed jurisdictions or with the approval of a Bermuda Government Minister. Hong Kong is not one of the appointed jurisdictions.

Comparison with other selected jurisdictions (cont'd)

	Inward re-domiciliation	Outward re-domciliation
New Zealand	Yes	Yes
Cyprus	Yes (Note 6)	Yes (Note 6)
Jersey	Yes	Yes
Guernsey	Yes	Yes
Isle of Man	Yes	Yes
Malta	Yes (Note 4)	Yes (Note 4)
Mauritius	Yes	Yes
Seychelles	Yes	Yes
Gibraltar	Yes (Note 5)	Yes (Note 5)
Anguilla	Yes	Yes
St Kitts and Nevis (Saint Christopher)	Yes	Not provided under the Companies Act
Belize	Yes	Yes

Notes:

4. In Malta, only inward re-domiciliation from or outward re-domiciliation to countries or jurisdictions approved by the Companies Registrar of Malta is allowed. Hong Kong is not one of the approved countries or jurisdictions.
5. In Gibraltar, only inward re-domiciliation from or outward re-domiciliation to “relevant states” that are approved by the Minister of Finance of Gibraltar is allowed. Hong Kong is one of the relevant states.
6. In Cyprus, only inward re-domiciliation from or outward re-domiciliation to approved countries or jurisdictions is allowed. “Approved countries or jurisdictions” include countries or jurisdictions that have equivalent legislative provisions as the Companies Law of Cyprus.

Comparison with other selected jurisdictions (cont'd)

1 Singapore

- Similar to the proposed regime in Hong Kong
- **Additional economic substance requirement** – foreign company must satisfy at least 2 of the following criteria:
 1. the value of the company's total assets exceeds SGD10 million;
 2. the company's annual revenue exceeds SGD10 million; or
 3. the company has more than 50 employees.
- **parent companies** → assessed on a consolidated basis
- **subsidiary company** → assessed on a single entity basis unless the parent company is incorporated in or re-domiciled to Singapore
- **Tax Obligations** – companies will be taxable under Singapore's tax regime
 - Re-domiciled companies may receive tax credit if subject to exit tax on unrealised profits in original domicile

Comparison with other selected jurisdictions (cont'd)

2 United Kingdom – 2021 Consultation Paper on proposed regime

- Currently no re-domiciliation regime in the UK
- The UK Government proposes to allow for inward re-domiciliation
 - considering whether outward re-domiciliation would be desirable
 - No amendments have been finalised to date
- 1 October 2024 – Report by Independent Expert Panel on Corporate Re-domiciliation convened by the UK Government sets out a proposed legal framework supporting two-way re-domiciliation and suggestions on the regime's practical logistics, for example:
 - contents of the application form
 - filing of certain resolutions and agreements executed prior to the re-domicile
 - discretion of UK authorities when considering the applications
 - process of determining the date on which the re-domicile becomes effective
 - contents and template of the re-domiciliation certificate
 - detailed steps in the application process
 - accounting and financial reporting requirements
 - creditor protection
 - amendments to the Companies Act 2006, the Corporation Tax Act and other legislation

Comparison with other selected jurisdictions (cont'd)

2 United Kingdom (Cont'd) – 2021 Consultation Paper on proposed regime

- Current rules on re-domiciliation – companies need to undertake complicated and costly restructuring processes
 - UK Government noted benefits of promoting continuity of operations of companies re-domiciling to the UK



Maintain legal personality as the same entity

- would not amount to a transfer of contract or assets and would not be affected by contractual restrictions on transfer



Property rights, criminal and civil liabilities, actions, authorities and charges effective or incurred prior to the re-domicile would not be affected by the re-domiciliation

Comparison with other selected jurisdictions (cont'd)

2 United Kingdom (cont'd) – Proposed requirements

- **Corporate form**
 - UK Government's Consultation proposes to allow all types of company that have a corresponding corporate form under UK company law
 - Independent Expert Panel proposes to exclude companies limited by guarantee
- **Further requirements on directors' good standing** – the company must submit:
 - a confirmation from the departing jurisdiction's competent authority that directors are not subject to any legal or enforcement action; and
 - a report by the company attested by a director detailing the legal and economic impacts on creditors, shareholders and key stakeholders
- **No economic substance test or size tests**

Comparison with other selected jurisdictions (cont'd)

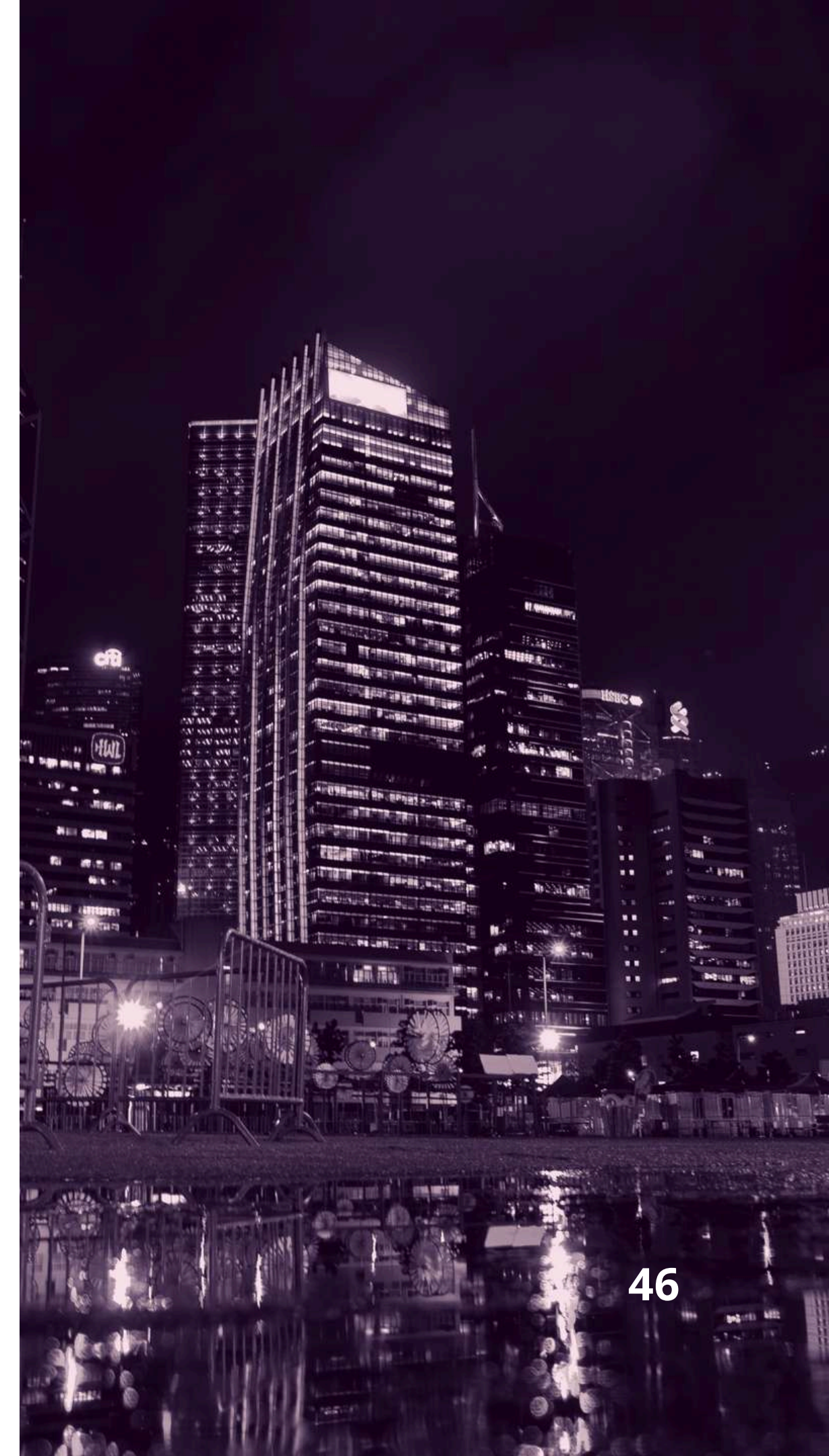
2 United Kingdom (cont'd) – Proposed requirements

- **Shareholders' resolution**
 - Independent Expert Panel recommends that this is not required if there is no such requirement in original place of domicile
- **Powers of the Registrar of Companies** – will have the power to liaise with the companies registry of the company's origin jurisdiction for verification of submitted information and confirmation of good standing and solvency
 - Consequences for submitting false information/ failing to meet re-domiciliation conditions or failing to submit proof of de-registration:
 - Companies House will have the power to petition for winding-up
 - Independent Expert Panel recommends that offences under the Companies Act should be applicable to applicants providing false/misleading information
- **Regulated Businesses** – would require approval from the Financial Conduct Authority and other regulatory bodies

Comparison with other selected jurisdictions (cont'd)

2 United Kingdom (cont'd) – Outward re-domiciliation

- **Possible benefits:** align UK with most peer jurisdictions
 - may attract more companies to re-domicile to the UK
- widely supported by stakeholders and the Independent Expert Panel
- Requirements on outward re-domiciliation to deal with risks to UK economic interests may include:
 - an exit fee;
 - relatively high requirements for shareholder approval;
 - a minimum length of operation in the UK; and
 - requirements to settle all outstanding obligations and disputes in the UK before re-domiciling out
- **Independent Expert Panel: emphasis on protecting interests of existing shareholders and creditors**
 - various confirmations required in the application
 - requirements on the shareholder approval and information contained in the notice to shareholders
 - appointment of an authorised representative for 10 years



Comparison with other selected jurisdictions (cont'd)

2 United Kingdom (cont'd) – Tax implications

- Currently, companies are treated as UK residents for corporation tax if:

- (a) the company is incorporated in the UK; or
- (b) if the central management and control of the company is located in the UK, unless non-UK resident under a double tax agreement

- **Proposals regarding tax treatment for inward re-domiciliation:**

- the company re-domiciled to UK treated as tax resident after re-domiciliation

OR

- the company will not be treated as UK tax resident unless its central management and control is in the UK

- Independent Expert Panel recommends other considerations on tax base cost of assets, controlled foreign companies and loss importation which should be considered and finalised later

- **Proposals regarding tax treatment for outward re-domiciliation:**

- the re-domiciled company will cease to be UK tax resident after outward re-domiciliation

OR

- the company will still be UK tax resident until it is treated as non-UK resident under a double tax agreement

- Detailed consideration being given to tax implications