Hong Kong passes bill on inward company re-domiciliation regime

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Issue 5

In brief

On 14 May 2025, the Companies (Amendment) (No. 2) Bill 2024 (Bill), as amended by way of committee stage amendments (CSAs), was passed by the Legislative Council (LegCo) to introduce an inward company re-domiciliation regime in Hong Kong[1]. The Bill is expected to be gazetted as an amendment ordinance and come into operation on 23 May 2025.

This news flash explains the key CSAs and discusses the noteworthy clarifications and responses to written submissions regarding the Bill as provided by the Hong Kong SAR government (the Government) during the legislative process, along with our observations.

In detail

Overview of the proposed inward company re-domiciliation regime

The Bill seeks to amend the Companies Ordinance (CO) to introduce an inward company re-domiciliation regime (Regime), allowing non-Hong Kong companies to transfer their domicile (i.e. essentially place of incorporation) to Hong Kong while maintaining their legal identities and business continuity. Upon re-domiciliation, the re-domiciled companies must comply with the same requirements as other Hong Kong incorporated companies under the amended CO.

In conjunction with the proposed changes to the CO, the Bill proposes changes to various other ordinances, including the Inland Revenue Ordinance (IRO). A new schedule will outline the tax treatments for re-domiciled companies that have not carried on a trade, profession or business in Hong Kong prior to re-domiciliation. This includes provisions for transitional tax matters and unilateral tax credits to facilitate a tax-neutral re-domiciliation process, providing re-domiciled companies with greater degree of certainty concerning their tax liabilities and obligations in Hong Kong.

Under the proposed Regime, the place of incorporation[2] of the applicant must permit outward re-domiciliation to another jurisdiction. Additionally, the applicant must be one of the specified types of companies under the CO and meet the specified criteria related to integrity, member and creditor protection and solvency. Notably, there will be no economic substance test applied to the applicant. Please refer to the ***Appendix*** to this news flash for details of the specified criteria under the amendment ordinance, which are essentially identical to those under the Bill, except for the CSAs discussed below.

CSAs to the Bill

After considering the views of the Bills Committee Members and submissions from stakeholders, the Government has proposed CSAs to the Bill. These CSAs are primarily aimed at refining certain provisions of the Bill, providing additional clarity and making editorial and technical amendments. All CSAs are related to the non-tax aspects of the Bill. The key CSAs are discussed below.

1. Members' consent requirement

The Bill originally proposed that shareholders must consent to the re-domiciliation either (i) as required under the law of the place of incorporation or the constitutional document of the applicant; or (ii) by a resolution duly passed by at least 75% of the eligible members, either at a meeting or in writing as

permitted under the law of its place of incorporation and its constitutional document (75% threshold requirement). An eligible member is defined as a member entitled to vote on the resolution.

As we have pointed out in our previous news flash, the 75% threshold requirement was too onerous for companies with a broad shareholder base. There was also a submission highlighting that under the CO, a shareholder resolution need only be passed by the relevant percentage of shareholders 'present and voting' at the relevant meeting.

In response, the 75% threshold requirement was amended as follows:

- A resolution passed at a meeting is passed by a majority of at least 75% if:
  (a) it is passed by at least 75% of the total of the following:
    (i) the number of eligible members who vote in person on the resolution;
    (ii) the number of persons who vote on the resolution as duly appointed proxies of eligible members; or
  (b) it is passed by members representing at least 75% of the total voting rights of all the eligible members who vote in person or by proxy on the resolution.

- A resolution passed without a meeting is passed in writing by a majority of at least 75% if:
  (a) at least 75% of all eligible members have signified in writing their agreement to it; or
  (b) members representing at least 75% of the total voting rights of all eligible members have signified in writing their agreement to it.

2. Legal opinion requirement

The Bill also proposed that an applicant should submit a legal opinion issued by a practising lawyer of the applicant's place of incorporation in relation to several matters as proof of compliance. To provide additional clarity, a CSA was moved to specify that the legal opinion must be issued within 35 days before the date of application for re-domiciliation. This aims to align the period with that for the issuance of the certificate by the board of directors of the applicant (BoD certificate) in relation to serving notices on all creditors of the applicant's proposed re-domiciliation.

3. Solvency requirement

To ensure the solvency status of the applicant, the Bill contains various requirements and safeguards, including the provision of the applicant's latest financial statements prior to the application date, as well as confirmation of no winding-up or liquidation proceedings against the applicant in the legal opinion above. Further, in the BoD certificate, the board of directors of the applicant will be required to confirm that the applicant has not been notified of any winding-up petition or liquidation in any place and will be able to pay its debts.

For clarity, a CSA has been added to align with the policy intent that the applicant should be able to pay its debts that will *fall due within the 12-month period beginning on the application date*. This will remove the ambiguity under the current draft of the Bill being interpreted as requiring the applicant to be able to pay all its debts *regardless of the due date* within the 12-month period from the application date.

Our observations: *We welcome the above CSAs to address stakeholders' concerns. The modification to the 75% threshold requirement addresses the previously identified issue of the onerous requirement in particular for listed companies, recognising the practical difficulties faced by companies with a dispersed shareholder base and providing a more feasible approach to obtaining the necessary approvals. Additionally, the clarification regarding the legal opinion and solvency related requirements enhances transparency in the Regime.*

The Government's responses and clarifications on the Bill

Several organisations made submissions to the Bills Committee seeking clarifications on certain provisions of the Bill and offering related recommendations. Some of the concerns raised in these submissions, and the Government's response to the same are discussed below[3].

Tax aspects

1. Tax residency of re-domiciled companies

In most comprehensive double taxation agreements/arrangements (CDTAs) signed by Hong Kong, a Hong Kong tax resident is defined to mean, among others, a company incorporated in Hong Kong. The Bill proposes to introduce a general interpretation provision into the IRO, stipulating that a reference to a company 'incorporated in Hong Kong' will

include a re-domiciled company. Such new provision will enable a re-domiciled company to be regarded as a Hong Kong tax resident under these CDTAs.

A few submissions suggested that Hong Kong should notify its CDTA partners, or at least communicate with the State Taxation Administration of the Chinese Mainland, to ensure that a re-domiciled company will be regarded as a Hong Kong tax resident under the relevant CDTA.

In response to this suggestion, the Government reiterated that as the term 'company incorporated in Hong Kong' is not defined under the CDTA, according to the general rule of interpretation provided for in the CDTA for undefined terms, the term could have the meaning that it has at that time under the applicable tax laws of Hong Kong, unless the context otherwise requires. In addition, the CDTA has in place a mechanism under the Mutual Agreement Procedure (MAP) Article for resolution of any disagreement arising from the implementation of the CDTA, including the recognition of a re-domiciled company as being a company incorporated in Hong Kong and hence a Hong Kong tax resident for the purposes of the CDTA.

Our observations: *The response reiterated the general interpretation of undefined terms in CDTAs and highlighted MAP as a mechanism to resolve any disagreement in the resident status of a re-domiciled company. While it did not directly address concerns about the interpretation by Hong Kong's CDTA partners, it is hoped that they will respect Hong Kong's interpretation.*

2. Application for certificate of resident status (CoR)

A non-Hong Kong incorporated company will become a re-domiciled company from the date when a certificate of re-domiciliation is issued to it (i.e. re-domiciliation date) and be regarded as a Hong Kong tax resident under the relevant CDTAs. For clarity, the Inland Revenue Department (IRD) will indicate on the CoR that the re-domiciled company is a Hong Kong tax resident effective from the re-domiciliation date.

On a separate occasion, the IRD supplemented that since the re-domiciled company is required to be deregistered in its place of incorporation within 120 days, to avoid the potential awkward situation where the re-domiciled company is unable to deregister resulting in its re-domiciliation being revoked, although the re-domiciled company can apply for the CoR any time, the IRD will only issue the CoR after that 120-day period, or upon provision of the certificate of deregistration if earlier. In any event, the CoR will still be effective as of the re-domiciliation date.

Our observations: *Conceivably, the above approach only applies to a re-domiciled company that does not qualify as a Hong Kong tax resident under the relevant CDTA prior to its re-domiciliation, such as not being normally managed or controlled in Hong Kong. If the re-domiciled company wishes to apply for a CoR for the period before the re-domiciliation date, it appears that it would need to provide detailed information and documentary evidence regarding its place of management and/or control in Hong Kong, as well as its business substance in Hong Kong, to demonstrate that it qualifies as a Hong Kong tax resident under the relevant CDTA during that period.*

Non-tax aspects

3. Deregistration in place of incorporation

To facilitate re-domiciled companies to deregister in their place of incorporation, the Government has been reaching out to relevant authorities of traditional offshore jurisdictions with local companies carrying out business in Hong Kong, including Bermuda, the British Virgin Islands, and the Cayman Islands, to solicit their facilitation for the orderly re-domiciliation of companies to Hong Kong.

In particular, the Bermuda authorities recently advised that the Government's request for designation of Hong Kong as an appointed jurisdiction for re-domiciliation of their local companies would be processed upon completion of the current legislative exercise. Once Hong Kong becomes an appointed jurisdiction, individual companies applying to exit Bermuda for re-domiciliation to Hong Kong will not be required to obtain approval from the Bermuda Minister of Finance. Prior to such designation, companies registered in Bermuda may still apply for re-domiciliation to Hong Kong subject to consideration on a case-by-case basis.

Our observations: *We are pleased to see that the Government has adopted a proactive approach to facilitate the re-domiciliation of companies from no or only nominal tax jurisdictions to Hong Kong. Notably, the recent communication from the Bermuda authorities marks a positive development. The adding of Hong Kong to Bermuda's list of appointed jurisdictions, which will hopefully take place soon, will significantly simplify and expedite the deregistration and overall re-domiciliation process.*

4. **Court-free amalgamation of re-domiciled companies**

   A re-domiciled company will be regarded as a company incorporated in Hong Kong from its re-domiciliation date. As such, once a certificate of re-domiciliation has been issued, various provisions under the CO, including those related to court-free amalgamation, will apply to the re-domiciled company.

5. **Companies Registry's guide**

   A 'Guide on Company Re-domiciliation', including information on application requirements, application procedures, fees payable, filing obligations and post-re-domiciliation obligations, will be published by the Companies Registry and made available on its website.

Application of the GloBE/HKMTT rules to re-domiciled companies

The Government has proposed to implement the Organisation for Economic Co-operation and Development's global anti-base erosion (GloBE) rules and the Hong Kong minimum top-up tax (HKMTT) in Hong Kong starting from the fiscal year 2025. A legislative bill to implement the GloBE/HKMTT rules is currently under scrutiny by the LegCo[4].

Several provisions under the GloBE/HKMTT rules may be relevant to re-domiciled companies that are members of an in-scope multinational enterprise (MNE) group. For instance, there is a provision specifying that an entity that has changed its location during the year is located where it was located at the beginning of the fiscal year. While the Government intends for a re-domiciled company to be regarded as a tax resident in Hong Kong from the date of re-domiciliation, given the intricacies in determining the location of an entity (which depends on tax residency to a certain extent), the treatment of a re-domiciled company for the purposes of the GloBE/HKMTT rules, including the allocation and computation of any top-up tax under these rules, will need to be looked into carefully.

Additionally, there may be complication on how asset re-basing and the resultant unrealised gains or losses, as well as tax adjustments, are to be handled. It is hoped that the IRD will provide guidance on these issues soon to provide clarity.

The takeaway

We are pleased that the Government has taken up the comments and suggestions made by stakeholders to provide more clarity and guidance for businesses exploring the re-domiciliation of their non-Hong Kong companies to Hong Kong. Recent developments, such as the implementation of global minimum tax rules, and changes in regulatory and tax-related law and practice in no or only nominal tax jurisdictions, have prompted many MNE groups to pursue entity rationalisation. Considering the favourable business and regulatory environment in Hong Kong, re-domiciling to Hong Kong is a viable option for many non-Hong Kong companies with substantial operations in the Asia Pacific region.

Given the tax and legal considerations may involve multiple jurisdictions and can be highly complicated, businesses are advised to seek professional assistance. At PwC, we have a dedicated, multidisciplinary team of experienced specialists in tax, legal and corporate services who can provide timely and relevant advice as well as implementation support to facilitate company re-domiciliation to Hong Kong. Should you require assistance, please do not hesitate to contact us.

Endnotes

1. The Bill and the CSAs can be accessed via these links:
   https://www.legco.gov.hk/yr2024/english/bills/b202412201.pdf
   https://www.legco.gov.hk/yr2025/english/bc/bc01/papers/bc01cb1-500-1-e.pdf

2. In the case where a non-Hong Kong company has transferred its domicile to another jurisdiction after its incorporation, the jurisdiction under the law of which the non-Hong Kong company is currently registered is the place of incorporation of the non-Hong Kong company.

3. The Government's responses to the written submissions can be accessed via this link:
   https://www.legco.gov.hk/yr2025/english/bc/bc01/papers/bc0120250314cb1-370-3-e.pdf

4. Our news flashes on the bill and proposed amendments can be accessed via these links:
   https://www.pwchk.com/en/services/tax/publications/hongkongtax-news-dec2024-21.html
   https://www.pwchk.com/en/hk-tax-news/2025q2/hongkongtax-news-apr2025-3.pdf

Appendix – Application eligibility for company re-domiciliation to Hong Kong

The Regime covers the following types of companies:

(i) private companies limited by shares;
(ii) public companies limited by shares;
(iii) private unlimited companies with a share capital; and
(iv) public unlimited companies with a share capital.

Non-Hong Kong companies applying for re-domiciliation to Hong Kong should fulfil the following requirements:

	Eligibility criteria
General	• The law of the place of incorporation permits outward re-domiciliation, and the applicant has complied with the requirements of such laws. • The company type of the applicant under the law of the place of incorporation is (substantially) the same as that of the re-domiciled company under the amended CO. • As at the date of application for re-domiciliation, the applicant's first financial year end since its incorporation has passed.
Integrity	• The applicant shall comply with all the registration requirements applicable to Hong Kong companies under the amended CO including adoption of articles, registered office address in Hong Kong, resident company secretary and resident designated representative for maintaining a significant controllers register. • The re-domiciled company will not be used for unlawful purposes or purposes contrary to public interest.
Members' consent	• Application must be in good faith and not intended to defraud existing creditors of the company. • The company's re-domiciliation must be endorsed by members. • If neither the law of the place of incorporation nor the constitutional document of an applicant requires members' consent, the applicant should obtain such consent by a members' resolution passed either at a meeting or in writing as permitted under the law of its place of incorporation and its constitutional document, and such a resolution is required to meet the 75% threshold requirement as refined by the CSA.
Solvency	• An applicant must be solvent and not in liquidation. To demonstrate this, the applicant should submit the latest financial statements as at a date no more than 12 months prior to the application date. • The financial statements are required to be audited only if such have been prepared for compliance with the requirements in the place of incorporation, relevant stock exchange or regulatory bodies. • A certificate must be signed by a director and issued within 35 days before the date of application for re-domiciliation certifying that, among other things, the applicant has not been notified of any petition or order for winding up or liquidation against it.
Proof of compliance in the place of incorporation	• An applicant should submit a legal opinion issued by a practising lawyer of the place of incorporation in relation to, among others, (1) the applicant's due registration in the place of incorporation, (2) company type and solvency, (3) permission of the proposed re-domiciliation under the law of the place of incorporation or the constitutional document of the applicant, (4) consent from members of the company for the proposed re-domiciliation, and (5) the intended re-domiciled company's type, name and adoption of the proposed articles of association. • The legal opinion must be issued within 35 days before the date of application for re-domiciliation.

Let's talk

For a deeper discussion of how this impacts your business, please contact:

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