

Issued on: 31 May 2023

FSTB Public Consultation on Proposed Company Re-domiciliation Regime in Hong Kong (March 2023)

In response to the captioned consultation paper, HKIoD has the following views.

A re-domiciliation regime can regenerate Hong Kong competitiveness

HKIoD supports the institution of a re-domiciliation regime.

Due to implementation of BEPS 2.0 and related tax rules, the traditional notion of Hong Kong being competitive from a taxation vantage point has diminished. A re-domiciliation regime can help reboot competitiveness by giving companies a plausible option to make Hong Kong home to better mesh tax residency and related economic substance requirements.

For listing purposes, the heretofore often-used formula is to engage in cumbersome pre-IPO restructuring to make a BVI or Cayman company the listing vehicle. Tax residency and economic substance requirements can make that formula less attractive if still workable. With a re-domiciliation regime, listing groups can have a plausible option to unwind the holding chain to make a Hong Kong company the listing vehicle. This should go some way to enhance the value and attraction of “a Hong Kong company”, showcasing Hong Kong as a place to set up companies and do business.

We note that the current proposal is for an inward regime only. On the count of attracting business to Hong Kong, this makes sense. Once the inward regime is implemented, we can revisit the pros and cons of having an outward regime as well.

Hong Kong is a financial center and commercial center with good provision of professional service. A re-domiciliation regime can further drive demand for such professional services, and in turn reinforce the Hong Kong strength as a business hub.

Companies seeking to re-domicile to Hong Kong can also tap the current and aspiring director community in Hong Kong to add local expertise or to bolster market expansion efforts to the Greater Bay Area, the Greater China and beyond.

Keep it simple and commercial

Re-domiciliation should not otherwise be more difficult or burdensome than registering a local company. Our general recommendation would be to keep the regime simple and flexible. Where evidence of compliance with non-Hong Kong requirements are concerned, documentations that meet closing requirements for cross-border commercial transactions should be taken as sufficient. Such could be certificates from official agencies or opinions issued by licensed and reputable practitioners.

Company name matters

A company seeking to re-domicile to Hong Kong may wish to retain a certain company name for recognition, identity or for branding. Some mechanism for companies pondering an application to pre-reserve company name could be helpful. In some cases, the desired name or

components of it could have already been in use under the Hong Kong registry, and it may not always be easy to distinguish a genuine name choice or an act of squatting. There may not always be an easy solution, but the Government can do well to give this aspect some further thoughts.

Authorisation to re-domicile is a major decision

The proposed requirement is to have a 21-day notice period before a resolution (by 75% of members entitled to vote) to consent to and authorise the re-domiciliation. On the count of it being a major decision, the requirement is reasonable. Some applicants could be able to present a unanimous written consent on the decision to re-domicile and be in compliance with the company's charter documents and the laws of the original place of incorporation, however. There could be some room for flexibility so long as the rights of members/shareholders are not impaired.

Director statement or certification

The proposed requirements entail statement or certificate issued by directors confirming that, as soon as practicable after the re-domiciliation date, the re-domiciled company will take all reasonable steps to procure its de-registration in its original place of incorporation. This should not raise too many issues if at all.

The proposed requirements also require statement or certificate issued by directors confirming that, in relation to the transfer, the company has complied with the requirements of the laws of its original place of incorporation. The directors can probably issue such a statement or certificate, but they will do so most probably on the back of some form of satisfactory legal opinion. For that reason, the Hong Kong legislation may want to re-formulate this requirement accordingly.

Director statements or certification on solvency?

The proposed requirements contemplate latest audited financial statements of the company seeking to re-domicile as at a date no more than 3 months prior to the Application Date. Thought not always likely to happen, three months could be a long time for a company's financial position to change. If the solvency situation of the applicant is a concern, the Hong Kong legislation may as well require a director statement or certification on solvency.

Practical issues once on the ground – bank accounts

For a business to open a bank account in Hong Kong the process has not been any fast or efficient. For a re-domiciled company likely with owners (and directors) outside of Hong Kong, the check can be more cumbersome, and the wait even longer. It would not speak well for Hong Kong for re-domiciled companies to have come here but got stuck trying to get a bank account.

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