

# Hong Kong to Introduce a Company Re-domiciliation Regime

## Key points

- Hong Kong will be introducing an “**inward re-domiciliation**” regime, allowing non-Hong Kong incorporated companies to move their place of incorporation to Hong Kong while preserving continuation of legal identity.
- Eligibility requirements apply, though there will be **no economic substance requirements** - thereby allowing overseas holding companies and other overseas companies of all sizes to benefit from the regime.
- **Key eligibility requirements** will include:
  - being of a company type that is the same or substantially the same as **four specified types of companies under the Hong Kong Companies Ordinance (HKCO)** (such as private companies limited by shares and public companies limited by shares); and
  - the “**outward re-domiciliation**” being allowed under the laws of the original domicile.
- The application process will be handled by the **Hong Kong Companies Registry**, which will generally aim to process any application within two weeks.
- There is currently **no plan to permit Hong Kong incorporated companies to re-domicile out of Hong Kong**.
- Although no precise timeframe has been confirmed, the legislative bill is being prepared, and the Secretary for Financial Services and the Treasury has noted there will be “**all-out efforts for early implementation**”.

## Background

There is currently a re-domiciliation regime in Hong Kong for overseas funds, but no straightforward way for overseas companies to re-domicile to Hong Kong. Existing methods involve winding up in the original domicile and incorporating a new entity in Hong Kong, or a court-sanctioned scheme of arrangement to convert into a wholly-owned subsidiary of a Hong Kong incorporated company.

The Financial Services and the Treasury Bureau (FSTB) issued a **consultation paper** in March 2023 outlining its proposal to allow non-Hong Kong incorporated companies to migrate their place of incorporation to Hong Kong while preserving their legal identities (termed “inward re-domiciliation”). The **consultation conclusions** were issued on 3 July 2024 noting the overwhelming support for the proposal and to confirm the key features of the regime.

This is a key initiative in Hong Kong’s continued drive to attract foreign enterprises and investment and it is hoped that the market, especially the insurance sector which has indicated interest in re-domiciling from offshore jurisdictions, will take advantage of the new regime and bring investment and job opportunities to Hong Kong.

## Rationale

Overseas companies that operate or are listed in Hong Kong may consider re-domiciling to Hong Kong to reduce its regulatory compliance burden and costs (for example, to avoid dual regulation in its place of incorporation and Hong Kong) and those with a business focus in APAC may wish to align its domicile with the location of its key business activities. This may become an attractive option as the traditional incentives for maintaining offshore registrations have been declining in light of the initiatives around global minimum tax and economic substance.

## Legal Effect

The FSTB notes that upon re-domiciliation:

- the company will retain its legal identity such that no new legal entity is created;
- its pre-existing property, rights, obligations and liabilities, contractual and legal processes will not be affected; and
- in general, it will be treated as having the same rights as any other locally incorporated company of its kind and be required to comply with relevant requirements under the HKCO.

## Eligibility

A company interested in re-domiciling to Hong Kong will need to assess whether it is able to satisfy the eligibility criteria for the new regime. The key criteria are as follows:

**Company type:** Its current form must be the same or substantially similar to one of the following four company types that can be incorporated under the HKCO:

- (a) private companies limited by shares;
- (b) public companies limited by shares;
- (c) private unlimited companies with a share capital; and
- (d) public unlimited companies with a share capital.

Other types (such as companies limited by guarantee without a share capital) would not be able to re-domicile to Hong Kong.

### **Originating Jurisdiction:**

- The laws of the Originating Jurisdiction must permit re-domiciliation out of the jurisdiction (i.e. outward re-domiciliation). For reference, Cayman and the BVI permit outward re-domiciliation, whilst Bermuda permits outward re-domiciliation to “appointed jurisdictions” (Hong Kong currently not being one) or to a jurisdiction approved by the Minister of Finance upon application by a company. It remains to be confirmed if Bermuda will add Hong Kong to its list of appointed jurisdictions.
- The company must comply with the requirements in the Originating Jurisdiction for the re-domiciliation. Depending on the jurisdiction and its industry, such requirements may include shareholder approval, creditor notification and/or approval from relevant industry regulators.

**Members’ consent:** If the laws of the Originating Jurisdiction or existing constitutional documents do not require members’ consent for the re-domiciliation, the HKCO will require the company to obtain such consent by a resolution passed by at least 75% of members entitled to vote.

**Timing:** the company must have been incorporated for at least one financial year.

Other eligibility criteria include solvency, compliance with HKCO requirements for re-domiciliation (which will be substantially similar to those for an incorporation of a HK company) and the re-domiciled company not being used for an unlawful purpose or against the public interest.

## Legal / regulatory implications

**Regulatory implications:** the FSTB has confirmed the Banking Ordinance and Insurance Ordinance will be amended such that overseas incorporated authorized institutions (e.g. banks) and insurers that re-domicile to Hong Kong will be regulated and supervised as locally-incorporated entities, and that they should approach the Hong Kong Monetary Authority or the Insurance Authority *prior to* any re-domiciliation application so that their ability to comply with the relevant regulatory requirements can be assessed in advance.

**HKCO obligations:** once re-domiciled, the company must observe requirements under the HKCO (and potentially other legislation) in the same way as a locally registered company of its kind. The company should therefore assess

the different compliance requirements between Hong Kong and the Originating Jurisdiction (for example relating to distributions and accounts/audit) and consider if these are acceptable.

**Existing contractual arrangements:** Hong Kong law will expressly provide to the effect that a re-domiciliation will not create a new legal entity and will not affect the property, rights, obligations and liabilities and contractual processes of a re-domiciled company. However, the company will need to consider whether a re-domiciliation will trigger any consent or other requirements under its contracts.

**Listed companies:** If the company seeking to redomicile to Hong Kong is listed on a stock exchange, it should consider the implications this may have under the relevant listing regime.

## Tax implications

Tax advice will likely be required, but the FSTB has clarified a number of points:

- A re-domiciliation will not affect the company's tax obligations in the Originating Jurisdiction or its Hong Kong profits tax position. This is because so far as the Hong Kong Inland Revenue Ordinance (IRO) is concerned, regardless 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.
- Nevertheless, consequential amendments will be made to the IRO to address certain transitional tax matters on fair deduction for trading stock, specified types of expenditures and depreciation allowances.
- To eliminate double tax, tax credits will be provided in respect of the tax payable on actual profits derived in Hong Kong after re-domiciliation if similar profits have been taxed in an unrealised form by the Originating Jurisdiction upon exit.
- No Hong Kong stamp duty implications will arise from the re-domiciliation process itself.

## Process

An applicant would be required to submit an application form, fee and supporting documents to the Companies Registry, which will administer the application process. Supporting documents include (amongst others) a legal opinion from a legal adviser in the Originating Jurisdiction and financial statements as at a date no more than 12 months prior to the application date. The statements can be unaudited unless the company prepares audited statements due to other requirements (e.g. the laws of the Originating Jurisdiction).

A company will become a re-domiciled company in Hong Kong upon the issuance of a certificate of re-domiciliation by the Companies Registry. The company will then be required to provide evidence of de-registration in its Originating Jurisdiction within 120 days (which may be extended upon application).

Companies should coordinate the re-domiciliation processes of Hong Kong and the Originating Jurisdiction to minimise any time period when it would be registered in, and therefore subject to, two different regimes, which is likely to involve liaising with the regulators in both jurisdictions in advance.

The FSTB's conclusions note the Companies Registry will generally be able to approve an application within two weeks.

## Next steps

The FSTB's conclusions paper sets out the intended key features of the new regime. A bill to amend the HKCO to provide for the new regime is being prepared, which will set out the precise drafting of the provisions. The FSTB has noted that the bill will be tabled "as early as practicable".

## Conclusion

The regime is to be welcomed - it will give overseas companies a much more straightforward route than existing methods to migrate their place of incorporation to Hong Kong and allow Hong Kong to keep pace with jurisdictions which have already adopted this mechanism and therefore enhance its status as a global business and financial hub.

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