

The Hong Kong Chartered Governance Institute

Submission

Financial Services and the Treasury Bureau (FSTB)

Consultation on Proposed Company Re-domiciliation Regime in Hong Kong

The Hong Kong Chartered Governance Institute 香港公司治理公會

(Incorporated in Hong Kong with limited liability by guarantee)

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By email only: keithgiang@fstb.gov.hk

Financial Services and the Treasury Bureau
Financial Services Branch
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Keith,

Consultation on proposed company re-domiciliation regime in Hong Kong

(Terms and expressions used in this submission are as defined under the Consultation Paper)

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries, is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with about 40,000 members and students worldwide. The Institute is one of the fastest growing divisions of CGI, with a current membership of over 7,000, 300 graduates and 2,600 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

Overall support for the re-domiciliation regime

We express our sincere appreciation and gratitude to the FSTB and HKSAR Government for considering our Institute's proposals for a general re-domiciliation regime. We wrote to the FSTB in May 2019 and followed up with the Administration on various occasions, the latest with the HKSAR Chief Executive and FSTB in 2023. We are glad to see the gradual adoption of the

re-domiciliation idea for OFCs and LPFs, and now generally as set out under the budget speech. Our Institute prides itself in thought leadership and looks forward to supporting the Government's initiatives in promoting Hong Kong as an international financial centre and the ease of doing business.

In this connection, we agree to keep the re-domiciliation regime simple for the moment, that an inward scheme is acceptable, with no threshold. There are pressures from the EU for Hong Kong to extend the FSIE regime to capital disposals; hence, it is a commercial weighing exercise whether to re-domicile to Hong Kong or not having regard to a totality of business factors relevant to each applicant. Our Institute will be delighted to join any working group to explore ideas to make Hong Kong attractive, for example, through taxation treaties and other policy initiatives.

In all, we believe that the proposed regime will align with the important role of Hong Kong as a super-connector between international business and the Mainland, in particular the GBA, which creates significant business opportunities. It will also help to attract talent into Hong Kong with enhanced business opportunities.

Technical Issues

In terms of technical issues:

1. There is a requirement that an applicant's non-Hong Kong entity should be the same or substantially the same as the proposed type of companies specified in the application for re-domiciliation. For the TCSP sector, where the HKSAR Government recognises that our members occupy senior positions within TCSPs under the 2018 Hong Kong AML/CFT National Risk Assessment submitted to FATF, the requirement must be capable of being established by documents. Thus, what is required must be clear, whether a legal opinion and/or draft articles with certain mandatory provisions following the model articles.
2. An important issue is that there should be a company secretary as required under the Companies Ordinance, as this is not compulsory in certain jurisdictions, but it must be in Hong Kong.
3. On complying with the laws of its place of incorporation under a transfer application, this should be reduced to a documentary requirement. For example, official consent to the re-domiciliation, where available, and/or legal opinion. The IRD should also clarify at which point will Hong Kong taxation apply and the scope of double taxation relief.
4. Regarding the financial statement, there are various related ideas, for example, published accounts under Part 16 of the Companies Ordinance. In all, the simplest solution may be to require statutory solvency declarations in place of audited financial statements.

5. An important issue is the opening of bank accounts. The Hong Kong Monetary Authority understands the problem and is proactively helping companies to troubleshoot account opening issues. For companies seeking re-domiciliation, it is perhaps critical for a special task force to facilitate the opening of bank accounts. Otherwise, they will be in limbo during the sixty days deregistration period and after that.
6. Regarding the sixty days deregistration period, there should be flexibility to extend this for justifiable reasons. This is because the discontinuation process may be outside the applicants' control, and it is unclear if another sixty days would be sufficient.
7. As to company name, perhaps, there can be a trial to allow for reservation of company names for a company seeking to re-domicile as the name will be an existing one. A company seeking re-domiciliation may want, for example, a famous name to be retained.
8. The applicant should pass a special resolution, or equivalent, beforehand to authorise the application. There is perhaps no need to specify 21 days' meeting notice period. More importantly, the validity should be covered by legal opinion or other documentary confirmation.
9. Regarding submission of the application, incorporation acts are covered under FATF Recommendation 22 and AMLO, and unqualified persons should not bypass this through electronic or other means. The application should be submitted by licensed TCSP, professional company secretaries, accountants or lawyers, but not estate agents, which are only authorised to deal with buying and selling real estate-related due diligence.
10. The HKCGI members as professional company secretaries practicing in Hong Kong should also be permitted to certify the competence of a translator and certify documents required to support re-domiciliation applications.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute



Ernest Lee FCG HKFCG(PE)
President