



## COMPANIES (AMENDMENT) (No. 2) BILL 2024

### The Law Society's Submissions

1. The Companies (Amendment) (No.2) Bill 2024 (the “Bill”) was introduced into the Legislative Council on 8 January 2025. The Bill seeks to introduce a company re-domiciliation regime to enable non-Hong Kong incorporated companies to re-domicile to Hong Kong.
2. The re-domiciliation regime facilitates the transition of re-domiciled companies while ensuring business continuity, eliminating the necessity for judicial procedures. The Law Society supports the policy objective of the Bill.

### Specific Comments on the Bill

3. Our specific comments on the Bill are set out as follows:

Clause 68 of the Bill (the proposed new Part 17A of the Companies Ordinance (Cap. 622))

#### *Compliance with Substantive Requirements*

4. The Bill clearly envisages that the Registrar of Companies (“Registrar”) is entitled to conduct a substantive review of the application and satisfy herself that all applicable substantive requirements are in fact satisfied before approving an application. For this purpose, while the Registrar “may” accept a statement of compliance as sufficient evidence that all the applicable requirements have been complied with (section 820B(4) of Part 17A introduced by Clause 68 of the Bill), the Registrar may require the applicant to provide any further documents or information that is, in the Registrar’s opinion, necessary for considering the application (section 820C(4) of Cap. 622).

5. Section 820C of Cap. 622 sets out two situations where approval would not be given to the application. Section 820C(3) of Cap. 622 provides effectively that the Registrar may turn down an application on public policy grounds and section 820C(2) of Cap. 622 provides that the Registrar must refuse to register an applicant as a Hong Kong company “*if any of the requirements mentioned in section 820B that are applicable to the application is not complied with*”. This gives the impression that these are the only two situations for refusal.
6. However, in relation to the latter situation, the relevant requirements mentioned in section 820B of Cap. 622 only deal with the delivery of documents and information, noting that subsection (4) is an empowering provision and not in itself a requirement. This could lead to an impression that if the document and information delivery requirements are met, the application would be approved. In this connection, it seems preferable that an express provision is included to provide that the Registrar is entitled to refuse an application if she is not satisfied that all substantive requirements are satisfied.

#### *Shareholder Approval Requirement*

7. If shareholder approval is required by the law of the applicant’s place of incorporation or under the applicant’s constitution (relevant requirement), the Bill requires that confirmation should be provided to the Registrar to the effect that such approval has been obtained (see section 4(1)(e) of Schedule 6A to Cap. 622). This should cover most situations.
8. If there is no relevant requirement, the Bill provides in effect that the application needs to be approved by a resolution that “*has been duly passed by at least 75% of the eligible members*” (section 4(1)(f) of Schedule 6A to Cap. 622) and “eligible member” is defined as a member entitled to vote on the resolution (section 4(2) of Schedule 6A to Cap. 622). This requirement could be onerous for a listed company with a significant portion of inactive shareholders. Generally, under the Companies Ordinance (Cap. 622), shareholder resolutions need only be passed by the relevant percentage of shareholders “present and voting” at the relevant shareholder meeting.

#### Clause 119 of the Bill (i.e. the proposed new section 3BA and section 3BB to the Insurance Ordinance (Cap.41))

9. The Bill would implement an appropriate regime for *Hong Kong authorized insurers* that are incorporated elsewhere (such as Bermuda) and re-domicile to Hong Kong. Under the proposed amendments to the Insurance Ordinance (Cap.41), such insurers need to apply to the Insurance Authority and obtain a non-objection before they apply for re-domiciliation to Hong Kong. There are some practical issues to be resolved, such as the conditions that e.g. the Bermuda Monetary Authority may impose in order for the insurer to be

deregistered in Bermuda (which is a condition to becoming a “re-domiciled insurer” in Hong Kong) and whether Bermuda-incorporated insurers writing some business from Bermuda (in addition to their Hong Kong business) will need to set up a branch in Bermuda following re-domiciliation. However, these practical issues cannot be addressed in the Bill.

#### Clauses 117(4), 117(5) and 153 of the Bill

##### *Definitions of “HK insurer”, “designated insurer” and “re-domiciled insurer”*

10. From a drafting perspective, introducing the concept of “**re-domiciled insurer**” (Clause 117(5) of the Bill) in addition to “**HK insurer**” (Clause 117(4) of the Bill) and “**designated insurer**” (Clause 153 of the Bill) introduces a significant level of complexity into an already complex regime regarding approvals of controllers, key persons and other regulatory matters. It may have been preferable instead to include “re-domiciled insurer” in the definition of “HK insurer” subject to some additional provisions.

#### Others

##### *Regulatory process to be followed for insurers that are incorporated elsewhere by that wish to re-domicile to Hong Kong without currently being authorized in Hong Kong*

11. The Bill does not set out the regulatory process to be followed for insurers that are incorporated elsewhere but that wish to re-domicile to Hong Kong without currently being authorized here. It is not fully clear how applications from such companies will be dealt with (the Bill only states that they will become re-domiciled insurers upon becoming authorized insurers in Hong Kong). Consideration should be given to putting in place a system under which the Companies Registry will consult with the Insurance Authority in relation to such insurers, effectively referring such insurers to the Insurance Authority for assessment. The Companies Registry does have some discretion to refuse re-domiciliations on certain grounds, but it would be helpful to have a clearer explanation of how the process will work for such companies (given authorization by the Insurance Authority may take a year or longer to obtain and may be refused) and how the re-domiciliation process would be handled by the Companies Registry during that time.

**The Law Society of Hong Kong  
25 February 2025**