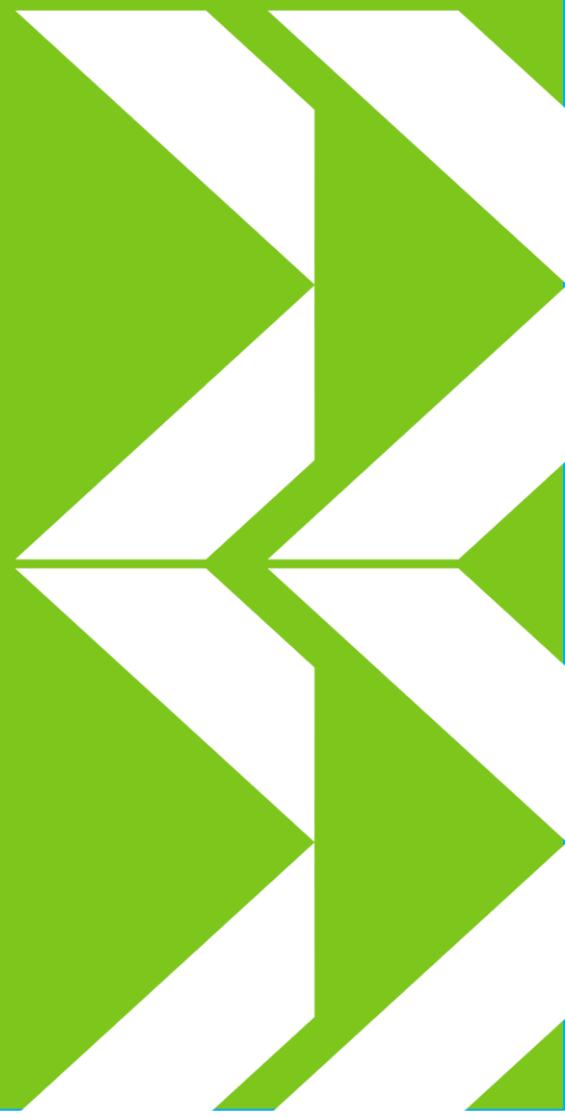


Re-domicile of a BVI Company to Hong Kong

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A company incorporated in the British Virgin Islands may make an application under section 820B of the Companies Ordinance (Chapter 622 of the law of Hong Kong) (the “**Hong Kong Companies Ordinance**”) to be registered as a company in Hong Kong. A successful application would result in the BVI company relocating its legal domicile from the British Virgin Islands (“**BVI**”) to Hong Kong while preserving its corporate identity, operational continuity, and pre-existing legal obligations.

Note: The BVI company applying for continuation under Hong Kong law is referred to in this note as the “BVI company” or the “company”, depending on the context.

Eligibility Requirements

The BVI company must meet the following requirements to be eligible to apply for re-domiciliation to Hong Kong:

- the BVI company must either be a private or public company limited by shares or an unlimited private or public company with a share capital;
- the BVI company has been incorporated for at least one financial year;
- compliance with requirements under BVI law on continuation under foreign law;
- the re-domiciliation application is not intended to defraud creditors and is made in good faith;
- all shareholder approval and other consent requirements under BVI law, the BVI company's constitutional documents (e.g. Memorandum and Articles of Association) and/or contracts or undertakings have been obtained or waived;
- shareholder approval requirements under the Hong Kong Companies Ordinance are met;
- all creditors have been notified of the re-domiciliation;
- the BVI company is able to pay its debts which fall due within the period of 12 months from the application date; and
- the BVI company (a) is not the subject of any petition, proceedings or order for the winding up or liquidation of the BVI company; (b) has not passed any resolution for winding up or liquidation; (c) has not been notified of the appointment of any receiver or manager with respect to the BVI company and/or its assets and there is no person acting as such; or (d) has not entered into any scheme, order, compromise or arrangement relating to the insolvency of the BVI company.

The Hong Kong Companies Registrar will refuse a re-domiciliation application if it is of the opinion that the company will be likely to be used for an unlawful purpose or a purpose contrary to public interest after re-domiciling to Hong Kong.

Application Process

The key documents required for the application include:

1. **Form NNC6** – Re-domiciliation Form;
2. **Copy of the proposed Articles of Association**;

3. Documents to accompany the Re-domiciliation Form;

- a. if the BVI company was initially incorporated in the BVI, a certified copy of the certificate of incorporation issued under BVI law;
- b. if the BVI company was initially incorporated in another jurisdiction other than BVI, a certified copy of the certificate of incorporation or other equivalent document under that jurisdiction and a certified copy of the certificate of continuance issued under BVI law;
- c. a certified copy of all constitutional documents of the BVI company;
- d. a certified copy of the shareholders' resolution passed under BVI law and the articles of association of the BVI company approved by a majority of at least 75% of eligible shareholders approving the continuation under Hong Kong law (where required);
- e. accounts or audited accounts of the BVI company as at a date no more than 12 months before the re-domiciliation application date;
- f. certificate issued by the board of directors within 35 days before the application date and signed by a director;
- g. legal opinion from a BVI legal practitioner issued within 35 days before the application date;

4. IRBR5 – Notice to Business Registration Office;

5. Application and Registration Fee (HK\$6,050 for electronic application; HK\$6,725 for paper application) and Business Registration Fee.

Timing

After submitting all required information and documents, it will generally take approximately 2 weeks for the Hong Kong Companies Registry to process the application.

After re-domiciliation

If the Hong Kong Companies Registry approves the application, the Hong Kong Companies Registrar will issue a certificate of re-domiciliation. The company will then be required to submit the following documents to complete the re-domiciliation process:

- a return setting out the particulars of the share capital and shareholders of the company within 15 days of the date of issue of the certificate of re-domiciliation; and
- for specific cases, a written consent from each director to act as a director of the company within 15 days of the date of issue of the certificate of re-domiciliation.

Deregistration in BVI

After obtaining the certificate of re-domiciliation, the company must deregister in the BVI. Documentary evidence of deregistration from BVI must be submitted to the Hong Kong Companies Registry within 120 days of the date of issue of the certificate of re-domiciliation. If the company fails to fulfil this requirement, the re-domiciliation registration will be revoked by the Hong Kong Companies Registry.

BVI law requirements on continuation under foreign law

Re-domiciliation to a foreign jurisdiction outside BVI is generally referred to as “continuation under foreign law” or “to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands” and the BVI company must be in good standing to be eligible for continuation under foreign law.

Under the BVI Business Companies Act (Revised Edition 2020) (as amended), the main documents required for the continuation under Hong Kong law and deregistration in BVI include:

1. resolutions passed by the directors and/ or shareholders to approve the continuation under Hong Kong law;
2. publication of a notice of intention to continue as a company incorporated under Hong Kong law in the BVI Gazette and/ or on the BVI company's website (if any) for at least 14 days prior to filing with the BVI Registrar of Corporate Affairs (the "**BVI Registrar**") (the "**Publication Requirement**");
3. the issue of a written notice to shareholders and creditors in writing regarding the intention to continue as a company incorporated under Hong Kong law at least 14 days prior to filing with the BVI Registrar (the "**Notification Requirement**");
4. if the BVI company has any charges that have not been released or satisfied, a security declaration stating that either (a) a notice of satisfaction or release of the charge is filed and registered; or (b) a notice of satisfaction or release of the charge is not filed, but the chargee has consented or not objected to the continuation under Hong Kong law or that the chargee has been notified of the continuation and will not be prejudiced by the continuation under Hong Kong law;
5. notice of the intention to continue as a company incorporated under Hong Kong law to be filed with the BVI Registrar;
6. declaration confirming that:
 - a. Hong Kong allows the continuation under Hong Kong law and the BVI company has complied with relevant Hong Kong law;
 - b. the BVI company has fulfilled the Publication Requirement and the Notification Requirement;
 - c. the BVI company has no unsatisfied requests from competent authorities to provide documents or information;
 - d. no receiver is appointed with respect to the BVI company or its assets;
 - e. the BVI company is not aware of any legal proceedings pending against the BVI company, its shareholders, director, officer or agent that is directly relevant to the affairs of the BVI company;
7. notice of the BVI company's continuance under Hong Kong law filed by the registered agent;
8. certificate of re-domiciliation issued by the Hong Kong Companies Registry; and
9. relevant application fees, including:
 - a. US\$25 for placement of notice in the BVI Gazette;
 - b. US\$250 to file the notice of intention to continue as a company incorporated under Hong Kong law ; and
 - c. US\$2,500 for registration of notice to continue as a company incorporated under Hong Kong law.

If the BVI Registrar approves of the continuance under Hong Kong law, the BVI Registrar will issue a certificate of discontinuance which must be submitted to the Hong Kong Companies Registry within 120 days of the date of issue of the certificate of re-domiciliation. The company will then no longer be a company registered under BVI law and will be struck off from the BVI Register of Companies.

Effects of re-domiciliation

The company will be considered a company incorporated in Hong Kong from the date of re-domiciliation. Under the Hong Kong Companies Ordinance, the re-domiciliation will not create a new legal identity and all contracts,

resolutions, functions, property, rights, privileges, obligations or liabilities that are owned, acquired or incurred by the company before re-domiciliation will not be affected after re-domiciliation.

The company must also comply with all requirements and filing obligations under the Hong Kong Companies Ordinance, including filing of an annual return before a prescribed deadline. Specifically, charges created by the company or charges on property acquired by the company before the re-domiciliation must be registered with the Hong Kong Companies Registry within one month of the date of issue of the certificate of re-domiciliation. Companies should therefore revisit their transactions to identify charges which are registrable under the Hong Kong Companies Ordinance even where these charges may not be registrable in the company's place of original domicile. Additionally, all companies, including those re-domiciling from jurisdictions that do not require companies to have a company secretary such as the BVI, will also be required to appoint a Hong Kong company secretary upon re-domiciliation pursuant to the Hong Kong Companies Ordinance.

Tax treatment of re-domiciled companies

Generally, the re-domiciliation process itself will not impact the company's tax obligations in its original domicile or in Hong Kong. However, there may be implications on the tax residency of the company given the change of place of incorporation. In each case specific tax advice should be sought.

Under Hong Kong tax law, unilateral tax credits are also available for re-domiciled companies (subject to certain requirements) to eliminate double taxation where the company is liable to pay tax in its original domicile that is of a similar nature to profits tax in Hong Kong for the re-domiciliation year or any subsequent year of assessment. Again, in each case, specific tax advice should be sought.

Other considerations

The registration status of a non-Hong Kong company registered under Part 16 Hong Kong Companies Ordinance applying to be re-domiciled to Hong Kong will cease to be effective upon re-domiciliation. However, registered non-Hong Kong companies will be allowed to retain their company names and business registration numbers.

In the case of insurance companies authorised under the Insurance Ordinance (Chapter 41 of the law of Hong Kong); and authorised institutions, holding companies of authorised institutions and approved money brokers under the Banking Ordinance (Chapter 155 of the law of Hong Kong), approval from relevant authorities must be obtained before making a re-domiciliation application.

About Charltons

Charltons is one of Hong Kong's leading firms focused on corporate finance legal practices. Our firm provides comprehensive re-domiciliation services to successfully transition your company from its original jurisdiction to Hong Kong. We can manage the entire process—from preparing all requisite documentation and handling the Hong Kong registration to ensuring compliant deregistration in the BVI, Cayman Islands or other jurisdictions where the company is originally domiciled.

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