

## CORPORATE RE-DOMICILIATION: GLOBAL BRITAIN? WHY THE PROPOSED NEW UK REGIME MATTERS

The Government confirmed in April that it intends to introduce a UK corporate re-domiciliation regime, which would allow a foreign-incorporated company to change its place of incorporation to the UK whilst maintaining its legal identity as a corporate body. This has the potential to reduce significantly the complexity involved in the process of relocating to the UK. Companies looking to align the domicile of group companies with, for example, the location of key operations, corporate headquarters or tax residency will benefit from this proposed new regime.

### Early test

The Government's confirmation that it intends to proceed with the regime comes relatively soon after the public consultation exploring the principles and feasibility of its proposals closed in January 2022, suggesting the Government's strong support for the measure. As one of the first substantial changes to UK company law since the UK left the EU on 31 January 2020, the detail of the Government's implementation of the policy will be an early test of its stated ambition at the time of the consultation "to strengthen the UK's position as a global business hub and an open, competitive, free market economy". The introduction of the regime will be particularly significant given that the EU cross-border mergers regime, an alternative route to re-domiciliation, is no longer available to companies looking to move from the EEA to the UK following Brexit.

### Why now?

There are a number of reasons why overseas companies may wish to re-domicile to the UK. These may include aligning domicile with the location of key operations, corporate headquarters or tax residency, regulatory consolidation, gaining access to UK-based sources of investment, achieving eligibility for certain FTSE indexes, being in a better position to secure UK Government contracts and UK subsidies, and achieving a desired tax treatment (including mitigating any negative consequences of being incorporated in a tax haven, for example). Companies may also favour the broader legal and policy framework of the UK, or seek to move away from jurisdictions experiencing political upheaval, or for more specific reputational or strategic reasons.

The UK currently offers overseas companies no straightforward way of migrating to the UK to enjoy these benefits. In most cases, new UK holding companies need to be put in place, introducing additional unnecessary layers within corporate structures, adding to costs and creating organisational inefficiencies, and often triggering "change of control" provisions in commercial agreements (such as contracts, leases and licences).

In the context of the Government's determination to increase the attractiveness and availability of the UK as a destination to locate a business and in which to invest, we welcome the proposed introduction of a corporate re-domiciliation regime as a means of simplifying the way companies can move to the UK. Indeed, it could be argued that the UK is at a competitive disadvantage in not already having such a regime in place in comparison with other jurisdictions such as Canada, Singapore and Luxembourg. Provided that the detail of the new regime is sufficiently simple to give overseas companies confidence that they can re-domicile to the UK without issues, the policy should signal to the world the attractiveness of the UK as a jurisdiction in which to do business.

### Five takeaways



The proposal should be welcomed as a useful addition to UK company law.



The regime will be a tool, and not a reason itself to move to the UK.



This is expected to be part of an overall package of measures to make the UK a more attractive place in which to do business.



Nothing changes yet – more time is required before legislation is introduced.



It has not yet been confirmed whether outward (as well as inward) re-domiciliations will be permitted.

## A two-way regime?

Whilst the Government has confirmed that it intends to introduce a regime making it possible for companies to move their domicile to the UK, it has remained silent on the question of whether it also intends to introduce an outward re-domiciliation regime, which would enable companies to shift their place of domicile from the UK to a foreign jurisdiction. The additional complexities of such a regime raised in responses to the consultation may have discouraged the Government from confirming its intentions at this early stage, and it is not necessarily the case that the Government has ruled out an outward re-domiciliation regime, but the silence does allow space for arguments that permitting only inward re-domiciliation would be limiting in a jurisdiction that is keen to be seen to be open to cross-border investment.

Concerns have been raised that some companies may be reluctant to make use of an inward re-domiciliation regime if they cannot subsequently leave the UK in the event that their circumstances change. From a pragmatic perspective, where the UK requires co-operation from authorities in other jurisdictions to ensure that re-domiciliation of overseas companies into the UK operates smoothly, that co-operation may be less forthcoming if the UK does not allow its own companies to re-domicile to that jurisdiction.

Nevertheless, it is undoubtedly the case that an outward re-domiciliation regime involves greater complexity than a regime that permits only inward re-domiciliation, raising substantial issues with regard to creditor and shareholder protection. It may be understandable for the Government to prioritise implementation of an inward re-domiciliation regime, particularly given that the majority of respondents to its consultation did not provide an answer to the question of the economic (or other) benefits to the UK of allowing outward re-domiciliation.

## Part of a package

Although the Government has confirmed its intention to proceed with the introduction of an inward re-domiciliation regime, it has indicated that more detailed analysis and engagement are needed before legislation can be drawn up to enact the policy, so the detail remains to be seen. It is also yet to be confirmed whether the new regime will permit re-domiciliation between UK nations, which may become more relevant in the context of any political moves towards independence from the UK by member nations. In any event, a UK corporate re-domiciliation regime (whether inward only or two-way, intra-UK or otherwise) will not single-handedly achieve the Government's aims of strengthening the UK's position as a global business hub, and there are unlikely to be overwhelming numbers of applications to re-domicile to the UK immediately following the introduction of the regime. Re-domiciliation will need to be part of an overall package of measures to make the UK a more attractive place in which to do business. General commercial conditions in the UK (including tax and regulation) are likely to remain key factors in a company's deliberations as to whether to relocate. In this context, developments such as the recent measures to enhance the attractiveness of the UK REIT regime for real estate investment and the publication of the outcome of the UK Prospectus Regime Review confirming the Government's intention to implement a simpler regime for companies listing and raising capital are welcome. Provided that the detail of the regime ensures its smooth running and a fully supported team at Companies House is on hand to implement it, a new UK corporate re-domiciliation regime will be equally welcome for the purposes of increasing the attractiveness and availability of the UK as a destination to locate a business, and will be a useful tool to facilitate transfers of businesses into the UK.

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## What was in the consultation?

The consultation sought views on the introduction of a UK re-domiciliation regime, which would make it possible for companies to re-domicile and therefore easier to relocate to the UK.

In the consultation, the Government set out its proposals and sought views on:

- **the advantages of enabling companies to re-domicile**
- **the level of demand that exists, among which types of companies and sectors**
- **the appropriate checks and entry criteria**
- **the merits of establishing an outward re-domiciliation regime**
- **any tax implications associated with the introduction of a re-domiciliation regime.**

Senior and specialist corporate lawyers from Clifford Chance were members of the joint working party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales that responded to the consultation.

Clifford Chance tax specialists also comprised part of the Revenue Committee of the City of London Law Society, which also responded to the consultation.

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