



Open for business: implementing a UK corporate re-domiciliation regime

18 June 2026



Introduction

1. The views set out in this response have been prepared by a Joint Working Group (**JWG** or **working group**) of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**), and include input on specialist areas from representatives from the Financial Law, Insolvency Law, Regulatory Law and Tax Law Committees of the CLLS.
2. The CLLS represents approximately 21,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. It should be noted that the JWG includes three members from the panel (the **Panel**) previously involved in preparing the independent expert report dated 1 October 2024 (the **Panel's Report**). The majority of JWG members were not Panel members and are independent of the discussions and conclusions reflected in the Panel's Report.

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Response

General remarks

5. We strongly support the introduction of a corporate re-domiciliation regime and agree that, as noted in the Consultation, existing mechanisms for moving a company's place of registration to the UK are costly and complex. Introducing a regime that enables companies to retain their legal identity will create a more efficient and easier pathway and will add to the overall attractiveness of the UK as a jurisdiction of choice.
6. We also generally agree with the proposals in the Consultation, subject to the additional comments included in response to specific questions below. As an overarching point, we would prefer that the proposed regime allowed for both inward and outward re-domiciliation, but we note from the Consultation that the government does not intend to adopt this in its proposals. We believe that a two-way regime (as exists in many other jurisdictions) would increase the overall attractiveness of the UK to those looking to take advantage of the ability to re-domicile. We acknowledge that the outward aspect of the regime would be more complex and time consuming to implement, but we hope that the government will continue to be open-minded about facilitating a two-way regime in the future, possibly as part of a further enhancement of the regime once the inward regime is in place.
7. Should the government wish to further enhance the competitiveness of the UK legal framework for companies, we also urge it to consider introducing a regime to permit mergers of companies, including cross-border mergers, which are a feature of many other regimes. Cross-border mergers are permitted in all EU member states and were available to UK companies prior to the UK leaving the EU. A new merger regime would share some of the features of an outward re-domiciliation, so could be considered as part of a potential future enhancement of the UK company law regime.

Question 1: To what extent do you agree with these broad principles? Are there other principles you think should be included? If so, please set out your reasons?

8. We agree with the broad principles proposed by the Panel and summarised in paragraph 2

of the Consultation. We agree in particular with the observations that it should be up to the applicant to liaise with the various authorities; that Companies House should not be required to exercise discretion in the process to any material extent; and that the applicant should have some degree of control over the timing at which the re-domiciliation takes effect, particularly in the context of the re-domiciliation of companies with securities that are listed or admitted to trading on a securities exchange.

9. We agree with the comment that re-domiciliation should be open to companies that wish to carry on business (rather than those wishing to explore liquidation or insolvency processes soon after re-domiciliation); for completeness, “carrying on business” should not be limited to “trading” (in the UK or elsewhere) and should be expressed to include any reason for which a new UK company could be incorporated, including, for example, acting as a holding company, a mere asset-owning company or a trust vehicle.

Question 2: To what extent do you agree with the proposed eligibility criteria? Please set out any other criteria the government should consider and why.

10. We agree with the statements in paragraphs 3 and 4 of the Consultation regarding eligibility for re-domiciliation for entities involved in insolvency processes and entities subject to resolution tools.
11. In the specific context of FCA and/or PRA involvement in the re-domiciliation process, we would note the following:
- For entities that are already FCA or PRA regulated prior to re-domiciliation, we consider that the FCA or PRA (as applicable) would expect notification of a change in domicile. However, whether a new authorisation application would also be required would depend on the circumstances, such as whether the re-domiciliation was treated by the FCA or PRA as involving a change of legal structure or of ownership/control. Where the entity is required to apply for authorisation, the FCA and PRA would be required to consider whether the entity would meet threshold conditions under Schedule 6 of the Financial Services and Markets Act 2000 (**FSMA**). That said, in any event, where the entity does not need to reapply, the FCA and PRA may reconsider whether the entity would still meet threshold conditions, which includes conditions such as effective supervision and location of offices.
 - For entities that are not already required to be FCA or PRA regulated, we do not think that a re-domiciliation will, of itself, necessarily impose a requirement for authorisation as (in broad terms) the general prohibition under section 19 FSMA applies to regulated activities carried on in the UK. If a UK-incorporated entity conducts regulated activities entirely outside the UK, it may not need FCA or PRA (as applicable) authorisation. Although the location of the registered or head office is one of the factors that may be relevant in this context, the analysis will ultimately also depend on a range of other factors including where decisions are made, where clients are located, and what activities are being undertaken.
 - Where FCA or PRA consent is required, we think that the framework proposed by the Panel for the re-domiciliation process gives sufficient flexibility for the applicant and its advisers to liaise directly with the regulatory authority during the application process and secure the necessary consent before the effective date of the re-domiciliation. It would be a policy decision for government whether to impose any additional consent requirements for an entity which conducts regulated activities in the UK. However, we would note (in light of the general position of seeking to adopt a consistent approach between new incorporations and re-domiciliations where possible) that FCA or PRA consent would not be required in order to be able to simply incorporate a new UK company (albeit it may be required in the context of operating the underlying business).
12. We agree with the comment in paragraph 5 of the Consultation that there should be a consistency of approach between new incorporations and re-domiciliations. We have set out our views in respect of the position of directors, PSCs and members in paragraphs 13 to 18 below.

Directors

13. Where a proposed director of the re-domiciling entity is disqualified under the directors disqualification legislation (as defined in section 159A Companies Act 2006 (**CA 2006**)), that proposed director would be ineligible to be a director of the re-domiciled company unless they cease to be subject to the directors disqualification legislation by the time of the re-domiciliation. Consistent with the approach for a newly incorporated company, we do not think this situation should render the company ineligible for re-domiciliation; rather, the proposed director in question would simply not be treated as a director of the company upon re-domiciliation. Furthermore, in the absence of the leave of the court, the proposed director would commit an offence under section 1(1) of the Company Directors Disqualification Act 1986 (**CDDA**) in being concerned in the promotion, formation or management of a company.
14. We do not believe there is any existing framework which would prevent directors who are the subject of equivalent overseas disqualification orders from acting as directors of a UK company and suggest the same approach is taken to re-domiciliations. We considered whether there was merit in requiring directors to disclose any such orders in the application documents but, on balance, believe this is not desirable as (a) there is no such requirement for new incorporations; and (b) it is difficult to ascertain exactly what is meant by “equivalent” in this context. There is a material risk that any such disclosure might undermine confidence in the re-domiciling entity and/or result in counterparties and other stakeholders being unwilling to do business with the entity in circumstances where this would not necessarily be the case had a new UK entity been incorporated instead.
15. We do not believe that the fact a proposed director is subject to sanctions or asset-freezing orders should, of itself, render the company ineligible to re-domicile. Instead, the existing enforcement regime would apply if any offence was committed (for example, as a result of acting as a director of a UK company). The precise scope of sanctions and asset-freezing orders varies and it is not appropriate to apply a blanket approach, nor do we think it is possible to future-proof any such approach. We would suggest that Companies House should adopt the same approach as is normally taken to proposed directors on a new incorporation. In this context, we understand that it conducts automated compliance checks on the proposed directors which are primarily intended to ensure that the relevant individuals are not “designated persons” pursuant to applicable UK economic sanctions and we would suggest the same process should apply. For completeness, if the government considers that additional processes are required to address sanctions, we suggest these should only relate to sanctions applicable in the UK rather than seeking to address international sanctions imposed by other jurisdictions.

PSCs

16. While current legislation does permit a UK company incorporation where any of the company’s initial registrable persons (PSCs or RLEs) are disqualified under the directors disqualification legislation, the introduction of section 12A(1A) CA 2006 will, once in force, require a statement of initial control to confirm that the initial PSCs or RLEs are not disqualified under the directors disqualification legislation. We suggest that the same approach should be applied in respect of applicants for re-domiciliation, with the rules to be reflective of the position for new UK incorporations and with the intention that they are adapted to apply consistently in the event of any future changes.
17. Separately, we understand that there is no hard prohibition on a person who is subject to a UK asset-freezing order being a PSC of a newly incorporated company, and it would be a question of fact as to whether the PSC was in breach of the relevant provisions of the order (in dealing with economic resources etc.). Similarly to the position with directors, we do not think that the re-domiciliation of the company needs to be made conditional on compliance with sanctions or asset-freezing orders relating to PSCs (or for that matter, to the applicant itself) and that the normal enforcement regime should apply in the case of any breach. This avoids putting Companies House in the position of having to police compliance with sanctions which it may not be well placed to do.

Members

18. Where an applicant has a member that is subject to a UK asset-freezing order, we do not consider that there are any grounds for this to prevent re-domiciliation. Again, the normal sanctions enforcement regime should apply where there is a breach. In this instance, there may not even be a breach (the member would not normally be concerned in the “promotion, formation or management” of the company unless they were also actively involved in day-to-day operations). Similarly, where a member who is not a PSC is disqualified under the directors disqualification legislation, this should have no impact on the ability to re-domicile. This position would be particularly important in the case of a large, listed company looking to re-domicile which may have sanctioned individuals on its register as minority shareholders (just as is the case with many UK-incorporated listed companies); this should not prevent the company from taking advantage of the re-domiciliation regime.

Reserve power

19. We have considered the statement in paragraph 6 of the Consultation that a reserve power for the Secretary of State is unnecessary. As a general point, although the Panel proposed a reserve power, we understand this was intended as a less intrusive alternative to the broader discretionary regime (particularly one involving an assessment of “good faith”) proposed in the government’s 2021 consultation paper. In that context, we do not consider that the Panel was firmly committed to the introduction of such reserve powers. Whilst we can see that there are potential merits in having such a power where factors beyond sanctions considerations may be relevant to a decision regarding a company’s re-domiciliation (for example, geopolitical or national security considerations specific to the timing or context of the application, or simply some unforeseen anomaly which has led to improper or abusive applications), we also acknowledge that no equivalent reserve power exists in relation to new incorporations. As such, on balance we defer to the government’s view as to whether such a power is necessary. Please also refer to our responses to Questions 14, 16 and 18 regarding the possible use of a reserve power for creditor protection purposes.
20. For completeness, if a decision was taken that the regime should include a reserve power for the Secretary of State, our view is that the exercise of such power should be subject to the parliamentary affirmative resolution procedure (i.e. requiring the proposal of a statutory instrument which must be positively approved by Parliament). In our view, this should ensure that any such reserve power is exercised appropriately, proportionally and only in circumstances that have been properly considered and approved by Parliament. This would provide a limited fall-back power for the Secretary of State, to be used only in exceptional cases but without putting them under undue political pressure to use a power which is exercisable without a further parliamentary procedure.

Question 3: To what extent do you agree with the list of the information to be provided when applying to re-domicile in the UK, as set out in section 2.3 of the Panel’s report?

21. We agree with the list set out in the Panel’s Report. Whilst the list is longer than the requirements for a newly incorporated company, we agree that this is necessary in order to deal with matters which have been put in place before re-domiciling, but which may continue to have an effect after re-domiciliation takes effect. We also refer to paragraph 35 below which includes an additional confirmation relating to the register of overseas entities (ROE) which we propose is included in an application for re-domiciliation.

Question 4: To what extent do you agree that: (i) the proposed director(s) should be required to make a solvency statement, no more than 15 days before the date of the application (ii) there should be a duty to update the statement if there is a change or event that would have prevented the solvency statement being made (iii) a refreshed solvency statement should be provided if the application has not been completed within 6 months?

22. In response to (i), we are supportive of this requirement. In most cases, we would expect proposed directors to make the solvency statement just before the application is submitted and 15 days should be a sufficient window (and is consistent with the approach taken under section 643 CA 2006). We are also supportive of the Panel’s recommendation to use

existing well-understood procedures such as the solvency statement approach, which is based on the requirements for a reduction of capital of a private company. It also has established parallels with the statutory declarations of solvency enshrined in UK insolvency legislation. We believe that the government guidance which accompanies the re-domiciliation legislation should expressly recommend that English law advice should be taken, including in respect of the confirmations to be given in the solvency statement.

23. In response to (ii), we agree that there should be a duty for re-domiciling companies to update the solvency statement if, prior to the re-domiciliation becoming effective, a change of circumstances has occurred as a result of which the proposed directors would not be able to make the statement in light of the circumstances then existing. Whilst we would hope the process of re-domiciliation could be dealt with expeditiously, it is possible that the application could be open for some time. In this case, it is important that the original basis for making the statement remains valid; a requirement to update the statement if circumstances change is therefore critical for maintaining the integrity and accuracy of the information provided to Companies House.
24. In response to (iii), we agree. If more than six months has elapsed, it would be sensible to require the statement to be refreshed in order to re-focus directors' minds on the solvency status of the company. This would also provide an important safeguard against circumstances where the initial statement may no longer reflect the company's financial health.

Question 5: To what extent do you agree that a person who committed an offence for making a solvency statement without reasonable grounds or for failing to notify a notifiable change of an event or change affecting the statement, should lead to imprisonment and/or a fine?

25. We agree with the Panel's approach. Section 643 CA 2006 provides that where directors of a UK-incorporated company make a solvency statement without having reasonable grounds for the opinions expressed in it and deliver such statement to the registrar, (i) an offence is committed by every such director in default, and (ii) any such person is liable to imprisonment and/or a fine. Such penalties act as a significant deterrent and are important in upholding the UK's corporate governance standards, particularly given the importance of the solvency declaration as a gateway to re-domiciliation. We see no rationale for imposing additional/alternative consequences on those proposed directors of companies applying for re-domiciliation that commit this offence. In our view, it is correct that the offence is only committed if the solvency statement is delivered to the registrar (because it is only after delivery that the solvency statement becomes part of a re-domiciliation application and would be relied upon as such). Proposed directors who make a solvency statement should be entitled to withdraw or cancel the statement if they become aware of something that means the statement might no longer be considered to have been made on reasonable grounds (as a result of which, the application would not proceed until a fresh solvency statement is made).

Question 6: To what extent do you agree solvency statements should not be independently audited (in line with existing practice)?

26. We agree that solvency statements should not be independently audited. The procedure for solvency statements on reductions of capital is well understood and does not require a report from the auditor. Any such requirement would require auditors to establish a new framework under which their reports may be given. We note that (pursuant to s714(6) CA 2006) a report from an auditor is required in relation to a solvency statement for a share buy-back out of capital (although even this does not involve an "independent audit" of the statement but merely a negative assurance as to the directors' opinion). We understand that in the case of a solvency statement being made in connection with a share buy-back out of capital, the legislation requires an auditors' report to address the perceived concern of there being some "self-interest" in a share buy-back that needs a degree of independent assurance, which we do not believe would be the case on a re-domiciliation. Furthermore, we note that the regime for buy-backs out of capital has been underused as a result of the auditors' report requirement and we would not wish for this to act as a disincentive to use

the re-domiciliation regime.

Question 7: To what extent do you agree a body corporate should be able to apply to become a private company limited by shares or an unlimited company or a public company regardless of its form in its departing jurisdiction, but not to become a company limited by guarantee?

27. We agree with the Panel's approach. We do not see a strong use case for re-domiciliation involving companies limited by guarantee (which are often used in the charity sector). On balance, our view is that the complexity of establishing a re-domiciliation regime for companies limited by guarantee would outweigh the potential benefits.
28. The CA 2006 permits conversion of companies between private and public status, and limited and unlimited status, but does not permit conversion of one of these companies into a company limited by guarantee. We can see no reason for the re-domiciliation legislation to take a different approach to that permitted for existing UK companies. Furthermore, we do not think it is desirable to attempt to test whether a re-domiciling entity is "equivalent" to a UK company limited by guarantee (or any other form of company) such that it would justify re-domiciling directly into that form of entity.
29. To avoid unnecessary complexity in the re-domiciliation legislation, an assumption is made that there will be shareholders or members who own a proprietary interest in the company. We think this is reasonable given the complexity of the legislation that will be required even without having to consider how provisions will apply to entities whose members have no proprietary interest and the limited practical benefit of the regime catering for these types of entities.
30. As a practical matter, we would not expect a significant number of re-domiciliation applications to involve unlimited companies, but permitting a foreign-incorporated body corporate to choose this corporate structure is consistent with the fact that the CA 2006 permits limited companies to become unlimited and vice versa.
31. Please also refer to paragraph 79 below in respect of the treatment of re-domiciling entities where members' liability is unlimited or where creditors may otherwise have recourse to members.

Question 8: Do you have any comments on the proposed list of information detailed in paragraphs 2.5 to 2.26 of the Panel Report or any other matter related to the application process and information to be provided?

32. We agree with the proposed list. Whilst extensive, we believe the requirement to make a public Companies House filing of the application form provides a convenient repository for information which third parties would want to see when reviewing a re-domiciled company's status. We note that these requirements are generally either (a) equivalent to a requirement applicable on a new incorporation, or (b) matters for which an existing UK company would be required to make a filing or other determination, or (c) matters which continue to bind the company or its shareholders after re-domiciliation and are therefore important to be notified to those dealing with the company in question.

Question 9: What are your views on the proposed 60-day timeframe (extendable by application) for companies that have re-domiciled to the UK to de-register as an overseas entity, and do you foresee any practical challenges for overseas entities in meeting these de-registration requirements?

33. In our view, re-domiciliation should automatically result in deregistration from the ROE on the basis that the ROE applies only to overseas entities (OE) and, on re-domiciliation, the PSC regime will apply to the re-domiciled company (regardless of whether the company holds a qualifying estate in UK land). We appreciate that this might result in the need for minor changes to existing legislation relating to the ROE to facilitate the deregistration.
34. An OE that holds a substantive interest ("a qualifying estate") in land in England and Wales

will be subject to restrictions (pursuant to the Economic Crime (Transparency and Enforcement) Act 2022 (**ECTEA**)) on how it transacts that land. These restrictions will be set out on its Land Registry title (see Practice Guide 78 for more details). Where that OE re-domiciles, the government should provide for an automatic mechanism to remove such restrictions from the title.

35. To avoid Companies House having to verify OE status manually, there could be a requirement in the application form to confirm if the applicant is a registered OE. The re-domiciliation application could be made subject to a confirmation to Companies House that the company is in compliance with its pre-existing ECTEA obligations. We note that section 16 of ECTEA requires a statement of beneficial owners and other information for the period between the OE's last update and the application for removal from the ROE, and that the information required to be provided under the ROE regime differs in certain ways from information required to be provided under the PSC regime. It would be possible to bridge this gap by requiring the re-domiciliation application to include the information that would be required in connection with a standalone application for removal from the ROE, specifically by virtue of section 9(1)(b) and (c) of ECTEA. However, it is ultimately a policy decision for the government as to whether it wishes to legislate to bridge the gap between the two regimes where the entity in question is re-domiciling and therefore becoming subject to the usual UK disclosure requirements. This is an area where there was some divergence of views within the group.
36. Even in the case of an overlap period (where the company is concurrently registered in England and Wales and the departing jurisdiction whilst waiting to be de-registered from the departing jurisdiction), there is no sense in making companies comply with both ROE and PSC regimes at the same time – the regimes impose different filing obligations and, in fact, the beneficial ownership analysis under each regime can, in some cases, produce different results. Currently a company is either an OE subject to the ROE regime or a UK company subject to the PSC regime, but never both.
37. The purpose of the ROE is to provide transparency on “ultimate beneficial owner” ownership of UK properties for OEs. Once re-domiciled in the UK, as a UK company, the re-domiciled company should be free to transfer land just like any other UK company (provided that, as part of its application, it confirms it is not in breach of the ROE rules).
38. There will be no need for Companies House to check whether the Land Registry has imposed a restriction on the company, as the company will give the compliance confirmation above as part of its application to re-domicile. This position is consistent with other aspects of the proposed regime, for example, Companies House relies on the solvency statement rather than conducting solvency checks. By combining the application for re-domiciliation and the application for de-registration from the ROE, the process will be streamlined, which will in turn, reduce the administrative burden on Companies House having to process two separate applications.

Question 10: What enforcement mechanisms or additional legislative powers do you believe should apply where a re-domiciled company fails to de-register from the Register of Overseas Entities within the specified timeframe?

39. Such additional enforcement mechanisms would not be necessary if the government is supportive of the proposal in response to Question 9.
40. Where (notwithstanding the compliance confirmation) an OE has re-domiciled but is found to have previously breached any of its obligations as an overseas company, any unsatisfied liabilities or penalties incurred by the company would still remain valid and applicable (even following re-domiciliation) until payment has been made. We would suggest that, if any penalties are demanded and remain outstanding at the time of the re-domiciliation application, these should be settled before the applicant is able to confirm compliance (but there is no need for an independent process to verify if penalties remain outstanding).

Question 11: Should an entity's eligibility to re-domicile to the UK be affected by outstanding penalties, ongoing compliance actions, or unresolved regulatory

breaches under the Register of Overseas Entities? If so, should this apply to all types of non-compliance, or only to certain categories (such as investigations for providing false information)? Please explain your reasoning.

41. Please refer to our response to Question 10. We do not consider that a re-domiciling company should be ineligible for re-domiciliation where it is in breach of the ROE in the period prior to re-domiciliation, on the basis that upon re-domiciliation, the company will be required to comply with UK legislation including the PSC regime.

Question 12: Do you think the proposed information would provide sufficient information for credit reference agencies?

42. We assume the question intends to address credit-ratings agencies rather than credit reference agencies (which may be used in the context of verification of identity under ECCTA or ECTEA).
43. As regards credit-ratings agencies, we do not think there is any need for additional information to be required. Following re-domiciliation, the company will provide information in the same way as other companies incorporated in the UK. We would assume that, as and when information is published in this way, a re-domiciled company would be in a similar position to other UK companies. A company is always able to provide additional information to credit-ratings agencies if it wishes to have a credit rating.

Question 13: Are there other matters relating to credit ratings the government should consider?

44. We do not consider there to be any such matters.

Question 14: Do you think Companies House should issue non-statutory guidance on the re-domiciliation process, including indicative timings for dealing with applications?

45. Yes. This will be helpful to guide applicants through the process. We agree that initially the guidance should be non-statutory in nature to provide Companies House with additional flexibility to issue guidance where required. Indicative guidance on timings for dealing with applications is also likely to be particularly helpful for entities contemplating re-domiciliation and seeking to align this with any relevant processes in their home jurisdiction.

Question 15: To what extent do you agree the process for ensuring the departing jurisdiction's conditions for re-domiciliation have been met should be resolved between the departing jurisdiction and the re-domiciling body corporate?

46. We agree that the process is a matter for the departing jurisdiction. Shareholders and other stakeholders have engaged with the re-domiciling company in the knowledge it is incorporated in a particular jurisdiction (and that that jurisdiction permits outward re-domiciliation). It does not make sense for the UK to try to "police" compliance with an unfamiliar regime. The applicant for re-domiciliation will be required to confirm that the departing jurisdiction's law allows it to re-domicile and that any necessary authorisation has been obtained, and there would be penalties if this confirmation was given improperly.
47. From a practical standpoint, some re-domiciliation processes will be quite complex multi-disciplinary projects, involving numerous regulators and other stakeholders, where a predictable timetable is key. It would not be in the interests of either the applicant or Companies House for the latter to be required to liaise with its counterpart in the departing jurisdiction, which we think could lead to a less efficient process given this is not currently something undertaken by Companies House.

Question 16: Do you think Companies House should be required to verify only whether the applicant meets the UK's entry criteria and not the departing jurisdiction's criteria for re-domiciliation? Please provide the reasons for your answer.

48. Yes. Companies House would not be well placed to assess what a particular departing jurisdiction requires to confirm compliance. For the process to be workable, Companies House must have a defined set of requirements which it can assess objectively; asking it to undertake a discretionary assessment of the compliance requirements under an overseas regime would add unnecessary uncertainty and delay to the process.
49. We note that this approach means that UK regulatory authorities will not directly oversee compliance with the departing jurisdiction's regime. They will effectively rely on the confirmations of the applicant that such requirements are satisfied, together with the power to impose sanctions for false statements and the requirement for the delivery of proof of de-registration by the departing jurisdiction (as noted in the response to Question 20 below). The government may wish to consider whether any other protections would be appropriate to mitigate the risk of fraud or abuse by applicants for re-domiciliation, such as requiring confirmation from an independent third party in the departing jurisdiction that the requirements of the departing jurisdiction have been met. We understand for example that Hong Kong requires certain requirements to be confirmed in a legal opinion from a legal practitioner practising in the departing jurisdiction, although we also note that if any such legal opinion was required, it would need to be reviewed by Companies House and would in all likelihood include caveats which mean that reliance is still placed on the veracity of the applicant's statements.
50. The government may also wish to note that, as the protection of creditors is a matter for the law of the departing jurisdiction, there would be no assessment by UK authorities of the adequacy of the departing jurisdiction's creditor protection regime. This could risk creditors being prejudiced as a result of the re-domiciliation. Some jurisdictions address this risk by permitting re-domiciliation only from specified approved jurisdictions, giving a degree of comfort as to the adequacy of protections in the departing jurisdiction. A further option would be to enshrine a reserve power for the Secretary of State to designate (or de-designate) specified jurisdictions and/or to designate additional requirements for companies re-domiciling from a particular jurisdiction or jurisdictions where the protections are not considered to be sufficiently robust. We discuss this further in the response to Question 35.
51. A majority of the working group was of the view that requiring a third party confirmation of compliance would impose an overly burdensome requirement on an already-complex regime and could be a disincentive to the use of the regime. For example, it might be necessary either to prescribe the form of legal opinion or third party confirmation of compliance required (which some third parties might not be willing to give) or for Companies House to assess whether a particular legal opinion or third party confirmation is adequate. It would also be necessary to consider to what extent, and to whom, a third party giving the opinion or confirmation should be liable if the opinion or confirmation is defective. We are also of the view that only permitting re-domiciliation from a list of jurisdictions specified in legislation would be an unduly restrictive approach as it would limit the ability to respond in an agile manner to changing circumstances and would impose on UK authorities a significant practical burden in having to confirm whether they consider the regime of a departing jurisdiction to be "adequate" from time to time. There may, however, be some merit to retaining a reserve power for the Secretary of State to pause or prohibit re-domiciliations from a specific jurisdiction if it has become apparent that there is a significant risk of fraud or abuse (so that at least future re-domiciliation applications with a similar fact pattern could have additional requirements imposed).

Question 17: To what extent do you agree that, in accordance with existing UK legislation applying to new company incorporations, the eligibility criteria should not include a 'good faith' requirement?

52. For the reasons set out by the Panel in its report, we do not believe a 'good faith' requirement is necessary. It would be too difficult for either the applicant or Companies House to assess what commercial motivations are relevant to this determination. There is no equivalent requirement for new incorporations. The requirement introduced by the Economic Crime and Corporate Transparency Act 2023 (ECCTA) into section 2 CA 2006, that an applicant for a new incorporation confirms the lawfulness of the company's future activities (which the Panel proposes is replicated for a re-domiciliation), should be sufficient.

Question 18: To what extent do you agree a national security assessment is not necessary and that applicants should provide confirmation, both as part of the application process and annually thereafter, that its future activities will be lawful?

53. We agree that a specific national security assessment should not form part of the re-domiciliation application process, and that applicants should instead be required to make a statement that they wish to re-domicile for lawful purposes on application and that the intended future activities of the company are lawful in their annual confirmation statements thereafter. On the face of it, an inward re-domiciliation would not offend the policy objectives of the national security legislation, as the entity will become subject to greater scrutiny of UK authorities by virtue of being incorporated in the UK and subject to UK law. We do not see a case for going further in relation to forward-looking confirmations in respect of re-domiciled companies than would be required of a company which had been incorporated *ab initio* in England and Wales.
54. In our view, this approach appropriately aligns the re-domiciliation regime with the UK framework for company incorporations as modified by ECCTA and supports the objective that the requirements of the regime should be objective, clear and predictable, whilst at the same time, being proportionate in providing some level of protection alongside existing laws relevant to national security which apply on an ongoing basis.
55. Whilst we support the proposal that the re-domiciliation regime should not include a bespoke national security test (or discretion for Companies House to assess such matters), we would encourage the government to keep under review whether additional powers or safeguards may be required in the future in order for there to be an appropriate "tool kit" available to address emerging risks. In our view, this could be achieved by enshrining a reserve power for the Secretary of State to make regulations laid under the affirmative procedure. As discussed at paragraph 19, we consider that such a power might be useful in the context of more ambiguous use cases around companies applying for re-domiciliation from jurisdictions which might raise geopolitical complexities.

Question 19: To what extent do you agree applications should be approved in principle and the re-domiciliation will be effective from the date the certificate of re-domiciliation is issued by Companies House? Please set out your reasons for your response.

56. We support this approach. There will often be a multitude of other workstreams that need to be aligned with the re-domiciliation timetable (such as processes with regulators, communications to stakeholders and notifications required to be made to third parties). It is important that the UK can indicate that all substantive approvals have been obtained to give the applicant the time and certainty to make final arrangements with the registrar in the departing jurisdiction and to co-ordinate these other workstreams. We also refer to paragraph 3.16 of the Panel's Report which we remain in support of.
57. We agree that the applicant should be able to fix an "earliest date" for the re-domiciliation to take effect, and that the date of issuance of the certificate would be the appropriate event to define the effectiveness of the re-domiciliation (equivalent to the issuance of a certificate of incorporation on a new incorporation).
58. Whilst it is acknowledged that there must not be a situation where de-registration occurs before the effectiveness of the re-domiciliation, the working group was strongly of the view that applicants would want to minimise or eradicate any period of overlap between the time the re-domiciliation becomes effective in the UK and the time of de-registration in the departing jurisdiction, due to the uncertainty that would be likely to arise from being incorporated in both jurisdictions simultaneously. To this end, there was some support for an ability to specify an exact time at which the re-domiciliation would take effect on the date of issuance of the re-domiciliation certificate rather than being consequent merely upon the time which the certificate happens to be issued.

Question 20: Do you think a period of 60 days from the date of registration (extendable upon application) provides an appropriate timeframe after which failure

to provide a certificate of de-registration from the departing jurisdiction would result in the re-domiciled company being struck off the UK register by Companies House?

59. We agree this seems to be a suitable timeframe although we suggest it is expressed as “two months” for consistency with, for example, section 1003 (in relation to striking off) and section 769 (in relation to the issuance of share certificates as mentioned in the response to Question 31 below). As noted above, we expect most applicants would align matters with registrars in both jurisdictions so that the duration of the overlap was minimal. However, we acknowledge that this might not always be achievable due to varying requirements imposed by registrars from departing jurisdictions and the time it takes to satisfy these. Where this is the case, we agree that a timeframe of two months provides an appropriate balance by giving sufficient headroom to allow administrative processes to be finalised in the departing jurisdiction, but without creating a “hair trigger” that would expose too many applicants to the risk of being struck off.
60. We would also note that there is a danger that a significantly longer period than two months might encourage applicants to defer processes in the departing jurisdiction which ought to be substantively complete by the time the re-domiciliation certificate is issued in the UK (believing that they have sufficient time to finalise such processes). We do, however, support the ability to extend the two-month period by application on the basis that this provides helpful flexibility to cater for legitimate unforeseeable circumstances that may arise and be outside the control of the re-domiciling company.
61. In due course following the introduction of the re-domiciliation regime, the government may wish to review whether a two-month timeframe remains suitable in light of practice or whether it may be appropriate for this to be shortened.

Question 21: Is there anything else you think the government should consider?

62. We support the recommendation of the Panel that the liaison with any other regulatory bodies (e.g. the FCA or PRA) should be a matter for the applicant (in respect of FCA/PRA engagement, see also the response to Question 2 above). By fixing an “earliest date” for re-domiciliation, regulatory processes can be aligned so that there is some certainty as to when, for example, a UK regulator will become responsible for the regulation of a re-domiciled company.

Question 22: To what extent do you agree that there should not be a specific offence for failure to provide evidence? Please provide any alternative measures which could incentivise the timely provision of the required evidence.

63. We agree that the existing powers under the CA 2006 to impose penalties for a failure to provide evidence are sufficient. The key consideration is that there should be an effective sanction for non-compliance with this requirement, other than the potentially draconian consequence of immediate strike-off.
64. Where a company has failed to provide evidence of de-registration within the prescribed timeframe (including any extension that has been granted), we consider that a single warning notification should be required (i.e. no immediate striking off upon the late filing, but less cumbersome than the normal process for striking off a company). This would recognise the fact that a company which has undertaken a re-domiciliation will have planned all the necessary steps (and should appreciate the importance of de-registration) so the numerous notification stages of a normal striking off should be unnecessary; whilst at the same time ensuring the company is not immediately struck off for an inadvertent procedural oversight. This is particularly appropriate given that the standard strike-off process for a UK-incorporated company typically takes a minimum of two months, assuming there is no delay following the publication of the Gazette notice.
65. In terms of the timing of warning notices, we see two potential approaches that could be taken:
- Warning notices could be sent at the end of the prescribed period, stipulating a

deadline by which the required evidence must be provided, and clearly stating that failing to provide that evidence by that deadline will result in the company being struck off without further warning (via the expedited strike off process discussed above).

- An alternative approach could be for warning notices to be sent shortly before the end of the prescribed period and, if the evidence has not then been provided by the deadline, for the expedited strike-off procedure to commence as at the deadline. If this route is pursued, then if a warning is issued and the deadline is subsequently extended, a further warning should logically be issued shortly before the extended deadline.

66. The working group notes that, if an applicant is struck off in these circumstances, then all of the pre-existing obligations under UK company law which applied to the OE before re-domiciliation will apply once more, such as any obligations in respect of the ROE and obligations to register a branch of an OE.

Question 23: Do you think Companies House should provide written reasons for an application being rejected within a set timeframe? Should this mirror the process used when rejecting applications to set up a new company? What timeframe do you think would be reasonable for Companies House to provide those reasons?

67. We agree that written reasons should be given but do not consider that this should be framed as a statutory requirement. We would not see this as unduly burdensome on the basis that Companies House should be able to identify a specific application requirement that has not been met (Companies House is not generally being asked to exercise discretionary judgement). Given the additional complexity of a re-domiciliation process compared to a new incorporation, we think it is even more important that reasons for rejection are given in a relatively short timeframe so that applicants can correct their application and re-apply. It was not clear to us from the Consultation whether the government considered that the giving of reasons should be a statutory requirement, or whether this should be merely a question of practice for Companies House.

68. We suggest that, at least in the initial stages of the regime, Companies House makes some public communication (on a no-names basis) as to the common reasons for rejecting applications. This will help practitioners to overcome pitfalls in the application process.

69. We agree that 14 days seems to be a reasonable maximum timeframe for giving reasons, although it would be hoped in practice that Companies House could provide reasons for rejection more quickly (indeed, simultaneously with the rejection of the application in most cases). We note that the application process set out in the Panel's Report recommends an ability to seek an "approval in principle" and in most cases, we would expect that Companies House would be able to give reasons for rejection at this stage as well as the final stage. It may be helpful for non-statutory guidance (see paragraph 67 above) to set out the expectation for Companies House, absent exceptional circumstances, to provide written reasons promptly and in any event within 14 days of the rejection, whether the rejection is at the "approval in principle" stage or at the final stage.

Question 24: With regard the process to determine an application, are there other points you would like the government to consider?

70. We have no additional points to raise.

Question 25: To what extent do you agree with the proposed contents of the certificate? Are there other points you think should be included in the re-domiciliation certificate in addition to the above?

71. We agree with the proposed contents of the certificate. We think that there is merit in keeping the certificate relatively simple so that it has a similar "look and feel" to a certificate of incorporation or change of name. Excessive detail on the face of the certificate may raise unnecessary concerns from those dealing with the company (including in overseas

jurisdictions) who may be less familiar with the re-domiciliation process.

Question 26: Do you think the registered number given to re-domiciled companies should include a means to distinguish re-domiciled companies from companies originally incorporated in the UK? If so, please give specific reasons why. Please also set out any views on how a re-domiciled company might be distinguished in a proportionate way.

72. We can see a marginal benefit to this, as it puts those dealing with the company on notice that they are dealing with a re-domiciled company. Parties who are, for example, conducting due diligence on that entity could then consider the (relatively minor) ways in which the CA 2006 would apply differently to that entity. We agree that this should not create a disproportionate burden on Companies House's systems. So long as it is made clear on the available Companies House filings that the entity has been re-domiciled, we consider this would be adequate notice in most cases. We do not support a compulsory reference in the company name to the fact it has been re-domiciled as this could create a disincentive to the use of the regime on the basis that this requirement would be somewhat cumbersome.

Question 27: To what extent do you agree with the proposed process set out by the Panel – see illustration below? Are there other steps you think should be set out in application process?

73. We agree with the proposed process. As noted above, we consider that there should be the ability for Companies House to extend the deadline, and that striking off should only take place after a further warning has been issued as to the failure to provide evidence of de-registration.

Question 28: Do you think the legislation should make clear the continuance of the legal personality including confirmation about the items listed in paragraph 5.1 of the Panel's Report? Are there other effects which should be set out in legislation? Please say why.

74. We agree that re-domiciliation legislation should make clear the continuance of legal personality and legal effect of re-domiciliation to clarify that the re-domiciling entity retains continued legal personality following the re-domiciliation procedure. We consider that this should apply in respect of all aspects of a re-domiciling company. We support the items listed in paragraph 5.1 of the Panel's Report. Please also refer to our comments in paragraph 90 below regarding employment matters.
75. In respect of the Panel's comments at paragraph 5.1(iii) of the Panel's Report, we understand this to mean that only those individuals explicitly named on an application for re-domiciliation as the proposed directors (and company secretary, if applicable) will be deemed to hold such offices for the purposes of UK law upon re-domiciliation. The re-domiciliation would have no impact for example on the continued appointment of those individuals to other positions such as executive management positions, regulatory appointments, committee or supervisory board roles (if retained following re-domiciliation) or directorships of other group companies.
76. We also agree with the suggestions in paragraph 5.3 of the Panel's Report that it would be unwise to include additional wording seen in other jurisdictions about what effect the re-domiciliation does not have.
77. It will be critical for legal practitioners in the UK to be able to give clear opinions on the legal effect of a re-domiciliation and express wording to this effect contained in legislation will be useful. It will also be important for counterparties and potential counterparties to contractual and other arrangements with the re-domiciling company, as well as interested third parties, to have this certainty. On the basis that re-domiciliation legislation will clarify that re-domiciled companies have continuous legal personality, we do not consider that the principle of universal succession should be explicitly noted as being of further relevance.

78. The Panel considered whether there was merit in including a provision along the lines of section 112A FSMA which, in relation to an insurance or banking business transfer, provides that where a person would otherwise be entitled to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified in consequence of the transfer, that entitlement would not be enforceable unless the court order relating to the transfer provided otherwise. In the context of a re-domiciliation, such a provision could effectively disregard provisions in contracts and other instruments which were inconsistent with the fact that the company has re-domiciled to the UK, in order to help facilitate the company's re-domiciliation process. On balance it was felt that, compared to an insurance or banking business transfer, there were less-compelling reasons on a re-domiciliation to override the expressed contractual intention of the parties. If, for instance, a lender was to provide in a loan agreement that a re-domiciliation is an event of default or acceleration event, in our view this should not be varied as a result of the re-domiciliation. Furthermore, there is no court involved in the re-domiciliation process which would be able to determine which provisions should remain enforceable and such a provision in the re-domiciliation regime would create uncertainty as to its intended effect. As a matter of practice, it will be necessary for all re-domiciling entities to review their contracts to ascertain whether a re-domiciliation would trigger breach, termination or other rights; this is a contractual matter however and should not impact whether the company is actually eligible for re-domiciliation.
79. Some concern was identified about the risk of evasion of creditors that pre-date the re-domiciliation, noting that when a UK unlimited company re-registers as a UK limited company, in some circumstances persons who were members of the company at the time of re-registration can be required to contribute to the assets of the company in respect of debts and liabilities contracted by the company before re-registration. In the context of re-domiciliations, the extent to which creditors of an applicant would continue to have recourse against the applicant's members in respect of liabilities contracted before re-domiciliation will be a matter for the departing jurisdiction, and it should be noted that different jurisdictions may deal with this in different ways. We suggest that the government considers this as a policy matter and should at least make clear in the UK legislation that the re-domiciliation does not have the effect of removing any rights of recourse which creditors had (or the ability to bring a claim in relation thereto) under the law of the departing jurisdiction prior to re-domiciliation.

Question 29: To what extent do you agree that we should make clear that, once the certificate has been issued, it should not be invalidated despite a mistake/inaccuracy in the application documents? Please provide any reasons for your answer.

80. We agree this should be made clear. Even if there are mistakes in the original application, it would do more harm than good to invalidate the re-domiciliation once the entity has been operating as a UK company. Those dealing with the company need certainty as to its existence, which should only be terminated in accordance with the normal rules for UK companies (i.e. striking off or liquidation).
81. As noted in paragraph 2.7 of the Panel's Report, there would still be an offence committed under sections 1112 and 1112A CA 2006 in the case of the delivery, knowingly or without reasonable excuse, of an application form which is false, misleading or deceptive.

Question 30: To what extent do you agree that if a company passes a conditional resolution prior to re-domiciliation that this resolution should be treated as an ordinary or special resolution, despite these not meeting all requirements of UK law?

82. We agree that there would be significant benefit in this. The purpose of re-domiciliation is to allow an applicant to continue as the same legal entity without having to incorporate a new vehicle. It is consistent with this approach to make clear that authorities given prior to re-domiciliation may still have effect (rather than the re-domiciliation requiring a "clean slate" to be created).
83. In the case of listed companies, in particular, there may be some shareholder resolutions which applicants would wish to ensure are passed so that they have immediate effect upon the re-domiciliation occurring, including the examples set out in paragraph 5.7 of the Panel's

Report. This would put the re-domiciled company in the same position as other UK companies that typically get a standard suite of shareholder resolutions approved at each annual general meeting and therefore have those authorities continually in place.

84. The matter could be framed by providing in the legislation that a resolution passed by a body corporate prior to re-domiciliation which (i) is expressly described as being intended to have effect (or to continue to have effect) on and/or from the time of re-domiciliation, (ii) is passed by the requisite majority required under the CA 2006 and (iii) otherwise satisfies the applicable requirements of CA 2006, may be treated as an ordinary resolution or a special resolution passed by a company for the purposes of the CA 2006, notwithstanding that (a) it was passed prior to re-domiciliation and (b) the meeting at which the resolution was passed was called and held (or the alternative procedure by which the resolution was passed was adopted) in accordance with the law that applied to the body corporate at that time and voting took place in accordance with that law. For a number of matters requiring shareholder approval under CA 2006, the relevant section requires it to be passed by a “company” and so it would need to be made clear that this included a body corporate seeking to pass the resolution in advance of re-domiciliation. In addition, to enable a company to hold a shareholder meeting as soon as possible after re-domiciliation occurs, the legislation could provide that such a meeting will be treated as validly convened if notice of it is sent out before re-domiciliation has occurred, provided the notice satisfied the applicable requirements of CA 2006.
85. We note that there are some complexities in facilitating this approach, as applicants will need clarity as to exactly which requirements of CA 2006 must be met. From a policy standpoint, we think that at least the substantive requirements for the relevant CA 2006 resolution ought to be met in order for such a resolution to be treated as an ordinary or special resolution under CA 2006, although we think it is difficult to draw a clear distinction between “substantive” and “procedural” requirements as a number of requirements that may be considered “procedural” may also be important, such as whether a particular shareholder is entitled to vote on the matter in question. If it is considered that there should be a facility to pass these conditional resolutions, it may be preferable to set out (in legislation or guidance) the precise requirements considered necessary for each specific resolution under CA 2006 (buy-back authorities, disapplication of pre-emption rights, approval of remuneration policy etc), each of which have their own particularities – noting however this would add to the complexity of an already-complex regime. An applicant might be able to address certain of these matters through other means, such as by building authorities into its articles of association, or by simply calling a meeting shortly after re-domiciliation.
86. For completeness, we would note that board resolutions which are passed before re-domiciliation (including board authorities under which powers are delegated) would continue to have legal effect upon re-domiciliation unless it is clear from their terms that they do not apply. We do not think this requires any express statement in the legislation.

Question 31: Do you think a 2-month period is sufficient for a re-domiciling company to issue and deliver share certificates? If not, please explain why and provide an alternative period you consider more appropriate.

87. Yes. We think a two-month period is sufficient and is consistent with section 769 CA 2006 which applies to existing companies.

Question 32: To what extent do you agree that companies should be required to maintain books and records that existed prior to re-domiciliation for 10 years after re-domiciliation?

88. We agree with the proposed ten-year requirement. There would be a legitimate expectation that records required to be kept prior to re-domiciliation are retained. The law of the departing jurisdiction may continue to apply after re-domiciliation (in which case the company would need to comply with those requirements as well as the UK requirements) or it may simply cease to apply. In the latter case, in the absence of the suggested requirement, there would be a gap in the requirement to maintain records which could cause

difficulties for those dealing with the company.

89. In our view, ten years would be an appropriate length of time (consistent with, for example, the requirement to retain minutes of shareholder meetings for a UK company in section 248 CA 2006) and it should not be unduly burdensome for companies to comply with this requirement. For simplicity, we would see the ten year period as running from the date of re-domiciliation as opposed to from the date of creation of the document in question (i.e. such that the books and records in existence at the time of re-domiciliation would be required to be kept for a period of 10 years regardless of when they were created).

Question 33: To what extent do you agree that no specific legislative provision is needed in respect of workers? Are there other points you would like the government to consider?

90. We do not believe specific legislative provision is needed. Employment specialists with whom we have consulted consider that there would be some utility in guidance being published confirming that, for UK law purposes, the re-domiciliation does not terminate employment arrangements, change the governing law or forum of employment contracts, create a new employment relationship or break continuity of employment for the purposes of legislation or contracts relating to employment.
91. Generally speaking, employment relationships are governed by the mandatory laws applicable to the place in which the employee is employed, and not by the jurisdiction of incorporation of the employer. Accordingly, employment relationships should not be fundamentally affected by a re-domiciliation of the employer. In our experience, corporate groups often prefer that their employees are employed by entities incorporated in the same jurisdiction as the employee in question, so we would not expect there to be a great deal of demand for the re-domiciliation of entities employing a significant number of overseas staff. A number of issues may arise where the jurisdiction of incorporation of the employer is different from the jurisdiction of the employee (e.g. conflict of laws, enforcement of employment laws, tax etc.) and these issues could arise on a re-domiciliation, but are not confined to that situation and could likely be mitigated prior to re-domiciliation being effected.
92. There will be some employment-related issues for a re-domiciling entity to work through, including the impact on any employee co-determination rights and employee relations issues. These would generally be “diligence” items for the entity in question rather than matters requiring any particular legislative provision.

Question 34: To what extent do you agree that a double charge will not arise? If you think a double charge will arise, please explain why and in what circumstances it could arise.

93. We agree that the re-domiciliation would bring transfers of shares in the re-domiciled company within the scope of stamp duty reserve tax (**SDRT**). At the same time, this would cause any UK depositary interest in respect of those shares to also fall within the scope of SDRT as it would no longer be a UK depositary interest in foreign securities for the purposes of the Stamp Duty Reserve Tax (UK Depositary Interests in Foreign Securities) Regulations 1999 (SI 1999/2383). This would mean that transfers of the relevant depositary interests would attract SDRT at 0.5%. However, we do not consider that this would result in a double SDRT charge. There would be a single SDRT charge on a subsequent transfer of the depositary interest, which is a chargeable security under section 99(3)(b) Finance Act 1986. There is no separate transfer of an interest in the underlying share for SDRT purposes.
94. We expect it is most likely that the shares would be removed from the depositary interest structure once the company is re-domiciled, as the structure would be unnecessary (as the securities in the re-domiciled company could now be settled in CREST directly). We consider that it should be possible to effect this without suffering a charge to SDRT, and without needing to cancel and re-issue the underlying shares (which would not necessarily be straightforward, particularly in the context of a listed company). The depositary interest should itself be capable of cancellation without incurring a charge to stamp duty or SDRT,

as such cancellation would not constitute a transfer or agreement to transfer that depositary interest. The transfer of the underlying share to the depositary interest holder should also not be subject to stamp duty or SDRT as we would expect it to be transferred for no consideration (and assuming that the depositary interest issuer and former holder are not related). This is analogous to the position for the cancellation of depositary receipts – HMRC confirms at STSM051040 that there is no 0.5% SDRT charge when a depositary receipt is cancelled and the underlying shares transferred to the holder. Future transfers of the underlying shares once extracted from the depositary interest structure will be subject to UK stamp duty or SDRT in the same way as transfers of shares in other UK companies.

95. The above notwithstanding, from a policy perspective, we would expect that in order for the UK to be attractive as a destination, there needs to be certainty that there is no charge to stamp duty or SDRT arising as a result of the re-domiciliation (whether the company is listed or unlisted) or the subsequent removal of the shares from any depositary interest structure. We would therefore welcome confirmation of the above (including that a transfer of a depositary interest in respect of re-domiciled shares would not result in a double SDRT charge). We think this could be dealt with adequately in guidance and that “for the avoidance of doubt” legislation should generally be avoided.

Question 35: Do you have any views on the Panel’s proposals within section 7 or on any other changes required to the UK accounting and audit requirements?

96. We agree with the Panel’s proposals. We considered the options set out in paragraph 7.7 of the Panel’s Report regarding which requirements should apply where an applicant for re-domiciliation is normally required to prepare accounts, but has not, at the time of the re-domiciliation, prepared them for the most recent financial period because the deadline has not occurred by that time. Support was expressed for option (i) on the basis that re-domiciling companies will have likely spent some time preparing for the application of a new accounting regime, so the requirement should not be overly burdensome. In addition, this approach will help to ensure that there is no gap in disclosure and that the disclosure is consistent with that which would be required for UK-incorporated companies.
97. We support the recommendations made in paragraphs 7.12 and 7.15 of the Report that certain companies should benefit from a transitional period following re-domiciliation before they are required to report in UK-adopted international accounting standards (noting that the exemption referred to in paragraph 7.12 of the Report may apply to any applicant for re-domiciliation (wherever incorporated) where the applicant’s relevant accounting standard-setting body is one of the bodies prescribed in the Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015).
98. With regard to paragraph 7.22 of the Panel’s Report, on balance, we did not think it was necessary to require a re-domiciling company to give a statement of their assessment of the amount of its distributable profits, as this is not required for other UK companies, and it could act as a disincentive for entities considering re-domiciliation. The requirement to justify a distribution by reference to a set of properly prepared accounts should provide adequate protection. We further note that the government considered introducing such requirements for large UK companies back in 2023, but that it ultimately decided against such a move. As such, it would seem at odds to introduce such a requirement for a re-domiciling company.

Question 36: Do you believe a solvency statement by the applicant would create sufficient protection for creditors in the UK? If not, please set out your reasons.

99. We agree that the use of a solvency statement is an appropriate way to determine that an applicant is solvent, and that applicants who cannot give such a statement should not be eligible to re-domicile. This prevents the immediate exposure of creditors to pre-existing financial distress. The threat of criminal sanctions for making a solvency statement without reasonable grounds provides an incentive for directors to ensure the accuracy of their declaration and elevates the statement beyond a mere administrative formality. The working group also notes that it is important for applicants to take legal advice in the UK in connection with a re-domiciliation, including in particular on the importance of (and liability

for) the solvency statement and factors that should be taken into account in giving this statement.

100. Different views were expressed about whether the solvency statement is sufficient of itself, particularly where proposed directors may not at the time of re-domiciliation have familiarity with or exposure to the UK as a jurisdiction. It is acknowledged that, notwithstanding the criminal sanctions, the solvency statement is open to fraud and that creditors who are dealing with the company would not generally rely on self-certification to assess their counterparty. Creditors will want to carry out due diligence of the available information in respect of a company (such as a corporate borrower), which will involve a review of information on available registers. Concerns were expressed that, if the re-domiciliation requirements are not sufficiently rigorous or sufficient information is not available, creditors and counterparties in the UK and elsewhere may not have sufficient confidence in dealing with certain re-domiciled companies (or possibly re-domiciled companies in general) without conducting further independent due diligence, including in the jurisdiction from which the entity re-domiciled. On the other hand, there are many reasons why a creditor may need to conduct due diligence on a borrowing entity (whether or not re-domiciled) and it would be up to the entity in question to consider the consequences of re-domiciliation and what additional information it may need to make available to creditors. Possible further mitigants are listed in our response to Question 15 above.
101. The government will need to consider to what extent the UK re-domiciliation regime should include any additional creditor protection measures. On balance, we consider the question of whether existing creditors (in the UK or elsewhere) are adequately protected is primarily a matter for the law of the departing jurisdiction. Persons who become creditors of the entity in question will have had the opportunity to inform themselves about the creditor protection regime in the departing jurisdiction, including the ability of the entity to re-domicile. On that basis, it follows that creditors of the company may, following its re-domiciliation, find themselves protected in part by the UK legal position. Once re-domiciled, creditors' interests will be safeguarded in part by virtue of the company becoming subject to applicable UK restructuring and insolvency laws, including the directors' duty to consider creditors' interests if solvency issues arise. Some concerns were noted that confidence in re-domiciled companies could be undermined if creditors were prejudiced by re-domiciliation.
102. It was noted that existing contracts (particularly finance arrangements/loans) of the re-domiciling entity are likely to have been drafted to cater for not only the departing jurisdiction's insolvency and creditor-protection regime but also its laws and court processes, ensuring that, if necessary, proceedings can be taken, and judgments enforced, in that jurisdiction. Whether or not such contracts would formally require the counterparty's consent to re-domiciliation will be a matter to be diligenced. In practice a company's financing contracts are unlikely to cater expressly for the change of jurisdiction of the company and may not operate well in this instance. Depending on the provisions of any relevant arrangements, a re-domiciling company may choose (or be required) to engage with its counterparties and re-negotiate particular contractual arrangements to cater for the new jurisdiction. We consider that the government guidance which accompanies the re-domiciliation legislation should expressly state that re-domiciling companies should have carried out due diligence on existing financing and other arrangements, in order to establish the impact (if any) of re-domiciliation and, in particular, if prior creditor or other counterparty consent is required or desirable.
103. With reference to paragraph 53 of the Consultation it should be noted that, even if the applicant has contracts with third parties which contain restrictions on re-domiciliation, this should not of itself make the applicant ineligible to re-domicile; it would simply mean that if re-domiciliation occurred without complying with the relevant contractual requirement, the company would be in breach of the contract and the counterparty could pursue any relevant claims against it. Furthermore, the impact of re-domiciliation on the company's contracts may be relevant to the ability of the proposed directors to give the solvency statement (e.g. if the company's borrowing facilities would become immediately repayable as a result). See also our comments in paragraph 78 above.
104. We discuss the effect on security that may have been granted over shares in the re-

domiciling company further in our response to Question 42 below. This would be a common form of credit support in secured financings, for example, so is also relevant to creditor protection.

Question 37: To what extent do you agree it would be neither necessary nor advisable to change the application of UK restructuring and insolvency processes to companies which have re-domiciled to the UK?

105. We agree no significant changes should be required. The application of UK restructuring and insolvency processes is not generally governed by whether the entity in question is incorporated in the UK. In England and Wales, the courts enjoy a wide jurisdiction to commence insolvency proceedings against entities incorporated elsewhere. There are more complex tests depending on the type of procedure, usually involving for example a consideration of where the administration of the business takes place, or the extent of connection of the entity to the UK and other assessments as to likely recognition of the processes in other jurisdictions. Following a re-domiciliation, those processes should be capable of applying to the company in the same way as a company originally incorporated in the UK. Certain changes could be made to the provisions in the Insolvency Act 1986 relating to jurisdiction to expressly refer to entities which have re-domiciled, in particular, to make clear that the Insolvency Act 1986 applies to a re-domiciled entity both as a UK company after the re-domiciliation and as an entity incorporated overseas before the re-domiciliation took effect.

Question 38: To what extent do you agree all UK legal provisions, including the provisions of the Company Directors Disqualification Act 1986, should apply to the review of the conduct of the directors of a re-domiciled company?

106. We agree that the CDDA should apply such that the UK courts may take into account the behaviour of a person prior to re-domiciliation. Clearly, a person will only be held to the compliance standards applicable to their conduct at the time so, for example, they would not be assessed for their compliance with CA 2006 requirements in respect of the period prior to re-domiciliation. Some parts of the CDDA apply specifically to conduct which offends UK legislation (e.g. section 3 which relates to non-compliance with UK companies legislation) and some parts expressly contemplate overseas conduct to be taken into account (e.g. sections 5A and 8 empower the Secretary of State to apply for a disqualification order as a result of convictions outside of the UK, and as a result of conduct relating to overseas companies respectively). There may need to be some revisions to the CDDA to clarify how it would apply to re-domiciled companies (in particular, reviewing the definition of “company” in section 22). However, generally speaking, we would suggest that the legislation already provides reasonable protection and a light-touch revision to cater for re-domiciliation may be sufficient.
107. More generally, we would not suggest there is any need for wholesale revisions to other UK legal provisions in relation to directors’ conduct in order to accommodate re-domiciliations. A person who is a director of a re-domiciled company will, following re-domiciliation, be required to comply with all provisions which are applicable to directors of any UK-incorporated company. On the whole, we do not believe it is necessary to make pro-active amendments to such provisions to enable them to “look back” at prior conduct. In common with most new legal structures, it is likely that some degree of review of the re-domiciliation regime will be needed after it has been in place for an initial period of time. To the extent any specific issues with existing legislation are identified in practice during that period, these could be addressed at the time.

Question 39: Do you think a liquidator or administrator of a re-domiciled company should ensure the review of directors’ conduct may take into account conduct before re-domiciliation as well as after it? If not, please explain why.

108. We understand that section 6 of the CDDA already permits the court to consider insolvencies of an overseas company. We agree that the CDDA should be reviewed to ensure that it would allow the court to assess directors’ conduct for the period prior to a re-domiciliation, although again, directors should not be in the position of being assessed

retrospectively against standards which were not applicable to them at the relevant time. Generally speaking, directors' conduct should be assessed in a similar manner to the way in which the CDDA currently assesses conduct in respect of overseas companies.

Question 40: To what extent do you agree that the vulnerable period for transactions detrimental to the general body of the company's creditors, ought to be capable of extending back beyond the body's corporate's re-domiciliation? Do you have a view on whether the Insolvency Act 1986 should be amended to achieve this effect?

109. We do not believe that an amendment is required here. The UK insolvency regime applies when the entity in question meets the jurisdictional test under UK insolvency law (sufficient connection etc.). The vulnerable (look-back) periods would apply to an OE which is subject to a UK winding-up even if such period extends to before the time the OE became subject to the UK insolvency regime. This should be unaffected by whether the entity in question re-domiciles during that period and as such, the insolvency regime would continue to apply as it currently applies. It may be worth noting that insolvency proceedings commenced elsewhere, where recognised under the Cross Border Insolvency Regulations 2006, already benefit from the Insolvency Act 1986 antecedent transaction provisions.

Question 41: To what extent do you think it necessary to provide an exception to the application of UK rules on antecedent transactions, in circumstances where a transaction was subject to rules that did not allow any means of challenging it in the departing jurisdiction?

110. We agree that the legislation ought to provide an exception in relation to detrimental acts, following the model included in the EU Recast Insolvency Regulation (Insolvency Regulation), which has mostly been repealed. Article 16 of the Insolvency Regulation provided that where a person who is alleged to have benefited from an act detrimental to other creditors provides proof that its [home jurisdiction] does not allow any means for challenging it, it should not be vulnerable to being unwound. Including this exception would have the benefit of providing certainty to existing arrangements for the re-domiciled company, and would benefit from already being widely recognised throughout the EU.

Question 42: To what extent do you agree only new charges, created after the UK's re-domiciliation process has completed, should be determined in the same way as any other UK-incorporated company?

111. We agree that:
- (i) the priority of all charges created **on and after** the date of the company's re-domiciliation in the UK should be determined in the same way as applies to any other UK-incorporated company; and
 - (ii) the validity, effect and priority of charges created by a body corporate before re-domiciliation should be determined by the law applicable to that body corporate prior to re-domiciliation (along with, to the extent applicable, the conflict of law rules of the applicable UK jurisdiction), but only to the extent that the law applicable to that body corporate would have been relevant to determine such matters. To the extent that other laws would have determined such matters (for example, the *lex situs* of an asset, including (particularly in the case of intangible assets) its *lex situs* as determined by applicable conflict of laws principles) then those laws should continue to apply.
112. We would emphasise that the law of the jurisdiction of the body corporate is not the only relevant law when considering security interests. Security creates *in rem* rights and is largely a matter of property law. Generally speaking, the validity, effect and priority of a security interest are governed by the *lex situs* of the asset over which the security interest is created. The location of the assets of the re-domiciling company which has created security (or their deemed location, particularly in the context of intangible assets) will not necessarily change as a result of its re-domiciliation, and the validity, effect and priority of charges should continue to be governed by the law of the jurisdiction in which the secured asset is located.

113. Re-domiciliation of a company will result in a change in the *lex situs* of its shares which will move from the departing jurisdiction to the applicable UK jurisdiction. Consideration needs to be given to what happens to any security interest that has been granted by members over their shares in the re-domiciling company. On first principles, if the creditor holding the security interest wanted to protect its position, a new security interest may need to be granted over the shares as they would become an asset with a different *lex situs*. However, taking fresh security could affect the priority of the security (even if registered) and commence new hardening periods. We suggest that the government considers the position of creditors holding security over the shares in a re-domiciling company, as their rights will be directly impacted as a result of the re-domiciliation (in a manner which is distinct from, say, merely being a creditor or contractual counterparty to a re-domiciling company, where the liability in question remains essentially unchanged). One option would be to leave the matter to the law of the departing jurisdiction (and any protections which the security-holder may negotiate) and merely make express provision that as a matter of UK law, the re-domiciliation does not extinguish any rights of the security-holder. Another option would be for the legislation to contemplate some form of express continuation of the existing rights of the security-holder, although we would consider this to involve significant complexity due to the divergence in the way security law operates in different departing jurisdictions.
114. We agree that companies re-domiciling into the UK should disclose all existing “charges” that would have required registration under the Companies Act 2006 if they had been UK companies. The re-domiciling company will be aware of each security interest that it has created and will be in a position to register that security interest at Companies House. The security interests being registered on re-domiciliation would need to be distinguished from charges newly created on the register at Companies House. We agree that it would be unfair on existing secured creditors to provide that failure to register should render the charge void under subsection (3) of section 859H CA 2006. We suggest that the government considers whether, for the protection of third parties, and to preserve the integrity of the register, failure by a re-domiciling company to register a registrable charge at Companies House should have the effect that the money secured by it immediately becomes payable under subsection (4).
115. A re-domiciling entity may be a party to an existing security arrangement in the departing jurisdiction which would qualify as a security financial collateral arrangement under the UK Financial Collateral Regulations when it re-domiciles into the UK. This may need to be considered in the context of the provisions of that legislation which disapply registration requirements. We think the logical position is that a company re-domiciling into the UK which has entered into a security arrangement which would qualify under that legislation should benefit from all aspects of that qualification after re-domiciliation (including in respect of registration requirements). We note that UK law in respect of whether a security arrangement qualifies under the Financial Collateral Regulations is complex and the qualification requirements in the UK may be different from those in other jurisdictions.

Question 43: Are there other points you would like the government to consider, including from the Report?

116. We would emphasise that most applicants for re-domiciliation who operate a material business will need to carry out an extensive due diligence exercise in order to determine which contracts and other instruments may be impacted by the re-domiciliation. In particular, loan agreements and related security documents would, in many cases, require revision to operate as originally intended if the jurisdiction of incorporation of the borrower were to change. Legislation should make it clear that existing contracts will continue to have effect, including upon a subsequent insolvency, but it is not possible or desirable to cater in the legislation for every question which may arise, and legal advice will need to be sought regarding the impact of re-domiciliation on particular situations (for example, set-off rights, retention-of-title arrangements and rights relating to third party purchasers). As mentioned in paragraph 78 above, we would not recommend an attempt in the legislation to “re-write” contracts or other instruments with language deemed to apply as a result of re-domiciliation, which could have unintended consequences. Please also refer to our comments in response to Question 42 above regarding the effect on security granted in respect of shares in a re-domiciling company.

117. Re-domiciliation of a company may also result in a change in the *lex situs* of its contractual obligations in some jurisdictions, which may affect its trade creditors, in particular. Often, if there is no express governing law of the contract under which a debt arises, the jurisdiction of the debtor will determine the *lex situs* of the claims against it and determine the third-party effects of an assignment of claims (whether or not by way of security). Of course, English law already provides that the law governing an assigned claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged (Article 14(2) Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations as it forms part of English law (the **UK Rome I regime**)). This applies equally to outright transfers of claims, transfers of claims by way of security and other security rights over claims (Article 14(3)). In relation to contracts generally, where the parties have not chosen a governing law for a contract, and the UK Rome I regime determines the governing law by reference to the habitual residence of a company, it provides that, for the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract (Article 19(3)). In relation to contracts entered into by a re-domiciling company, and the assignment or charge by counterparties of contractual obligations owed by it, or the assignment or charge by the re-domiciling company of contractual obligations owed to it, we see no need to amend or supplement the existing UK Rome I regime.

Question 44: To what extent do you agree the existing requirements for Companies House to publish notices when issuing a certificate of incorporation are sufficient in applying to certificates issued on re-domiciliation into the UK? If not, please say why.

118. We fully agree. We are supportive of the proposed clarification to sections 1064 and 1065 of the CA 2006 so that the requirements relating to the publication of notices for a certificate of incorporation, and the right to a copy of a certificate of incorporation, apply equally to a certificate of incorporation on re-domiciliation.
119. We agree that there is generally no need for the application form to be made an enhanced disclosure document (and therefore require public filing) at the time it is filed as there could be omissions or other elements which make the applicant ineligible. Although there could arguably be some merit in requiring public filing at the time that Companies House grants approval in principle for the re-domiciliation (in order to give some public visibility of the forthcoming re-domiciliation), on balance, the view of the working group was that this should not be necessary and a public filing upon the re-domiciliation taking effect should be sufficient, with any requirements about prior publicity in connection with the re-domiciliation being dealt with by local law requirements in the departing jurisdiction.

Question 45: To what extent do you agree Companies House should be able to use its existing powers to give notice to a body corporate applying to re-domicile to the UK to deliver a document to it or give notice to Companies House of any matter related to the application? If not, please set out why.

120. We agree that Companies House should be able to use its existing powers to require information from applicants for re-domiciliation and to give notice to proposed directors on a re-domiciliation. As discussed in section 11 of the Panel's Report, the necessary legislative changes to enable this could be addressed "globally" (as per paragraph 11.6 of the Panel's Report) or specifically in the relevant sections. We note, for example, that section 1079B(1)(a) CA 2006 refers to the "*statement of proposed officers required on formation of a company*" so if there is to be no direct amendment of that section, there would need to be clarity elsewhere that "formation" includes re-domiciliation.

Question 46: Are there other points you would like the government to consider, including from the Report (see paragraphs 9.1 to 9.12)?

121. We have no further comments on paragraphs 9.1 to 9.12 of the Panel's Report. Whilst there may be some utility in entering into memoranda of understanding with other registries in due course, we note that the re-domiciliation process is intended to be conducted through the applicant liaising between the departing jurisdiction registry and Companies House, so

we would not see this as being a necessary precursor to the introduction of the re-domiciliation regime.

Question 47: Do you have any views on any of the proposed changes set out by the Panel in its Report – see sections 11.1 to 11.9?

122. We support the views of the Panel in relation to the general approach to the legislative exercise. We have no further comments in respect of this section.

Question 48: Are there other points you would like the government to consider, including from the Report?

123. See the general remarks made in paragraphs 5 to 7 above.