

Spotlight on Corruption submission to the Corporate re-domiciliation Consultation organized by the Department for Business, Energy and Industrial Strategy, HM Revenue & Customs and HM Treasury.

Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

We are concerned that companies arriving into the UK as part of the proposed re-domiciliation regime will not be subject to appropriate levels of scrutiny during the application process to ensure they are fully compliant with UK governance standards. At this stage, the consultation document offers next to no information about how the government intends to maintain the UK's corporate governance standards beyond a broad commitment to do so.

Where companies are re-domiciling into the UK from high-risk jurisdictions the UK's company Registrar must have sufficient powers to request evidence of good corporate conduct, and be confident that information gathered from regulators, law enforcement agencies in other jurisdictions confirms vital information on companies' standing, solvency and whether they are subject to any civil and criminal investigation.

Key recommendations

- The proposed regime should not be introduced until BEIS has completed the proposed reforms to Companies House giving the register powers to query, verify and remove inaccurate company data.
- Companies re-domiciling into the UK should be subjected to robust due diligence procedures and where companies are found to have submitted false or misleading information they should be subject to sanctions including, where necessary, the cancellation of the process itself.

Section 2 Rationale for re-domiciliation

International precedent and trends

Q5. Are there aspects to other jurisdictions' re-domiciliation regimes which the UK should seek to replicate or avoid?

No substantial sanctions or deterrents for firms making false declarations during the re-domiciliation process.

Spotlight on Corruption has found no evidence that jurisdictions establishing re-domiciliation regimes have implemented sufficiently robust rules to act as deterrents for companies making false declarations to mask misconduct or illegalities during the application process.

In Singapore, which introduced a re-domiciliation regime in 2017, false declarations made to the regulator are grounds for a S\$50,000 fine (equivalent to £27,000) or a maximum of two year prison sentence.¹ Given that the minimum requirement for firms redomiciling to Singapore is a minimum S\$10,000,000 asset requirement (or the same in annual turnover), the disparity between a company's size and the maximum financial sanction do not constitute an adequate deterrent. In Hong Kong, which has a dual, inward and outward re-domiciliation regime, recent prosecutions for supplying false declarations to the Registrar of Companies have resulted in generally small fines.² For the system to work in the UK, there must be a greater alignment between firms' size and potential sanctions for submitting false or incomplete declarations.

Good faith covenants should be replaced by discrete due diligence processes

In the case of Singapore, official guidance states that firms should comply with a broad "good faith" commitment during the application process,³ but does not disclose the extent to which the registrar or regulators undertake due diligence on applicants to ensure firms comply with such commitments. The UK should not seek to copy this approach which is weighted heavily toward voluntary disclosure and should instead seek a systematic approach in which all firms applying to re-domicile in the UK should be subject to robust due diligence checks to understand the nature of the business, its operations and staff. Only when firms pass through checks should the re-domiciliation process be confirmed.

Wider issues

Q9. Do you have any wider concerns about a re-domiciliation regime that the Government should be aware of?

Re-domiciliation regimes can be used by companies to evade scrutiny through regulatory investigation

According to a memoranda published by the Tax Justice Network attached to a 2009 Treasury Select Committee report,⁴ re-domiciliation regimes can provide opportunities for companies to move between jurisdictions to escape regulatory scrutiny into their affairs, akin to "a game of cat and mouse." If firms complete the transfer before investigations are complete they effectively remove the potential for regulators to undertake and conclude investigations, or impose sanctions where appropriate.

Section 3 Entry criteria for re-domiciling companies

Ensuring adequate checks and balances

¹ Singapore Companies Act. Para 401. <https://sso.agc.gov.sg/Act/CoA1967?ProvlDs=pr401-&ViewType=Advance&Phrase=Meetings&WiAl=1>

² Hong Kong Registrar of Companies. <https://www.cr.gov.hk/en/compliance/prosecution.htm>

³ Inward Re-domiciliation Regime in Singapore. ACRA. <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/inward-re-domiciliation-regime-in-singapore>

⁴ Memorandum from the Tax Justice Network UK. <https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/355/355we03.htm>

Q13. Do you have any views on how the regime should best ensure departing country conditions are met? Is there anything else we should consider?

Q14. Do you have views on our proposed approach, which would allow all corporate bodies to re-domicile to the UK, subject to the relevant entry criteria?

Questions 13 & 14 are answered together

Authorisation from departing country should include certificate of good conduct

To ensure firms moving to the UK are not subject to investigation, authorisation documents from the departing country should include a certificate of good conduct confirming that a firm is currently not subject to investigation. This certificate should, in addition, provide an overview of the previous five years including information on previous investigations and their outcomes.

General due diligence procedures

Further to the eight requirements set out in section 3.7, UK authorities must have the widest set of enhanced due diligence powers to assess whether the re-domiciling entity poses any national security risk or is a threat to the public interest. An overview of any such assessment should be placed on public record, and should include any areas of potential concern, and the justification for approving the application despite any identified areas.

Financial Conduct Authority authorisation for firms wishing to conduct regulated activities

In addition to the standard authorisation checks performed prior to firms listing on UK markets, the FCA should conduct a discrete enhanced due diligence check on firms prior to approval being given to check compliance with UK governance standards.

'Wider impact' report prepared by company during the re-domiciliation should include broader range of factors

The report should go beyond listing the economic impacts of the transfer and implications for creditors, shareholders and include information on any social, ethical and environmental considerations that may affect a broader set of stakeholders including the general public. This report should be placed on the public record and be equivalent to any other mission statement made by the firm in their annual reports.

15. Should we preclude directors who do not have a good standing (i.e. pending court cases) from re-domiciling to the UK? If so, is confirmation from the departing jurisdiction's competent authority the best way of assessing this?

The registrar should obtain sufficient evidence from competent authorities and law enforcement authorities from the originating jurisdiction that directors are not currently subject to civil or criminal enforcement proceedings. Where departing jurisdictions are considered as particularly high risk (i.e. appear on FATF's or any other third party's high-risk jurisdictions lists such as those produced by civil

society groups e.g. Transparency International or business intelligence groups e.g. Trace Bribery Risk Matrix) this should automatically trigger enhanced due diligence to confirm through other sources whether directors are subject to investigation.

Confirming directors' good standing should not be limited to checks on the departing jurisdiction but should be extended to all jurisdictions to ascertain whether a re-domiciliation process is being used to evade investigations elsewhere.

Directors should also be required to sign attestations confirming that the director is not subject to investigation in any jurisdiction. If through this attestation details of investigations are disclosed, this should include further details including on the jurisdiction, lead agency, nature of the investigation and dates when investigations were confirmed. In such cases the registrar should have the discretionary powers to refuse the application on the grounds that directors cannot prove good standing. If the subsequent director attestation turns out to be false then this should allow the cancellation of the re-domiciliation proceedings, or the trigger for an investigation by UK authorities into criminal violations of the Companies Act 2006 for providing false and misleading information to the registrar.

It is essential that company directors benefiting from re-domiciliation meet the same standards as required by current UK-based directors in order not to receive an unfair advantage.

Q17. Should it be necessary for firms to have completed a reporting period to redomicile? What other reporting information should be provided to the Registrar or should it be able to request and is the audited accounts requirement sufficient and proportionate?

Firms should provide company data including annual reports and information on shareholding movements for the last five years in comparable format to the categories of Companies House data (i.e. Accounts, Capital, Charges, Confirmation statements/Annual returns, Incorporation, Officers). This data should be published on the UK register on the day the re-domiciliation comes into effect.

Q20. Are there any other entry criteria we should consider?

Q26. Do you agree that existing protections and sanctions against director misconduct provide sufficient protection for the UK's re-domiciliation regime?

UK-resident company directors have a duty under s.1112 of the Companies Act 2006 not to provide any material to the registrar that is misleading, false or deceptive, punishable by fine and a maximum two year prison sentence. The government's Companies House consultation suggested that it is considering updating the rules to additionally include civil penalties and director disqualification.⁵

⁵ Para 50. BEIS Corporate Transparency and Register Reform.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942160/Consultation_on_improving_the_quality_and_value_of_financial_information_on_the_register.pdf

There are substantial concerns, however, over the extent to which this law is enforced insofar as the government announced the first prosecution for violation of s.1112 in 2018, a full 12 years after the introduction of the law.⁶ It should be noted that the offender in this case brought substantial publicity to the case which then alerted the authorities to undertake an investigation and was not the result of standard Companies House verification procedures. In addition, and as noted by law enforcement agencies, false filings are often discovered during the course of investigations which have not been flagged by Companies House.⁷ As Spotlight on Corruption outlined in its response to the 2021 Companies House consultation,⁸ verification procedures are only efficient when backed up with appropriate staffing resources which will need to be expanded to keep pace with entities undertaking the re-domiciliation process.

Q27. Do you have views, including evidence from other jurisdictions, to inform how the Registrar could seek assurance over the standing of the company before approving re-domiciliation, in order to safeguard the UK's business environment?

Companies should be subject to best practice due diligence procedures, with enhanced procedures being applied to companies that are deemed high-risk, either by jurisdiction, sector, or whether the entity or directors have been subject to criminal or regulatory investigations.

A major weakness to the proposals in their current form is that the Registrar at Companies House has no powers to query, amend or remove incorrect information from the UK's corporate register. Implementing the re-domiciliation before the planned reforms to Companies House are implemented could represent a significant risk.

Q28. Do you agree that Companies House should have the ability to refuse an application or petition for the winding up of companies in the circumstances as set out above?

Yes. It is vital that a firm's refusal to supply up to date and accurate information should be taken as a refusal to meet the UK's governance standards and therefore represents adequate grounds for an application's refusal. In addition to ensuring the highest levels of corporate behaviour in the UK, it is clearly unfair to introduce a two tier system whereby UK companies are at a disadvantage by having to meet higher standards.

ENDS

⁶ UK's 'first ever' successful prosecution for false company information. HM Government.
<https://www.gov.uk/government/news/uks-first-ever-successful-prosecution-for-false-company-information>

⁷ Para 45. BEIS Corporate Transparency and Register Reform.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942160/Consultation_on_improving_the_quality_and_value_of_financial_information_on_the_register.pdf

⁸ Spotlight on Corruption submission to the Companies House consultation on 'Corporate transparency and register reform: powers of the registrar' <https://www.spotlightcorruption.org/wp-content/uploads/2021/03/Spotlight-Companies-House-submission.pdf>