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Dear Sir / Madam

Open for business: implementing a UK corporate re-domiciliation regime
Consultation on the design of the UK framework

The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 135 years ago, the Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are frequently responsible for the arrangements surrounding the re-domiciliation of a company and are therefore well placed to understand the issues raised by this consultation document.

In preparing our response we have consulted, amongst others, with members of the Institute. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent. Our views on the questions that you ask, together with some general comments, are set out below.

General comments

We welcome the action that the government is taking to make it easier for companies to redomicile in the United Kingdom.

The government's stated aim of Growth is important, and this is a helpful piece in the jigsaw. However, we should not lose sight of the fact that that is all it is. There is clear evidence that the UK market is shrinking, and a package of reforms is required that will reinvigorate the attractiveness of the UK to both existing foreign and newly listing companies and new public capital. There are many reasons why companies choose to domicile in one jurisdiction over another; some of these relate to factors of market infrastructure but ease of re-domiciliation is not the only element, and probably not the primary one, in decisions made about where to domicile a company. This is one lever that the government can pull, but there are many other factors that drive those choices.

For example, there are voices in the market who seek to emphasise the significance of governance issues at the expense of the more significant issues affecting choice of listing regime, in some cases because it suits their commercial interests to do so. Our view remains that the minutiae of the UK governance regime is definitely not a primary factor in the choice of corporate domicile and is, indeed, a minor one. In recent consultations on the future of the listing regime, The Financial Conduct Authority has identified such factors as the macroeconomic environment, taxation, depth of capital markets, valuations, research coverage, indexation, founder preferences, home market bias or company-specific considerations, such as the location of operations, customers, or investors and many other aspects besides. In our view these are all far more significant factors in swaying decisions on whether and where companies choose to domicile.

The challenge for the government - and the focus of the debate that we have had amongst members - is how and where to balance the relaxations of rules to encourage more companies to domicile and/or list in the UK market against the potential associated loss of valued investor protections.

Whilst we accept that a relaxation in legal and regulatory requirements does not mean there has to be a diminution in good governance overall, that can be an outcome, and it is one that we wish to avoid. Our view, as the professional body for governance is, quite simply, that achieving an increase in companies domiciling in the UK market is not an end in itself. It is desirable, but only if the companies that are attracted to list are desirable too. In our view, those companies which are deterred from a UK domicile by UK corporate governance requirements may well be companies that we should not be wanting to do so. They seem to be giving evidence that something is not up to the required standard.

Specific questions asked in the consultation

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.

We agree with the stated principles.

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.

We agree with the proposed eligibility criteria. We note that the consultation document states (in paragraph 6) that the government does not consider a reserve power to be necessary to allow "the Secretary of State to make regulations to stop a body corporate applying from a particular country to prevent applications from a country which has been identified as problematic in some way." Whilst we understand the motivation for this position and are opposed in general to Henry VIII powers, this is an area of law where market practice develops swiftly and it may be appropriate to build in some mechanism for prompt change by regulation where this becomes necessary.

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

We agree. This information is sensible and proportionate, reflecting as it does the same information that someone applying to form a company in the UK would provide.

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.

We agree with all three proposals, which are in line with the Panel recommendations.

Question 5: To what extent do you agree that a person who commits 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?

We agree – there has to be some penalty in these circumstances. The key point is that it must be enforced. Enforcement should sit with bodies experienced in director conduct and corporate compliance. We suggest that this might be a responsibility that could be given to the new Audit, Reporting and Governance Authority, supported by the necessary powers, with additional support from Companies House in a supervisory and intelligence capacity, and with escalation to criminal enforcement authorities where appropriate. Clear allocation of responsibilities and resourcing will be critical to ensure that penalties are credible and consistently applied.

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

We agree. An auditor's report is not required for a solvency statement meeting the requirements of section 643 CA 2006, so this is in line with that process.

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?

We agree.

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?

The list of information detailed in paragraphs 2.5 to 2.26 of the Panel Report seems sensible and proportionate. With regard to paragraph 2.8, our experience is that many other jurisdictions are more lenient than the UK in terms of the names that can be used and we believe that the UK requirements should apply to any company seeking to re-domicile.

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?

In our experience, it seems likely that the proposed 60-day timeframe will not be sufficient. Getting all invoices paid and a liquidator appointed within 60 days would be a challenge. We are told that the Financial Conduct Authority requires at least six months to remove regulatory permissions.

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?

We see no reason why this might present a challenge for an overseas entity and it is important that these new rules are effectively enforced. It should not present a barrier to overseas entities, provided it is implemented clearly and consistently. To ensure the regime has "teeth", the new Audit, Reporting and Governance Authority should be explicitly mandated and resourced to act as the lead enforcement body for these offences, drawing on its established expertise in director conduct and corporate compliance. This should be supported by Companies House in a supervisory and intelligence capacity, with clear escalation routes to criminal enforcement authorities where appropriate. Clear allocation of responsibilities, supported by sufficient resourcing, will be essential to ensure that breaches are identified and acted upon in a timely and consistent manner. We would see failure to comply with a de-registration duty as indicative of a disregard for UK legislation and should be capable of triggering proportionate consequences. It would be reasonable for such non-compliance to pause the re-domiciliation process until all the necessary steps – including this one – have been completed and compliance is demonstrated.

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.

Yes. In order to qualify for re-domiciliation to the UK, any such issues should be closed before the re-domiciliation process is completed. Allowing entities with unresolved breaches to re-domicile risks undermining the integrity of the UK framework, and it is important to avoid creating opportunities for regulatory arbitrage. Restrictions should be proportionate, with particular focus on serious non-compliance that raises concerns about transparency or integrity, say, the provision of false or misleading information. Clear processes for assessing compliance history and ensuring accountability will be important to maintain confidence in the regime.

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

No comment

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

No comment

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

Yes. Statutory and non-statutory guidance is always helpful, especially where arrangements are complex, as it reduces any potential for confusion.

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?

We agree. This is the only sensible approach.

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 jurisdictions criteria for re-domiciliation? Please provide the reasons for your answer.

Yes. Although it might be appropriate for the company to provide some sort of certificate from the departing jurisdiction to the effect that all relevant exit criteria have been met.

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?

We agree. Consistency with the established UK incorporation framework is important for clarity and predictability. A 'good faith' requirement risks introducing subjectivity and enforcement complexity, whereas governance outcomes are more effectively supported through clear disclosure requirements, director accountability, and robust enforcement of existing obligations.

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?

We agree.

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.

We agree that applications should be approved in principle and the re-domiciliation effective from the date on which the certificate of re-domiciliation is issued by Companies House. This seems the most sensible approach.

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?

This is very similar to question 9 above. As noted there, our experience is that it seems likely that the proposed 60-day timeframe will not be sufficient. Getting all invoices paid and a liquidator appointed within 60 days would be a challenge. We are told that the Financial Conduct Authority requires at least six months to remove regulatory permissions.

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

No comment.

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.

We agree. The powers of Companies House seem sufficient in such cases.

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?

Yes. 14 days should provide a sufficient timeframe.

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

No.

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?

We agree with the proposed content of the certificate.

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.

We agree that the registered number given to re-domiciled companies should include a means to distinguish re-domiciled companies from companies originally incorporated in the UK. The suggestion of an R prefix to their number seems sensible. This will make such companies readily identifiable whilst not imposing a significant burden on them or on Companies House.

Question 27: To what extent do you agree with the proposed process set out by the panel – see Figure 1? Are there other steps you think should be set out in application process?

We agree with the proposed process set out by the panel.

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.

We agree that 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. We can think of no other effects which should be set out in legislation.

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

We agree that, once the certificate has been issued, it should not be invalidated despite a mistake/inaccuracy in the application documents. However, this can be a nuanced point, and it may be better that the government remain silent.

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?

We 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.

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.

We agree that a 2-month period is sufficient for a re-domiciling company to issue and deliver share certificates. Of course, as the digitisation reforms progress, this may cease to be a requirement.

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?

We agree that companies should be required to maintain books and records that existed prior to re-domiciliation for 10 years after re domiciliation.

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?

We agree that no specific legislative provision is needed in respect of workers, although the built-in novation mechanism would still need to cover contracts of employment.

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.

We defer to tax experts on this question.

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?

No comment.

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.

No comment.

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?

No comment.

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?

We agree that 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.

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.

We agree that 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.

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?

No comment.

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?

No comment.

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?

No comment.

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

No comment.

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.

We agree that 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.

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.

We agree that 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.

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

No.

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?

No – the changes proposed by the panel seem proportionate.

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

No.

If it would be helpful for the Department to discuss these issues with some practitioners whilst developing thinking around that consultation, the Institute would be happy to facilitate this.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

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The Chartered Governance Institute UK & Ireland