CORPORATE RE-DOMICILIATION

REPORT OF THE UK INDEPENDENT EXPERT PANEL

1 October 2024

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Introduction

Re-domiciliation allows a company incorporated in one jurisdiction to become a company incorporated in another jurisdiction whilst retaining its legal personality. A public consultation was undertaken on the principles of a corporate re-domiciliation regime in October 2021 and the then Government said it intended to introduce a corporate re-domiciliation regime. Its summary of responses to the consultation was published in April 2022. Overall, respondents were broadly supportive of the proposals whilst noting that further detail on the design of the regime would be helpful. The independent expert panel (the "**Panel**") was established in December 2023 to develop a specific proposal for changing the legal framework to enable companies incorporated overseas to become companies in the UK whilst retaining the same legal personality. The Panel's terms of reference are set out in Annex 1. This Report sets out the Panel's proposals.

The Panel strongly supports the introduction of a two-way re-domiciliation regime to allow bodies corporate registered outside the UK to become a UK company and also to allow UK companies to re-domicile outside the UK. Versions of such regimes already exist in many other jurisdictions, including all member states in the EU, Singapore, Canada, New Zealand, Australia, Jersey and a number of US states. The Panel believes that a re-domiciliation regime will make it easier and more cost efficient for certain companies to move their businesses to the UK. It also believes that the flexibility to re-domicile both into and out of the UK will increase the overall attractiveness of the UK as a destination of choice.

The Report suggests how various components of the regime could work. This includes which organisations would be eligible to re-domicile, the information they would have to provide to re-domicile, the process for dealing with an application and how this would interact with requirements in another jurisdiction. The Panel has also considered how a re-domiciled company would be treated once it has re-domiciled to the UK, not only for company law purposes, but also how legislation relating to tax, accounting and insolvency could be changed to take account of re-domiciled companies. The Panel has also considered how a regime for UK companies to re-domicile outside the UK could work and how the interests of members, creditors and national security could be protected.

The Panel recognises that a regime will need to balance various competing interests. The Panel has taken account of the approach adopted in other jurisdictions, whilst also fitting with the law in the UK. It has also taken into account aspects of the pre-Brexit UK regimes relating to cross-border mergers and migration of Societas Europaea. As far as possible, the Panel has based its proposals for re-domiciliation to the UK on the principles which apply where a company is being incorporated in the UK for the first time, so as to ensure there is comparable information available to the public and that the re-domiciling body corporate will meet substantially the same requirements as a company originally incorporated in the UK. Because the re-domiciling body corporate will exist already, some adaptations and additional information should also be required.

The Panel believes that re-domiciliation to the UK should be available to bodies corporate which are solvent and intend to carry on business following their re-domiciliation. The Panel also considers that, so long as the applicant meets the requirements of the jurisdiction it is leaving and the relevant inward re-domiciliation requirements of the UK regime, it should have flexibility as to whether to become a private or public UK company upon re-domiciliation. Given the number of different corporate forms which exist in other jurisdictions, the Panel suggests it would be impractical to require any degree of equivalence in the company form before and after re-domiciliation, and the applicant should have the flexibility to make changes to its form, constitution and other features as part of the application for re-domiciliation.

For the regime to be attractive to those considering re-domiciling, the Panel believes that the regime needs to be as clear and simple as possible, with guidance so an applicant can easily establish what it needs to do and how the process will work. As the process will involve liaising with Companies House in the UK and with a registrar in another jurisdiction (and possibly other regulators depending on the business concerned), the Panel suggests that the applicant should be primarily responsible for liaising with the relevant authorities to make the necessary arrangements. As far as determination of any application is concerned, the Panel has suggested an approach which reduces the need for discretion by Companies House so as to provide certainty for both the applicant and Companies House. Although ideally re-domiciliation to the UK would take place on the same day as de-registration in the existing place of incorporation, this may be hard to achieve in practice. The Panel has therefore suggested an approach which is intended to ensure that legal personality is preserved (so the applicant will be registered in the new jurisdiction before it is de-registered in its existing jurisdiction) and any period where there is registration in two jurisdictions is kept short.

For a body corporate re-domiciling to the UK, the Panel believes that protection of the members, creditors and others in its existing jurisdiction is properly a matter for the law of that jurisdiction. Protections for stakeholders in the UK will come from the information the applicant will provide in its application and from the protections offered by UK company law once the applicant becomes a UK company. For a UK company wishing to re-domicile outside the UK, the Panel has suggested the protections that should be available to members and creditors and in relation to national security interests. In addition, the Panel has suggested some additional provisions so certain information relating to the company will continue to be available in the UK for a period after re-domiciliation.

Once a body corporate has re-domiciled to the UK, the Panel suggests that, as far as possible, it should be treated in the same way as a company originally incorporated in the UK. Since there will inevitably be some differences because the company will have existed in another jurisdiction beforehand, there will need to be some changes to existing legislation to make it clear how a re-domiciled company should meet those obligations. The Panel believes that making such changes will offer more certainty to those considering re-domiciliation and so make the regime more attractive to them whilst also providing clarity about the continuing obligations which will benefit those dealing with the re-domiciled company. Some differences will remain in the way that certain requirements apply to a re-domiciled company and for this reason it is recommended that re-domiciled companies are distinguished from companies originally incorporated in the UK so that those transacting with them are on notice of these differences.

The Panel recognises that Companies House will play an important role in any re-domiciliation process. It expects that Companies House will seek to recover the costs associated with re-domiciliation applications through fees, without the need for any additional Government spending commitment once the regime is in operation. Companies House's role in dealing with applications and issuing a certificate of re-domiciliation or de-registration will be very important to the success of the regime. The Panel recognises that Companies House will need to be closely involved with the design of the regime and, in particular, the process for determining the date on which a re-domiciliation occurs. The Panel has suggested some changes to the powers and responsibilities of the Registrar of Companies ("**Registrar**") to assist the re-domiciliation process.

Whilst the Panel has made quite detailed proposals, it recommends that there should be further consultation once the Government has decided on more detailed proposals. This would allow those with a specialist knowledge of particular areas to comment on the proposals and help ensure the regime will work well in practice. It should also allow other regulators, including the Panel on Takeovers and Mergers, the Financial Conduct Authority,

the Prudential Regulatory Authority and the Pension Protection Fund or Pensions Regulator to consider whether changes would be needed to accommodate both a re-domiciled company and a UK company that re-domiciles out of the UK. The Panel also suggests further consultation is carried out on the accounting and audit-related aspects of re-domiciliation, which are particularly complex.

The Panel would like to thank the Department of Business and Trade for its support of the Panel and also HM Treasury, HMRC, Companies House, the Cabinet Office and many others too numerous to mention individually for their assistance with various areas.

The Panel hopes the new Government will consider the introduction of a re-domiciliation regime in the UK as an important step forward in improving the attractiveness of the UK as a place to do business.

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1. Section 1 - Eligibility for inward re-domiciliation to the UK

Bodies which can apply

1.1 In its Summary of Responses to the Corporate Re-domiciliation consultation, the then Government said it intended to introduce a regime to make it possible for a foreign-incorporated company to change its place of incorporation whilst maintaining its legal identity. The Panel notes that some jurisdictions also allow other entities, such as unit trusts, to re-domicile, but notes that the re-domiciliation requirements relating to such entities would need to be different. The Panel therefore recommends that, at least initially, the law should be limited to applications from any body corporate as defined in section 1173(1) Companies Act 2006 ("CA 2006") which is registered where it is established.

Bodies which cannot apply

1.2 The Panel recommends that certain bodies should not be eligible to apply to re-domicile to become a UK company. This should be in cases where the body corporate is insolvent, or where a receiver, manager or administrator (or similar official) has been appointed, whether by a court or in some other way, in respect of any of the body corporate's property or where a receiver, manager or administrator (or similar official) possesses or controls any of the body corporate's property. It should also be the case if the body corporate is being wound up or is in liquidation or any proceeding to liquidate or wind up the body corporate is ongoing. This is because the Panel believes that the re-domiciliation process should be available to existing bodies corporate which plan to carry on business in the UK. There are alternative options open to bodies corporate which wish to take advantage of the UK restructuring and insolvency processes such as administrations, schemes of arrangement, restructuring plans or liquidations. Each of these processes is governed by its own, well-established, criteria which can, and would continue to, operate independently of the proposed re-domiciliation process.

1.3 The Panel is aware that some jurisdictions also do not allow a body corporate to apply to re-domicile if there is any proceeding pending or ongoing to appoint a receiver, manager or administrator. The Panel believes that including such cases might provide a person who wishes to prevent a re-domiciliation with a way to achieve that and therefore suggests that it is only once a receiver, manager or administrator or similar official has been appointed or possesses or controls all or part of the body corporate's property that the body corporate should be ineligible. The Panel is also aware that, in some jurisdictions, a body corporate can apply to re-domicile even if it is in liquidation, provided that it is not an insolvent liquidation and the distribution of assets has not begun. Whilst this would provide more flexibility, for the reasons explained above, the Panel is not suggesting this approach.

1.4 The Panel has also considered whether a body corporate involved in a compromise or arrangement between it and any other person should be eligible to re-domicile. From the time the body corporate or other person applies to the court in connection with the compromise or arrangement until the time the court decides whether or not to sanction the compromise or arrangement or, if later, when the compromise or arrangement has been implemented in accordance with its terms, the Panel suggests that the body corporate should not be eligible to apply to re-domicile into the UK.

1.5 The Panel is aware that some other jurisdictions also exclude bodies corporate from applying in other situations. The Panel suggests that the Government considers

whether bodies corporate should be ineligible if they are subject to resolution tools, powers and mechanisms provided for in Directive 2014/59.

1.6 For the purposes of these exclusions, it should be immaterial where the company is being wound up or put into liquidation, where the receiver, manager, administrator or similar official is appointed, where the compromise or arrangement is entered into or where any application before a court is pending.

1.7 The Panel does not believe that there should be a list of countries from which companies can apply to re-domicile. It suggests, instead, that there should be a reserve power for the Secretary of State to make regulations laid under the affirmative procedure to stop a body corporate applying from a particular country. This would allow regulations to prevent applications from a country which has been identified as problematic in some way. In addition, the Panel suggests that the Government may wish to explore the extent to which any body corporate subject to, or whose majority shareholders or other controlling parties are subject to, UK or international sanctions, should be ineligible for inward re-domiciliation.

2. Section 2 – Inward re-domiciliation: information to be provided

General approach

2.1 Bodies corporate incorporated in other jurisdictions will not be subject to the same requirements as apply to companies incorporated in the UK. However, by choosing to become a company incorporated in the UK, the body corporate will be choosing to become subject to the same legal regime as applies to a company originally incorporated in the UK. For this reason, the Panel believes that a body corporate applying to re-domicile should provide all the information that someone forming a company in the UK would provide to form a company. These requirements will change as regulations are made under the Economic Crime and Corporate Transparency Act 2023 ("**ECCTA 2023**"). In addition, because the body corporate already exists, the Panel believes it should also provide additional information, recognising that the company already exists and may have existing obligations and assets that the Registrar and the public should be aware of.

2.2 The Panel suggests that an applicant should be able to apply to become a private company, limited by shares or unlimited, or a public company in the UK regardless of its form in its departing jurisdiction. Given the number of different forms which exist in other jurisdictions, the Panel believes it would be impractical to require any degree of equivalence in the company form before and after re-domiciliation. The Panel suggests that the applicant should have flexibility to change its form, constitution and other features as part of the application. The Panel suggests that an applicant should provide the same or equivalent information as would be provided if a company was being originally incorporated in the UK and some further information to recognise that the applicant already exists.

Information to be provided

2.3 The Panel recommends that a body corporate applying to re-domicile to the UK should have to provide specified information, together with the proposed date on or after which the body corporate wishes the re-domiciliation to take effect (see paragraph 3.16). The Panel suggests that the information should be provided to Companies House in, and where applicable attached to, an application form (see paragraph 2.4). An explanation of some of the proposals is set out below. The information to be provided should be:

(i) Confirmation, by way of ticking a box, that the body corporate's intended future activities after re-domiciliation are lawful (following the requirements of section 2 CA 2006 introduced by ECCTA 2023);

(ii) The body corporate's proposed name (which should meet the requirements on names set out in sections 54 to 57 CA 2006);

(iii) Where the company's registered office will be situated i.e. in England and Wales (or in Wales), in Scotland or in Northern Ireland and the proposed address of the registered office;

(iv) Whether the liability of the members will be limited by shares or not;

(v) Whether the company is to be private or public;

(vi) In the case of a company that is to have share capital, a statement of capital. This should state:

(a) the total number of shares to be treated as issued on re-domiciliation;

(b) the aggregate nominal value of those shares;

(c) the aggregate amount (if any) unpaid on those shares whether on account of their nominal value or by way of premium;

(d) details of how any amounts unpaid on share capital are to be paid and when;

(e) confirmation, if the company is to be a public company, that the nominal value of the company's allotted share capital will, on re-domiciliation, be no less than the authorised minimum (as defined in section 763 CA 2006); each of the allotted shares will, on re-domiciliation, be at least one-quarter paid up and that all of any premium has been or will upon re-domiciliation be paid up; that there will be no outstanding undertaking to pay for the shares by doing work, performing services or by any long-term undertaking to be performed more than 5 years after re-domiciliation; that there will be no outstanding agreement to transfer a non-cash asset to the company unless the requirements of section 603 CA 2006 (as amended as suggested in Section 11) are or will be met; that the requirements as to net assets will be met on re-domiciliation (as set out in section 92 CA 2006) (so that the requirements will be similar to those for a private UK company re-registering as a public company - see Section 11, commentary on section 90-96 (private company becoming public) for more details);

(f) the aggregate amount of any share premium and whether such amount is to be treated as share premium for the purposes of section 610 CA 2006;

(g) for each class of shares, the prescribed particulars of the rights attached to the shares (including in the case of redeemable shares, the terms, conditions and manner of redemption), the total number of shares of that class to be treated as issued on re-domiciliation and the aggregate nominal value of shares of that class;

(h) details of any shares to be held by the company itself as treasury shares on re-domiciliation, including the number of shares to be held and, if there is more than one class of share, the class of shares held;

(i) if the applicant is to be a public company, details of any charge of the applicant on its own shares (whether taken expressly or otherwise) that is in existence immediately before the application to re-domicile is made or is created before re-domiciliation;

(vii) Details of any right that will be outstanding at re-domiciliation to subscribe for, or convert securities into, shares, including any such right granted pursuant to an employee share scheme, together with details of the employee share scheme;

(viii) Details of any equity securities (as defined in section 560 CA 2006) which may be allotted after re-domiciliation in pursuance of an offer or agreement made by the applicant before re-domiciliation;

(ix) Details of any contract under which the applicant is obliged to purchase its own shares, including the maximum number of shares it may be obliged to purchase, the minimum and maximum prices that the company may pay for the shares, any conditions to which the contract is subject and the time period in which the purchase(s) may happen;

(x) A statement of the company's proposed officers, including details of the director(s), any person to be the secretary or a joint secretary of the company or, for a public company, the person to be the secretary or one of any joint secretaries, together with the particulars to be stated (or that, in the absence of an election under section 167A or section 279A CA 2006 would be required to be stated) in the company's register of secretaries, in the company's register of directors and register of directors' residential addresses. Whether the applicant is making an election under section 167A (election in respect of a register of directors) or section 279A (election in respect of a register of secretaries) CA 2006 to take effect on the re-domiciliation date. The Panel believes that the person being appointed should confirm that they have consented to act and qualify to be a director under the CA 2006. Once changes are made to the CA 2006 by the ECCTA 2023, the proposed directors would have to meet the same requirements as those being appointed for a company being incorporated in the UK on formation;

(xi) To the best of the applicant's knowledge, a statement of significant control i.e. anyone who will count as either a registrable person or a registrable relevant legal entity, including the required particulars of any such person and any other details to be included in the company's PSC register (see Section 11 of this Report, commentary on sections 790A-790ZG (information about people with significant control)/12A (statement of initial significant control) for more details). Again, when changes are made to the requirements by the ECCTA 2023, the same requirements should apply to a company applying to re-domicile;

(xii) A copy of any proposed articles of association and whether these include any provision for entrenchment. As for companies formed in the UK, if the applicant does not want to have bespoke articles, the Panel believes the default model articles for the relevant company form should apply to the re-domiciled company (in substitution for its existing constitution);

(xiii) A statement of the type of company it is to be (by reference to the prescribed classification scheme) and its intended principal business activities (by reference to one or more categories of any prescribed system of classifying business activities);

(xiv) A copy of any resolution passed by the applicant conditional on re-domiciliation;

(xv) Details of any resolution or agreement affecting the applicant's constitution that effectively binds all members or all members of a class of shareholders and that is to continue in effect after re-domiciliation;

(xvi) A copy of any court order that will continue to affect the company in any material respect after re-domiciliation;

(xvii) A copy of any resolution or any agreement between the members of the body corporate or of any class of shareholder that will continue in force after re-domiciliation which will limit the directors' powers to bind the company;

(xviii) A copy of the accounting documents, if any, prepared for a financial period of the applicant, last disclosed in accordance with the law of the departing jurisdiction, together with a statement as to whether they have been prepared in accordance with generally accepted accounting principles and the organisation which issued the principles, whether they have been audited and, if so, whether they were audited in accordance with generally accepted auditing standards and the organisation that issued them and, if there has been no audit, whether the applicant is required to have its accounts audited or a confirmation that the applicant is not required to prepare and disclose such accounts in accordance with such law;

(xix) A solvency statement made by each of the persons named as proposed directors no more than 15 days before the date of the application. The Panel suggests that the solvency statement should be based on the requirements in section 643 CA 2006, that if a person making a statement does not have reasonable grounds for making it they should commit an offence, but that, if an offence is committed, this should not affect the validity of a certificate of re-domiciliation. The Panel recommends that there should not be a requirement for an auditor's report (which is not required for a solvency statement meeting the requirements of section 643 CA 2006). The Panel also suggests the solvency statement should have to be refreshed if the application is not determined or withdrawn within 6 months of submission of the application (see paragraph 8.4 for further commentary on this point);

(xx) Details of the body corporate's current name, identifying number, the jurisdiction in which it is incorporated, the date of its original incorporation, details of any previous changes of legal form, details of any previous change of place of incorporation, details of any previous change of name, together with certified copies of its certificate of incorporation, any certificate on change of legal form or place of incorporation, and on change of name if, in each case, they are publicly available and details of the registrar and any other official in its current jurisdiction which has to determine any legal requirements in connection with the proposed re-domiciliation*;*

(xxi) Details of the company's proposed accounting reference date and first accounting reference period, and a statement as to whether the body corporate is required under the law of its departing jurisdiction to have drawn up a balance sheet (see Section 7 for a discussion on determining the accounting reference date and accounting reference period);

(xxii) Details of the aggregate amount of any debentures outstanding and, if not the registered office, the place where any register of debenture holders will be kept available for inspection;

(xxiii) Details of the outstanding charges or security interests created or granted by the body corporate that would, if such charges or security interests had been created or granted by a company incorporated in the UK, have been registrable under UK company law including specified particulars of those security interests and charges (see Section 8 of this Report for more details);

(xxiv) Details of the applicant's proposed registered email address;

(xxv) Details of the proposed auditor or auditors of the company unless either the persons proposed to be the directors of the company have reasonably resolved that no auditor is to be appointed on the ground that audited accounts are unlikely to be required or the company is proposed to be a private company eligible for an audit exemption;

(xxvi) A statement as to whether any of the applicant's shares were, at any time in the 12 months before the application is submitted, shares admitted to trading on a relevant market or on any other market outside the UK and, if so, whether there were shares that were admitted to trading on a relevant market and whether the company was a DTR issuer (as defined in section 853E CA 2006);

(xxvii) Details of the body corporate's Unique Taxpayer Reference for UK tax purposes if it has one;

(xxviii) Any other information the Registrar would require on an application to register a company under the CA 2006, unless the Registrar determines that that information is not needed;

(xxix) Confirmation as to whether the company has been an overseas company as defined in section 1044 CA 2006 required to register particulars with the Registrar;

(xxx) Confirmation that the law of the departing jurisdiction allows the applicant to re-domicile subject to meeting any relevant requirements;

(xxxi) Confirmation that any authorisation or other action required by the applicant's constitution or the law of departing jurisdiction has been given or will have been given on re-domiciliation; and

(xxxii) Confirmation that the applicant is not prevented from making the application because it is subject to a restriction on applying. (This might be relevant if a court in the departing jurisdiction could order that the re-domiciliation should not proceed.)

2.4 The Panel suggests that the requirements as to the information to be submitted should be set out in a statutory instrument, which should provide a degree of flexibility to make amendments if thought appropriate. The Panel suggests that Companies House should be able to design the application form once the requirements have been established.

Fees

2.5 The Panel notes that section 1063 CA 2006 allows the Secretary of State to make regulations requiring the payment of fees to the Registrar in respect of the performance of any of the Registrar's functions and for providing services or facilities incidental to, or connected with, those functions. The Panel recommends that those regulations are amended to allow the Registrar to charge an applicant fees for dealing with an application. The Panel suggests that the applicant should pay the fee when submitting the application form.

Power to require information

2.6 The Panel notes that the Registrar has power under section 1092A CA 2006 to require a person to provide information. The Panel suggests it should be clear that

this includes a power to require a person to provide information in connection with an application to re-domicile.

False statements

2.7 The Panel notes that it is an offence under sections 1112 and 1112A CA 2006 to deliver a document to the Registrar which is false, misleading or deceptive in a material particular or to make a statement to the Registrar which is false, misleading or deceptive in a material particular either knowingly or without reasonable excuse. This offence applies to any person and so the Panel believes this is wide enough to catch an applicant, its officers and directors and any proposed officers and directors. The Panel recommends (see paragraph 4.6(v)) that there would be a continuing obligation to notify Companies House promptly in the case of any changes in the application form, and the section 1112 CA 2006 offence should apply if the application form was not updated to reflect such changes or if the information deemed to be provided was false, misleading or deceptive in a material particular.

Company names

2.8 The Panel believes that the process for a body corporate to use a particular company name should, as far as possible, be the same as for someone incorporating a company in the UK. As it is not possible to reserve a company name, a body corporate that wishes to re-domicile may wish to incorporate a UK company with the name it will want to use on re-domiciliation so that there can be a name swap on re-domiciliation. Companies House may need to consider some small changes to the process for achieving this.

Types of company

2.9 The Panel suggests that a body corporate should be able to apply to become a private company limited by shares or an unlimited company or a public company, but not to become a company limited by guarantee. The Panel notes that it is not possible to convert a company limited by shares to a company limited by guarantee under the CA 2006. The Panel does not expect there will be a demand to re-domicile to become a community interest company and does not consider it necessary for the re-domiciliation regime to permit re-domiciliation into the UK as a community interest company. It notes that it is possible for a company limited by shares to become a community interest company under section 6 CA 2006. At a later date, the Government might wish to consider, for example, whether the regime could be extended to allow bodies to apply to become a UK limited liability partnership.

Statement of capital

2.10 The Panel thinks it will be important for the applicant to provide a statement of capital. If the applicant has shares which do not have a nominal value it will have to determine the nominal value the shares will have upon re-domiciliation. The Panel does not think it is necessary or desirable for UK legislation to determine how this should be done. If the applicant wishes to re-domicile as a public company, it will be subject to the requirements that apply to the share capital of a public company immediately upon re-domiciliation, for example, the requirement that the shares are at least one-quarter paid up, that all of any premium has been paid up and that there are no outstanding undertakings or agreements which are not permitted under the CA 2006. The Panel believes it would be helpful for applicants to have to confirm that they will meet the relevant requirements from re-domiciliation. If the applicant has bearer shares it will need to make arrangements either to cancel these with effect from re-domiciliation or to convert them into registered shares on re-

domiciliation. Any unidentified bearer shares would need to be cancelled (see also paragraph 5.9(ii)). A body corporate that does not have shares before re-domiciliation but will have shares upon re-domiciliation will have to determine what its share capital will be and how those shares will be held by its members. The Panel does not think UK legislation should determine how this is done (see Section 11 of this Report, commentary on sections 90-96 (private company becoming public) for more information).

Share premium account

2.11 An applicant may have a share premium account when applying. The Panel believes that, if this is the case, the applicant should state the aggregate amount of that share premium account and should be allowed to choose whether to treat that amount as if it were share premium created after the re-domiciliation (so as to be subject to the restrictions under the CA 2006) or not. If the applicant has not been required to keep a record of the premiums paid for shares, the Panel recommends that the applicant should not be required to create a share premium account for shares issued at a premium before re-domiciliation (and notes that, in some cases, this might be an impossible task in practice) (see Section 11 of this Report, commentary on section 610 (application of share premiums) for more information).

Undistributable reserves

2.12 The Panel considered whether an applicant should be required to provide details of any reserves which are undistributable. The Panel concluded that this was not necessary. If an applicant has reserves which are limited in their use by virtue of the applicant's constitution, the applicant will be able to include similar provisions in its proposed articles of association to preserve the position. This will be information available to the public. If the applicant's reserves are limited by virtue of the law of the departing jurisdiction or relevant accounting standards, the position will be governed by English law and generally accepted accounting principles after re-domiciliation.

Resolutions conditional on re-domiciliation

2.13 The Panel believes that some applicants will want to be able to pass one or more resolutions before re-domiciliation which are conditional on re-domiciliation. This is so they will meet certain requirements of CA 2006 as soon as re-domiciliation occurs. This may be particularly important for public listed companies (see paragraph 5.7 for more details).

Resolutions, agreements and constitutional documents with continuing effect

2.14 The Panel notes that, under sections 29 and 30 CA 2006, a company must forward a copy of the resolutions and agreements affecting a company's constitution to which Chapter 3 of Part 3 of the CA 2006 applies to the Registrar. The Panel believes that a similar requirement should apply to applicants, so that any resolutions or agreements that they would have had to forward if they had been a company and which will continue to be relevant after re-domiciliation are provided as part of the application. Section 32 CA 2006 sets out constitutional documents to be provided to members. The Panel believes such documents created before re-domiciliation which would have fallen within section 32 if the applicant had been a company and which will continue to be effective after re-domiciliation should be provided as part of the application.

Members

2.15 The Panel does not suggest that an applicant should have to provide details of its members as part of its application. Although a company being formed in the UK has to provide details of its subscribers under section 9A CA 2006, this is mainly because there needs to be information about the persons establishing the company. For an applicant, it will already be established as a body corporate. Also, it is possible that its members may change from time to time and this will certainly be the case if the applicant's shares are traded on a stock exchange. The applicant will need to keep a register of members in accordance with section 113 CA 2006 from the re-domiciliation date, subject to any transitional provisions that may be agreed for re-domiciled companies (see Section 11 of this Report, commentary on section 112 (members of company)/113 (register of members) for more information).

Latest disclosed accounting documents

2.16 The Panel's recommendation for an applicant to provide a copy of its latest disclosed accounting documents is based on the requirements for overseas companies with a UK establishment. When an applicant re-domiciles to the UK it will become subject to the accounting requirements under the CA 2006 (see Section 7 of this Report).

Solvency statement

2.17 The Panel recommends that the persons who will be directors when the applicant becomes a UK company should be required to make a solvency statement based on the requirements for a reduction of capital set out in section 643 CA 2006 and that such a person should commit an offence if the statement is made without reasonable grounds. The Panel believes that the re-domiciliation regime should only aim to attract as applicants bodies corporate which are reasonably expected to be and remain going concerns and that requiring the proposed directors to make a solvency statement, with penalties if the statement is made without reasonable grounds, will help to achieve this. The Panel notes that some other regimes, including Jersey and Singapore, also include requirements as to solvency. The Panel suggests that the solvency statement should be made no more than 15 days before the date of the application. The Panel also suggests that the applicant should be required to notify Companies House if the applicant becomes aware, before the re-domiciliation occurs, of any event or change which, if the proposed directors had been aware of that event or change on the date the solvency statement was made, would have meant that the proposed directors would not have had reasonable grounds to make the solvency statement. In this case, Companies House should be required to refuse the application. The Panel also suggests that if the application is not determined or withdrawn within 6 months of the application date, the solvency statement should be refreshed and, if the proposed directors are then unable to give the solvency statement, the application should be refused. Paragraph 8.4 addresses this matter in more detail.

Information that should not be required

2.18 The Panel does not believe it would be appropriate to require an applicant to prepare or have a memorandum of association, as is required for a company formed under the CA 2006. This is a confirmation that the subscribers wish to form a company under the CA 2006 and agree to become members. For an applicant, the applicant will already have been formed as a body corporate and will have members. It will confirm its wish to become a company incorporated by re-domiciliation under the CA 2006 by submitting the application form which will be signed on its behalf by a duly authorised signatory.

2.19 The Panel has considered whether there should be a requirement for evidence that a resolution approving the re-domiciliation has been passed by a certain percentage of members if the law of the departing jurisdiction does not require members to consent to the proposed re-domiciliation. The Panel believes that the question of protection of members is properly left to the law of the departing jurisdiction.

2.20 The Panel has also considered whether there should be any requirement to provide information about directors' long-term service contracts, substantial property transactions with directors or connected persons or loans, quasi-loans or credit transactions to directors or connected persons. Any requirements of the law of the departing jurisdiction as to approval may differ from requirements under the CA 2006 which, subject to exceptions, require shareholder approval. The applicant will become subject to the requirements of the CA 2006 for agreements and arrangements entered into after re-domiciliation. The Panel has concluded that it is not necessary to require information on this as part of the application and that anyone dealing with the re-domiciled company will be aware from its registration number that it is a re-domiciled company and that therefore there may be differences from a company originally incorporated in the UK (see paragraph 4.4).

2.21 Similarly, the Panel does not suggest that an applicant be required to provide information about any indemnities to directors. Again, provisions in the CA 2006 on this will apply to the applicant from the re-domiciliation date and any provision that does not meet the UK requirements will be void.

2.22 The Panel does not recommend that applicants should have to meet any size criteria or any test of economic substance other than the usual protections which apply where a company is to be a public company.

Documents not in English or Welsh

2.23 The Panel notes that, under section 1103 CA 2006, the general rule is that all documents required to be delivered to the Registrar must be drawn up and delivered in English (and documents relating to a Welsh company may be drawn up and delivered in Welsh). The Panel believes that the application form and most documents should be delivered in English (or Welsh) but, depending on exactly what is required, it may be appropriate to allow some existing documents that must be delivered that are in another language to be delivered in that language, accompanied by a certified translation. Section 1103 CA 2006 sets out the documents that this applies to and this will need to be reconsidered (see Section 9 of this Report).

Guidance

2.24 Certain applicants may need to make pre-application enquiries of Companies House to confirm what information Companies House will require to approve a re-domiciliation application. The Panel suggests that Companies House facilitates a process to enable potential applicants to make informal enquiries (referring such applicants to a specialist team within Companies House and possibly allocating a case officer where appropriate) but it does not believe it is necessary or desirable for legislation to formalise this process. The Panel recommends that either Companies House or the relevant Government Department (or both on different aspects) should publish guidance on the application process (see Section 3 of this Report).

Personal information

2.25 The Panel suggests that, as part of the application process, an individual should be able to apply to suppress or protect their personal information from the register in the same way as applies for a UK company.

Ways to apply

2.26 As for new company incorporations in the UK, the Panel recommends that Companies House should accept applications for re-domiciliation via its electronic filing service, by post and through agents and third party software.

3. Section 3 - Inward re-domiciliation: how the application is determined

Relevant authority

3.1 The Panel recommends that the Registrar, operating through Companies House, be the relevant authority for determining applications for re-domiciliation into the UK.

3.2 The re-domiciliation regime will require Companies House to play a key role, particularly for the purposes of confirming that the re-domiciling body corporate has satisfied the UK's entry criteria and ensuring that the process is properly co-ordinated with the applicant, the departing jurisdiction and any relevant regulators. As explored in this Report, these matters have the potential to be technically complex, so the Panel recommends that Companies House establish (and is funded to establish) a specialist team to determine applications that is familiar with and fully understands the re-domiciliation process. The deployment of one specialist team to determine applications will allow protocols to develop on a case-by-case basis through experience, taking into account the precise requirements and process for each departing jurisdiction so that re-domiciliations from the same and similar departing jurisdictions are handled in a consistent manner. An alternative would be a court-sanctioned process to confirm that the applicant has satisfied both the UK's entry requirements and the departing jurisdiction's conditions for outward re-domiciliation, but this could make the process unattractive to applicants given that it would, amongst other things, increase the administrative and financial costs of re-domiciliation to the UK. The Panel notes that many other jurisdictions use their company registry to deal with re-domiciliation applications.

Timeframe for determining applications

3.3 Given that the length of time it will take for a body corporate to re-domicile to the UK will largely depend on the outward re-domiciliation process in the departing jurisdiction, the Panel recommends that the legislation implementing the UK re-domiciliation regime does not specify any timeframe for determining applications once received.

3.4 However, it would be useful for the Government to issue non-statutory guidance on the regime that provides some indication as to Companies House's expected timescales for determining applications. This should allow applicants and their advisers to plan accordingly, particularly where the re-domiciliation of an overseas company is part of a wider project for the business. By way of example, guidance issued by the Accounting and Corporate Regulatory Authority in Singapore states that it "*may*" take up to two months from the date of submission of all required documentation to process applications for re-domiciliation.

Departing jurisdiction requirements

3.5 Given that each jurisdiction permitting re-domiciliation to the UK is likely to have different requirements for removing a body corporate from its register, the Panel's view is that the process for ensuring that the departing jurisdiction's conditions for re-domiciliation have been met must be determined by the departing jurisdiction itself and resolved between it and the re-domiciling body corporate. Subject to the body corporate having confirmed that any authorisation required by the departing jurisdiction has been (or will be) given (see Section 2 of this Report), the Panel considers that the only matter for Companies House to consider when determining

an application should be whether the applicant has satisfied the UK's own entry criteria.

Discretion when determining applications

Overview

3.6 To ensure that inward re-domiciliation provides the UK with a competitive advantage and is actually used by overseas businesses, the Panel believes that the general approach of the regime should be to treat the re-domiciliation process as similarly as possible to new company incorporations in the UK. This means that the process should be clear and simple, and any requirements for qualification to re-domicile must be objective. As a general principle, the Panel considers that questions of member, creditor and stakeholder protection are for the applicant and the departing jurisdiction to consider and that Companies House should not be required to make its own investigations in these areas. Businesses will want to be able to predict the outcome of an application with a high degree of certainty and this would increase the appeal of the regime. An applicant that is eligible to apply for re-domiciliation (see Section 1 of this Report) and has supplied the information required to support its application (see Section 2 of this Report) should be confident that Companies House will accept its application.

Good faith

3.7 When consulting on the new regime, the then Government proposed that UK authorities should have discretion to assess applications for re-domiciliation and satisfy themselves that an application is being made in 'good faith' (citing by way of example that the application is not being made to evade creditors). The Panel recommends that the regime does not include any good faith element, consistent with the re-domiciliation regimes in other jurisdictions such as Jersey, Canada, New Zealand, Delaware and the Republic of Ireland. It notes that UK legislation does not expressly require applications for new company incorporations to be made in good faith.

3.8 In its deliberations on this question, the Panel considered that a requirement for Companies House (or another UK authority) to make a determination as to whether an application to re-domicile to the UK was being made in good faith or bad faith would require Companies House first to speculate on the motivations behind an application on the basis of limited evidence and then to express an ethical view on the legitimacy of those motivations. For example, Companies House would be in a position where it would be required in the first instance to ascertain whether an application was being made by a body corporate to enjoy a more favourable legal, regulatory and/or tax regime, before considering whether such a motivation constitutes "good faith" or is a "bad faith" attempt to avoid undesirable requirements that may have been designed to ensure good governance in the departing jurisdiction. This would place a considerable additional burden on Companies House's resources (given that it is not presently mandated, funded or equipped to make such assessments), reduce the efficiency of operation of the regime and increase the risk of judicial review of unsuccessful applications.

3.9 If, notwithstanding the Panel's recommendation, the Government deems it necessary to incorporate a good faith requirement into the new regime, the Panel believes that this should be adopted as a reserve power for the Secretary of State, such that if the Secretary of State considers that a re-domiciliation is being undertaken in 'bad faith', Companies House would be mandated to refuse the application, but would not be required to determine whether each and every application it receives is being made

in good faith. However, this would require applications made to Companies House to be onward-notified to the Secretary of State, and for the relevant Government department to have sufficiently robust resources and policies to make any assessments itself. This would add an additional layer of complexity and administrative burden to operation of the regime. If such a reserve power is adopted, the Panel recommends that guidance be published expressly providing that re-domiciliations motivated by a desire to be governed by the UK's legal, regulatory and/or tax regimes, or to exit the legal, regulatory and/or tax regimes of another jurisdiction, will not be considered bad faith.

National security

3.10 When consulting on the new regime, the then Government also proposed that UK authorities should have discretion to satisfy themselves that an application poses no risks such as to national security. Whilst re-domiciliation regimes such as that in Singapore include a reserve power for the relevant authority to reject applications on public policy grounds, again, it is difficult to see how Companies House would be in a position to assess such risks when determining applications.

3.11 Pursuant to ECCTA 2023 changes to the CA 2006, subscribers are required to confirm on incorporation of new UK companies that they wish to form the company for lawful purposes, and the company itself is required to confirm in its annual confirmation statement that its intended future activities will be lawful (with an offence committed under the CA 2006 where a person delivers a false, deceptive or misleading filing or statement to the Registrar either knowingly or without reasonable excuse). The Panel recommends that applicants for re-domiciliation should be subject to an equivalent requirement to new subscribers when making their application and notes that, after re-domiciliation, re-domiciled companies will be subject to the requirement for annual confirmations in the same way as all other UK companies.

3.12 The Panel considers that a confirmation by the applicant that its intended future activities will be lawful would be adequate protection in addition to existing laws relating to national security, which would apply on an ongoing basis to a successful applicant. Therefore, the Panel's view is that no specific national security assessment should be required for applications to re-domicile to the UK. Indeed it is difficult to see how being incorporated in the UK could in itself undermine national security; it is the actions of a company that will pose a national security risk, regardless of where it is incorporated. There may even be national security benefits to the UK where an overseas body corporate re-domiciles to the UK in that, after re-domiciliation, the company would be brought closer into the UK's legal and regulatory ambit and would be subject to more UK laws, including laws requiring greater transparency than may be required in the applicant's departing jurisdiction.

3.13 If, notwithstanding the Panel's recommendation, the Government believes that a specific national security test is necessary, the Panel recommends that such a power be formulated as a reserve power of the Secretary of State, to be exercised once the application for re-domiciliation has been made but before the re-domiciliation becomes effective. In terms of the operation of this power, the Panel considers that it would be preferable for the regime itself not to include any new national security and/or public interest test (just as there is no such test for new company incorporations), but for applications for inward re-domiciliation to be made subject to the Government's power to call in transactions for national security assessment under the National Security and Investment Act 2021 ("**NSIA 2021**"). This would maintain the simplicity of the re-domiciliation regime for overseas businesses

operating in sectors that are not subject to mandatory filing under NSIA 2021 and are unlikely to be called in under the voluntary regime, while overseas businesses operating in sectors more likely to fall within the scope of NSIA 2021 would be subject to an existing regime with which they may already be familiar. It is noted that this would require amendment to the NSIA 2021 regime and necessitate a 75-105 working day waiting period for clearance before applications for re-domiciliation could be granted. To provide applicants with greater certainty in relation to the use of the power, the Government could publish a list of jurisdictions from which any applicant would definitively be deemed not to present a national security risk. The Panel believes that it would be critical for the power not to be exercisable after the re-domiciliation in question has become effective, because the departing jurisdiction may have de-registered the body corporate from its own registry by the time of any retrospective refusal in the UK, thereby rendering the company registered in no jurisdiction. The risk of such a severe outcome could significantly undermine the attractiveness of the UK regime to overseas applicants.

3.14 The Panel believes that there may be more policy justification for a national security element to the assessment of any outward re-domiciliation by a company already registered in the UK (see paragraph 10.26).

Determining the effective date of the re-domiciliation

3.15 Clarity in relation to the effective date of a re-domiciliation will be important:

(i) so that there can be certainty about the exact date at which the applicant becomes subject to the CA 2006 and any other requirements that apply to UK-incorporated companies; and

(ii) where separate regulatory processes are triggered by the re-domiciliation of an applicant into the UK (e.g. approvals under financial services legislation that are dependent on the jurisdiction of the holding company, or any authorisations required for the applicant to carry on its existing business in the UK), in order to enable applicants to liaise with the relevant regulators to ensure that the relevant approvals/authorisations are effective immediately upon re-domiciliation.

3.16 The Panel therefore recommends that UK legislation does not provide for re-domiciliations to become effective immediately upon Companies House's determination that an application meets the relevant requirements but rather for there to be a process to determine the effective date of the re-domiciliation once it is approved in principle, with the re-domiciliation only becoming effective upon the issue by Companies House of the certificate of re-domiciliation. An applicant will have proposed, as part of its application (see paragraph 2.3), the date on or after which it wishes the re-domiciliation to take effect (taking account of guidance from Companies House) and will be able to change that date, for example to take account of the regulatory process in its departing jurisdiction and any other regulatory consents it needs (see also paragraph 4.6(iv)). Companies House would not issue a certificate of re-domiciliation before this date. The applicant will have a continuing obligation to update information in its application form until the certificate is issued. It may be appropriate to consult further on exactly how timing should work once further progress has been made on the proposed regime. Companies House will need to be closely involved with the design of any proposed system (see Sections 4 and 5 for more information).

3.17 Ideally, the departing jurisdiction would be able to co-ordinate de-registration of the applicant so that the re-domiciliation is deemed to occur on the same date (if not at

the same time) in both the departing jurisdiction and the UK. This would avoid the confusion that could arise from the applicant having a legal existence and personality in two jurisdictions at the same time. Whilst it may not be possible to eradicate this overlap entirely where it is not possible to co-ordinate the exact date of de-registration and re-domiciliation, most applicants will at least want to minimise the duration of any overlap. Allowing the applicant to propose a date on or after which registration in the UK would occur (with the ability to update the proposed date depending on the progress of de-registration in the departing jurisdiction) will help to achieve this. UK legislation should provide that for the purposes of UK law the re-domiciliation is effective from the issuance of the certificate of re-domiciliation in the UK (notwithstanding that the company is not formally de-registered in the departing jurisdiction on the same date).

3.18 The Panel believes it is critical that the re-domiciling applicant maintains a legal existence at all times so that there cannot be a situation where the applicant has been de-registered in the departing jurisdiction before being registered in the UK. In some jurisdictions, the departing jurisdiction authority may refuse to de-register the company until it has evidence from the UK that the re-domiciliation has become effective (i.e. a "chicken and egg" problem). The Panel therefore suggests that the re-domiciliation should proceed and become effective for UK purposes from the date of issuance of the certificate of re-domiciliation even if the re-domiciled company is still also registered in the departing jurisdiction. The Panel sees merit in the position under the re-domiciliation regime in Singapore where, upon being registered as a Singapore company, a document evidencing that the re-domiciling company has been de-registered in its place of incorporation must be submitted to the registrar within 60 days after the date of registration, with failure to provide this document within the specified time period (which may be extended upon application) resulting in revocation of the registration of the company on the Singapore register. The Panel suggests that, if the re-domiciled company does not provide evidence that it has been de-registered in its departing jurisdiction within the relevant time period, Companies House should be able to strike the re-domiciled company off the register. The Panel suggests that it should be an offence to fail to provide evidence within the relevant time period but should not be an offence if that is for a reason beyond the applicant's control.

Absence of conditions subsequent

3.19 The Panel recommends that the Registrar should not be empowered to impose conditions subsequent on a successful application. The re-domiciled company should be subject to an obligation to deliver evidence within a specified period that it has been de-registered in its place of incorporation (see paragraph 3.18).

Unsuccessful applications

3.20 If an applicant is informed by Companies House that its re-domiciliation application has been unsuccessful, the Panel recommends that the applicant have the right to require Companies House to provide the reasons for its decision within a specified time period (under the Jersey regime this is 14 days), following which the applicant will be able to re-apply for re-domiciliation if it is inclined to address the given reasons. In common with other processes overseen by Companies House, the Panel does not envisage there being a need for an appeals process, but of course in an extreme case the decisions of Companies House would be capable of legal challenge in the same manner as other administrative decisions.

4. Section 4 - Inward re-domiciliation: issue of a certificate of re-domiciliation

Contents of certificate

4.1 The Panel recommends that the re-domiciliation certificate should state the following information:

(i) The fact that the applicant has re-domiciled to the UK;

(ii) The effective date of the re-domiciliation (see Section 3 of this Report);

(iii) All of the information set out in a certificate of incorporation under section 15 CA 2006, namely:

(a) the name and registered number of the company following re-domiciliation;

(b) whether limited/unlimited;

(c) whether private or public; and

(d) whether the registered office is in England and Wales (or Wales), Scotland or Northern Ireland.

4.2 The Panel considered whether the re-domiciliation certificate should also set out the previous jurisdictions in which the company has existed, but recommends that this level of detail is not necessary for the re-domiciliation certificate. Instead, it recommends that the application form requires the original date and place of incorporation of the applicant, as well as details of any previous change of place of incorporation and details of any previous change of name. Since the application form will be publicly filed at Companies House, this will enable third parties dealing with the company to make enquiries of the registries in those other jurisdictions where relevant.

Registered number

4.3 A new registered number will be necessary for each re-domiciled company to comply with the registered number conventions in the UK. The Panel recommends that the registered number given to re-domiciled companies should include a prefix to distinguish re-domiciled companies from companies originally incorporated here (e.g. an "R" at the start of the number – "R123456789"). There will be a number of divergences in treatment between re-domiciled companies and companies originally incorporated in the UK, and this convention will allow persons investigating or dealing with the company to be put on notice that it has re-domiciled so that they may, for example, consult the application form relating to the re-domiciliation for further details.

Suggested template

4.4 The Panel has set out a suggested template for the certificate below to guide discussion:

> CERTIFICATE OF INCORPORATION ON RE-DOMICILIATION.
>
> Company Number R[xxxxxxxx].
>
> The Registrar of Companies for [England and Wales] hereby certifies that [COMPANY NAME] [Limited/PLC] has on this day re-domiciled as a [private/public] company and shall from such date be treated as incorporated under the Companies Act 2006, that the company is [limited by shares/unlimited], and the situation of its registered office is in [England and Wales/Wales/Scotland/Northern Ireland].

Publicity for the application form

4.5 The Panel notes that currently Companies House makes public the application form to register a company (IN01). The Panel suggests that the application form described in Section 2 of this Report is filed in the same manner, and publicly available from the effective date. This would effectively address the Companies House filing requirements that might otherwise apply e.g. of directors' appointments which take effect upon re-domiciliation.

Process for issue of certificate

4.6 The Panel envisages that the application process would comprise the following procedural steps, and that guidance would set out how the process might be expected to work:

(i) The applicant makes formal application to the Registrar with the relevant supporting documents/information (as set out in Section 2 of this Report). This would need to specify a proposed effective date (see also Section 2 of this Report) which would be sufficiently far ahead so as to give Companies House enough time to vet and process the application;

(ii) The Panel does not see any need for publicity to be required in the UK at this time (and notes that other jurisdictions also do not require publicity in their own jurisdiction before deciding whether to accept an application to re-domicile). It may well be that that is a requirement of the laws of the departing jurisdiction (e.g. to allow input from any creditors, members or third parties who may consider themselves prejudiced by the application);

(iii) The Panel considers that it would be sensible for guidance to specify timeframes within which Companies House would normally expect to revert with a decision. Companies House might need to respond with questions/requests for clarifications and if Companies House does not consider that an application is complete, it would be able to notify the applicant of the application's shortcomings. The Panel does not think that minimum or maximum timeframes for dealing with an application should be set out in legislation. This is consistent with the approach for incorporating a company in the UK and also takes account of the fact that the time needed to deal with the requirements in the departing jurisdiction and to deal with other regulators, if applicable, may vary considerably.

(iv) If Companies House believes the application meets the criteria the Panel suggests that Companies House would respond with an approval in principle. This would allow the applicant to consider whether it has the relevant confirmations from its departing jurisdiction and from any other regulators or will have them in place on the proposed re-domiciliation date. Companies House would continue to work on the basis of the date notified by the applicant as the earliest date it would want re-domiciliation to take place, unless the applicant notified it of a change to a later date;

(v) There would be a continuing obligation upon an applicant to notify Companies House promptly in the case of any changes in the application form or satisfaction of eligibility requirements. In the absence of such notification, the applicant would be deemed to have confirmed there are no changes. Despite this, Companies House would be permitted (but not required) to seek positive confirmation from the applicant that: (a) all application requirements are satisfied; (b) it wishes to proceed with the re-domiciliation on or after the stated effective date; and (c) there has been no change in the matters specified in the original application;

(vi) Companies House does not at present guarantee that it will take a particular action, e.g. issue a certificate of incorporation, on a particular date. The Panel suggests that the same approach should apply to a re-domiciliation. Whilst, in practice, Companies House would expect to issue a certificate of incorporation on the proposed effective date, this might not be possible, for example if there is an IT failure. The Panel thinks that, provided Companies House does not issue a certificate before all the requirements have been met or before the proposed effective date, this should provide a workable process for bodies corporate wishing to re-domicile. The Registrar would issue the certificate of re-domiciliation after approval in principle has been given and on or after the proposed effective date (assuming there has been no change in the information provided). At this point the re-domiciliation would take effect for the purposes of UK law and the applicant would become a company incorporated under the CA 2006; and

(vii) It may be necessary for the company to liaise with Companies House so that, to the extent that the departing jurisdiction requires the certificate of incorporation on re-domiciliation to be furnished to the departing jurisdiction in order for the outward process from the departing jurisdiction to be completed, this is facilitated.

4.7 As set out in paragraph 3.18, a re-domiciled company would be required to provide evidence of its de-registration in its departing jurisdiction within a specified period.

4.8 Any process would need to be flexible enough to take account of the differing situations of applicants. Some cases may be relatively simple and quick whilst others may be more complicated. It may be appropriate to consult further on exactly how the process should work once further progress has been made on the proposed regime. Companies House will need to be closely involved with the design of any proposed system.

4.9 The Panel considered whether Companies House should be tasked with liaising directly with its counterpart registrar in the departing jurisdiction or whether this should be a matter for the applicant to co-ordinate. The Panel considers that the applicant itself would be best placed to do this, although Companies House may wish

to engage with its counterparts where invited by the applicant or approached directly by the other registry, in order to align timings.

5. Section 5 - The effect of inward re-domiciliation

5.1 The Panel believes that it is important the effect of a re-domiciliation is made clear. Actions taken by an applicant before re-domiciliation will have had to meet the requirements of its departing jurisdiction and the applicant will remain liable for any criminal and/or civil liabilities incurred if it did not meet any relevant requirements of that jurisdiction. The Panel suggests that the legislation should include a confirmation that, as from the effective date of the re-domiciliation (as referred to in paragraph 3.16):

(i) The re-domiciling body corporate will, by virtue, and with effect from the date of the issue of the certificate of re-domiciliation, become a company incorporated under CA 2006, registered in England and Wales (or Wales), Scotland or Northern Ireland (as specified in the certificate of re-domiciliation) and of the type as specified in the certificate of re-domiciliation;

(ii) Any change in the name of the re-domiciling body corporate specified in the application form and the articles of association specified in the application form, in each case which are accepted by the Registrar, will take effect;

(iii) The directors, and if relevant the secretary/secretaries, of the applicant as named in the application form who meet the relevant requirements shall become the directors and secretary/secretaries of the company for UK purposes, and all other appointments shall cease;

(iv) The re-domiciling body corporate shall maintain its legal personality following the re-domiciliation and shall remain the same legal entity. The Panel suggests that the legislation should confirm that:

(a) all property and rights to which the re-domiciling body corporate was entitled immediately before re-domiciliation will remain the property and rights of the company after re-domiciliation;

(b) all criminal and civil liabilities, and all contracts, debts and other obligations, to which the re-domiciling body corporate was subject immediately before re-domiciliation shall continue;

(c) all actions and other legal proceedings which, immediately before re-domiciliation, were pending by or against the re-domiciling body corporate may be continued by or against the company;

(d) any authority granted by the re-domiciling body corporate to represent it or act on its behalf, e.g. by way of a power of attorney or an authority granted by the board which met the requirements of the relevant law shall continue; and

(e) the validity, effect and priority of charges created by the re-domiciling body corporate before re-domiciliation will not be affected by the re-domiciliation (see Section 8 of this Report).

5.2 The issue of the certificate of re-domiciliation should be conclusive evidence of the matters referred to in paragraph 5.1, and of compliance with all the requirements for the re-domiciliation. The Panel suggests including language to the effect that once the certificate is issued it cannot be invalidated even if there is a mistake/inaccuracy in the application documents. The Panel suggests that such inaccuracies are better

dealt with by holding to account the applicant and its directors for having made false statements (see paragraph 2.7).

5.3 The Panel has considered the merits of including language which appears in certain overseas legislation (for example section 3 of the Irish Companies (Miscellaneous Provisions) Act 2009) which attempts to state what effect the re-domiciliation does not have, e.g. certain legislation states that the re-domiciliation will not affect the rights of third parties. The Panel considers this approach less helpful as whatever general language is used may be an oversimplification (e.g. certain third-party rights such as the position of creditors may indeed be affected by the company becoming UK incorporated). The Panel suggests that legislation makes clear the continuance of the legal personality of the entity but does not go further than this with "negative" language.

5.4 An applicant that re-domiciles and becomes a company incorporated by re-domiciliation under CA 2006 will therefore become subject to the provisions in the CA 2006. There will need to be certain changes to the CA 2006 to deal with the particular position of re-domiciled companies (see Section 11 of this Report).

Effectiveness of existing resolutions/authorities

5.5 The Panel has considered the effect of re-domiciliation upon internal company authorisations (board authorities, shareholder authorities etc.) which were obtained before re-domiciliation. For resolutions or authorisations which are "spent" (i.e. the relevant matter authorised by the resolution has been effected before re-domiciliation) the Panel does not consider that any special provision needs to be made.

5.6 Where an authorisation has been given to represent the applicant or act on its behalf, the Panel has suggested that that authority should continue (see paragraph 5.1(iv)(d)) (unless it has been explicitly revoked by the applicant). For certain shareholder resolutions and authorisations, the re-domiciled company will have to consider the requirements of CA 2006 for any action to be taken after re-domiciliation and whether the authority given meets the requirements of CA 2006. As this may not be certain, the Panel believes a re-domiciled company may well want to obtain a new authority to be sure the UK requirements will be met.

5.7 The Panel believes that some applicants will want to be able to pass one or more resolutions before re-domiciliation which are conditional on re-domiciliation. This is so they will meet certain UK law requirements as soon as re-domiciliation occurs. This may be particularly important for public listed companies because calling a general meeting to obtain shareholder approval can be expensive and time-consuming for such companies. If an applicant has to wait until re-domiciliation happens to call a general meeting there is a risk that, once re-domiciled, the company will either be in breach of UK legal requirements and/or be unable to take certain actions until shareholder approval is obtained. The Panel has identified various areas where this is likely to be important. These include authorising directors to allot shares etc (section 549 CA 2006 etc.), disapplying pre-emption rights (section 570 CA 2006 etc.), for a quoted company, approval of a remuneration policy (section 420 CA 2006), authorisation for share buybacks (sections 694 and 701 CA 2006), for traded companies, approval to convene a general meeting on 14 days' notice (section 307A CA 2006), political donations (section 366 CA 2006) and remuneration of auditors (section 492 CA 2006). There may be other examples and so the Panel suggests that legislation should not be limited to specific examples.

5.8 The CA 2006 requires resolutions to be passed either as an ordinary resolution or as a special resolution. The Panel suggests that the definitions of ordinary resolution (in section 282 CA 2006) and special resolution (in section 283 CA 2006) should be amended to make clear exactly what an applicant would need to do for a resolution passed prior to re-domiciliation to be deemed to have been passed as an ordinary resolution (i.e. a resolution passed by a simple majority) or as a special resolution (i.e. passed by a majority of not less than 75%) in such cases, including where the resolutions are passed as written resolutions. The Panel notes that the law of the departing jurisdiction may allow a written resolution to be passed by public companies as well as private companies and that the formalities to be observed to pass a written resolution may be different. The Panel believes that an applicant wishing to pass a resolution prior to re-domiciliation which would be deemed to be an ordinary or special resolution for UK law purposes following re-domiciliation should not be subject to UK procedural requirements e.g. as to how the relevant meeting is called or voting arrangements at that meeting (which will be governed by the law of the departing jurisdiction). However, the Panel suggests that to be deemed to be a special resolution, the notice of meeting would have to include the text of the resolution and specify the intention to propose the resolution as a special resolution. Also, for an authorisation for a share buyback, the Panel suggests that the requirements for members to abstain from voting on resolutions which relate to shares held by them and the requirements to disclose details of a contract or variation should apply (see Section 11 of this Report, comments on sections 690-708 (purchase of own shares)). The Panel believes that offering such an approach will provide more certainty for applicants and make re-domiciliation to the UK more attractive.

Shareholders

5.9 The Panel has considered the position of shareholders of a re-domiciling company immediately before re-domiciliation and of other members of an applicant immediately before re-domiciliation who are not shareholders but will become shareholders of the company upon re-domiciliation. It suggests that:

(i) Where the re-domiciling company would be required to issue certificates if the shares were allotted on re-domiciliation (and one of the exceptions to issuing a certificate does not apply), the re-domiciled company should be required to complete share certificates and have them ready for delivery to those who are shareholders on re-domiciliation. These would replace any certificates in existence before re-domiciliation. The share certificates would comply with the provisions of CA 2006. This would need to be done within a specified time period from the re-domiciliation date (e.g. within two months). (A similar approach should be adopted for cases where certificates have been issued, or would under UK law have been issued, for debentures or debenture stock and an exemption does not apply); and

(ii) If the re-domiciling company had any bearer shares, these would need to be reissued in a registered form on or before re-domiciliation or be cancelled. This is the same process as applied to bearer shares of UK companies pursuant to the Small Business, Enterprise and Employment Act 2015 (section 85) which provided that no share warrants to bearer could be issued after May 2015.

5.10 As noted in paragraph 2.15, the Panel does not believe there should be a requirement to file publicly a complete list of shareholders as part of an application. For companies whose register of members changes frequently this could be too

onerous or impracticable. The re-domiciled company will need to keep details of its shareholders in accordance with the requirements of CA 2006 after re-domiciliation.

Company register obligations

5.11 Company registers showing current information will need to be in place at the point of re-domiciliation. These will need to be prepared by the company and be available for inspection in the same way as for UK companies under the CA 2006, although not currently filed publicly. This will include registers of directors, shareholders, secretaries, PSCs (people with significant control over the company), debentures and encumbrances. Re-domiciled companies will have to prepare an opening position where registers present a snapshot of the correct information as at re-domiciliation but not to recreate registers for the period prior to re-domiciliation (see Section 11 of this Report for more details).

5.12 Once the ECCTA 2023 provisions come into force, certain registers will no longer be required to be kept by companies but rather the information they contain will be available on the Register of Companies. The Panel suggests that re-domiciled companies should be subject to these changes in the same way as other companies.

5.13 Although the Panel does not see a need for companies to recreate records and registers for the period prior to re-domiciliation where none previously existed, there may be a need for UK legislation to impose a requirement to maintain records that exist on the re-domiciliation date (as the departing jurisdiction's law is likely simply to cease to apply to a body corporate from the moment it de-registers). In this case, the Panel suggests that the company is required to maintain books and records that existed on the re-domiciliation date for 10 years after the re-domiciliation date and records and books of matters happening on or after re-domiciliation for the period required by the applicable UK requirements (e.g. under section 355 CA 2006). So, for example, if a company had been required by the laws of its departing jurisdiction to keep records of minutes of shareholder meetings for 20 years, upon re-domiciliation it would be required under UK law keep those records for 10 years from the re-domiciliation date and for minutes of shareholder meetings held after re-domiciliation it would be subject to section 355 CA 2006 in the normal way.

Employees

5.14 The Panel has also considered the position of employees of the re-domiciling body corporate and concluded that, as the re-domiciling body corporate will remain the same legal entity, albeit with a different form and place of incorporation, there should be no change to the status of the employees of the re-domiciling body corporate. The Panel has considered the potential impact of co-determination or other rights applicable to the employees under the legislation of the departing jurisdiction and suggests that UK legislation does not need to make any specific legislative provision in respect of employees, noting that the Panel considers UK law to be flexible enough for the re-domiciling body corporate to take action to accommodate any such rights if appropriate.

Tax, accounting and insolvency

5.15 For tax, accounting and insolvency implications of the re-domiciliation, please refer to Section 6 of this Report (for the tax implications), Section 7 of this Report (for the accounting implications) and Section 8 of this Report (for the insolvency implications).

Universal succession

5.16 The Panel has considered certain UK case law relating to the concept of universal succession:

(i) It has been generally considered that the effect of the decision in *Nokes vs Doncaster Amalgamated Collieries [1940]*[1] is that (despite the provisions for domestic mergers under Part 27 CA 2006) mergers between UK corporate entities are not effective in transferring to the surviving entity any contract containing a restriction on transfer or where the rights under it are otherwise incapable by their nature of transfer. However, the Panel does not consider *Nokes* to present a similar problem in the case of re-domiciliation. Since the re-domiciled company will have the same legal personality before and after re-domiciliation (and this will be made clear in the UK legislation), there will be no "transfer" of contracts or other assets/liabilities. Consideration should be given as to whether this should be put beyond doubt in legislation; and

(ii) The Panel also notes the case of *Metliss v National Bank of Greece and Athens [1957]*[2], which is one of the few judicial authorities to consider the effectiveness of the concept of universal succession under English law. In this case, the courts refused to accept a concept of universal succession as an English law principle, but recognised (as a matter of English law) that a corporate amalgamation occurring in an overseas jurisdiction was effective in passing to the successor company the liabilities under an English law contract, on the basis that the amalgamation had the quality of a universal succession under the laws of the overseas jurisdiction and that the status of the amalgamated company under such laws should be recognised under English law. The Panel sees nothing in this case that would prevent a re-domiciliation from being considered effective so that English law contracts held by the re-domiciling body corporate before the re-domiciliation would continue to be binding on the company after re-domiciliation.

1 [1940] AC 1014

2 [1957] 2 WLR 570

6. Section 6 - Changes that may be required to tax legislation

Introduction

6.1 This Section sets out the key areas of UK tax legislation which may require amendment or new provisions as part of the development of the re-domiciliation framework. This Section covers key UK tax considerations for both inward and outward re-domiciliation.

6.2 In drafting this Section, the Panel has briefly considered tax legislation and practice in a sample of territories that currently have a re-domiciliation regime. Whilst it was possible to discern some limited trends in respect of corporation tax matters, the same cannot be said in respect of indirect taxes, personal taxes and stamp duty as the construct and application of these taxes vary amongst different jurisdictions. The Panel notes that, of the territories that were considered, there tended to be limited tax legislation to address tax issues that may arise for companies re-domiciling into their tax jurisdiction but it was not uncommon for there to be established practice or guidance as to how the tax affairs of companies which re-domicile into a jurisdiction are dealt with on entry into the regime.

6.3 This Section does not address any industry specific tax matters that may arise or any tax policy considerations, which are matters for the Government. The Panel suggests that specific industry tax issues should be addressed as part of the next phase when decisions have been made in respect of the company law aspects of the proposal.

6.4 As set out in Section 5 of this Report, the Panel has recommended that once a body corporate has re-domiciled to the UK, it should become a company incorporated under the CA 2006 (subject to some minor adjustments as explained in Section 11 of this Report). The Panel has also recommended in the earlier Sections that the regime should require that the body corporate provides, within a short period of time after it has been issued with a certificate of re-domiciliation in the UK, evidence that the entity has been de-registered in its original country of incorporation. Likewise, once a company has re-domiciled out of the UK it should cease to be regarded as UK incorporated. These principles inform the approach suggested with respect to how UK tax law should apply to such companies and are the basis on which this Section has been drafted.

6.5 On the basis that a body corporate is treated in the same way as any other company incorporated under CA 2006 once it has re-domiciled to the UK, the Panel would expect that existing UK tax legislation that would apply to a UK incorporated company should automatically apply to a body corporate which has re-domiciled to the UK. However, the Panel's view is that some new tax legislation would likely be desirable to address UK tax issues for such bodies corporate on entry into (or exit from) the UK tax system although that could, in large parts, be achieved by adapting existing legislation and/or HMRC guidance that deals with companies moving their tax residence to the UK (or out of the UK).

General Principles

6.6 To ensure simplicity for businesses and provide as much certainty as possible, the Panel recommends that the Government should ensure that any tax system for re-domiciled companies (i) leverages existing UK tax legislation as far as possible and (ii) does not create a separate tier of tax system for re-domiciled companies.

6.7 The Panel has focussed on the key points that came out of the original consultation but notes that there may be other matters that transpire or become relevant at the time such a regime is introduced. For example, some of the suggestions in this Section may need to be amended to take into account matters such as any new tax legislation on taxation of non-UK domiciled individuals and in particular any legislative changes that arise out of the announcement of 29 July 2024 on “Changes to the taxation of non-UK domiciled individuals”.

6.8 The Panel notes that matters of lesser importance or of an administrative nature under the proposed regime may not require new primary tax legislation and could be addressed in HMRC Guidance, in a Statement of Practice or in Statutory Instruments.

6.9 The comments in this Section span various parts of UK tax legislation and practice. The Panel considers that it would be clearer to introduce a new self-contained part of the Corporation Tax Acts (as defined in section 831(1) of the Income Taxes and Corporation Tax Act 1988 ("**ICTA 1988**")) to address most, if not all, of the required changes to tax legislation in one place, with reference to existing parts of the tax statutes as and where necessary.

Anti-avoidance

6.10 As part of the original consultation, the then Government included the protection of the UK tax base as part of its desired objectives for a re-domiciliation regime. The Panel notes that the UK has a General Anti-Abuse Rule ("**GAAR**") in Part 5 of, and Schedule 43 to, the Finance Act 2013 and there are a number of existing specific anti-avoidance provisions in UK tax legislation to deal with perceived tax avoidance. The Panel would expect that these should apply without modifications to bodies corporate that re-domicile into the UK. Where additional anti-avoidance measures may be desirable to protect the UK tax base for companies that re-domicile into and out of the UK, these have been noted in the specific comments in this Section.

"Company" vs "company" vs "body corporate"

6.11 For consistency within this Report, references to "body corporate" (or "bodies corporate") mean a foreign entity (or foreign entities) which may re-domicile to the UK and references to "company" (or companies) include a former foreign entity (or former foreign entities) that has (or have) actually re-domiciled to the UK and is (or are) regarded as incorporated under CA 2006. The Panel notes that, whilst a UK incorporated company (i.e. a company incorporated under CA 2006) would be regarded as a company for UK tax purposes, this would not necessarily be the case for a body corporate. Therefore, this Section also uses the capitalised term "Company" (or "Companies" where relevant) when referring to a company within the meaning of section 1121 Corporation Tax Act 2010 ("**CTA 2010**") which states that "In the Corporation Tax Acts "company" means any body corporate or unincorporated association, but does not include a partnership, a co-ownership scheme (as defined by section 235A of the Financial Services and Markets Act 2000), a local authority or a local authority association". Section 992 of the Income Taxes Act 2007 has a very similar definition.

6.12 As stated in paragraph 6.11, the Panel recognises that there may be cases, albeit limited, where a body corporate would not, because of its characteristics under foreign law and/or its constitution, be regarded as a Company for UK tax purposes until it has re-domiciled into the UK (and vice-versa on a re-domiciliation out of the UK). In such cases, it would be expected that, for UK tax purposes, this would result in a deemed disposal of assets by members of the body corporate at market value

and an acquisition of these assets by the Company for an issue of shares on re-domiciliation. The result would be that the Company would inherit the assets at market value but that result would not be inconsistent with the principle of market value rebasing set out in paragraphs 6.21 to 6.28.

6.13 To ensure that there is no inconsistency for tax purposes, the Panel would recommend that it is made clear in legislation that the provision of a re-domiciliation certificate has no impact on whether a "body corporate" was a Company during periods up to the effective date of re-domiciliation or as to whether its members had an interest in the assets of the body corporate or in the body corporate itself for the purposes of the UK Tax Acts as defined in section 831(2) ICTA 1988.

Inward re-domiciliation

6.14 As a broad principle, the Panel would not expect that re-domiciliation should, in and of itself, give rise to a UK tax charge on the Company on entry into the UK tax system even though it may have the benefit of its assets revalued to market value (see paragraphs 6.21 to 6.28).

Corporate tax residence

6.15 Under section 14 Corporation Tax Act 2009 ("**CTA 2009**"), a UK incorporated company is treated as UK tax resident for corporation tax purposes and section 18 CTA 2009 addresses treaty tie-breakers for UK incorporated companies that are tax resident in another territory with which the UK has a Double Tax Treaty.

6.16 If, as the Panel recommends in Section 5 of this Report, CA 2006 is amended so that a body corporate becomes incorporated under that Act, it will unlikely be necessary to distinguish between "... a company which is incorporated in the UK …" (i.e. companies that incorporated for the first time in the UK) and companies which are deemed to be incorporated in the UK by virtue of having re-domiciled to the UK in section 14 CTA 2009. However, as corporate tax residence is not solely determined by virtue of incorporation in the UK, there could be various permutations of tax residence for a body corporate that re-domiciles to the UK. For example, the body corporate might already be regarded as a UK tax resident Company or might not become UK tax resident following the application of tie-breaker provisions under Double Tax Treaties.

6.17 The Panel considers that a simple approach would be to treat a body corporate that has re-domiciled to the UK as UK tax resident from the date that Companies House issues a certificate of re-domiciliation subject to addressing the question of dual residence under section 18 CTA 2009 (treaty tie-breaker provisions). This approach would be consistent for UK incorporated companies which are managed and controlled in a different jurisdiction. There is also precedence for what might be required to be drafted in respect of Societas Europaea in section 16 CTA 2009.

6.18 The Panel recognises that there may be unusual permutations in relation to the question of tax residence (e.g. Companies that are dual resident) but that it would be impractical for legislation to cater for all scenarios and such scenarios might therefore be best addressed in HMRC Guidance and/or amending Statement of Practice 1/90 (or in a new Statement of Practice). In many cases of treaty tie-breakers, it would be expected that the competent authorities of the two jurisdictions would have to endeavour to agree the tax residence of a Company as Double Tax Treaties are increasingly incorporating the tax residence tie-breaker provisions under the Multilateral Convention to implement Tax Treaty Related Measures to Prevent Base

Erosion and Profit Shifting and that should provide certainty on tax residence that businesses might expect.

6.19 The Panel notes that there will be some practical difficulties in determining when UK tax residence starts; for example, where the date on which a body corporate ceases to be tax resident in the departing jurisdiction does not accord with the date on which Companies House issues a certificate of re-domiciliation. The Panel considers that such matters together with other issues as to the process for addressing dual residence and treaty tie-breakers are best addressed in HMRC Guidance and/or in a Statement of Practice. The Panel considers that the UK double tax relief rules are sufficiently clear on the availability of relief (as applicable) against foreign taxes suffered during any period of dual tax residence.

6.20 In relation to the OECD Proposal for Global Minimum Taxes ("**Pillar Two taxes**"), the Panel considers that the rules for determining location for Pillar Two purposes for a body corporate that re-domiciles to the UK should follow the OECD Model rules, as implemented under the UK Multinational Top-Up Tax rules in Parts 3 and 4 of Finance (No.2) Act 2023. Both the UK and the OECD Model Pillar Two rules provide that an entity changing location during a period is treated as remaining located for the purposes of the Pillar Two taxes in the jurisdiction where it began the period and would therefore become located in the UK for these purposes at the beginning of the next period. The Panel does not see any compelling reasons why there should be changes required to the UK Pillar Two taxes rules in re-domiciliation cases.

Base cost of assets following re-domiciliation to the UK

6.21 For a Company migrating its tax residence to the UK, there are various provisions that determine the tax base cost of assets at the point of entry into the UK corporation tax system. In certain circumstances, the tax base cost is determined by reference to the market value of the asset at the point where the Company becomes UK tax resident, whereas, for other assets, the tax base cost is determined by reference to the historic cost of the asset recognised for accounting purposes.

6.22 The Panel understands that it is not uncommon for territories with a corporate re-domiciliation regime to allow the tax base cost of a Company's assets to be revalued to their market value at the point of entry into their tax system (with an exit charge levied on companies re-domiciling out of their territories on any gains based on the market value of assets at the point of exit). Such an approach is deemed to be fair from an economic point of view because taxation would be based on the profits and gains that accrue on the relevant assets whilst the Company is resident in that territory. An alternative school of thought suggests that a market value uplift should only be allowed where the Company has suffered an exit charge based on the market value of its assets in the territory it is emigrating from.

6.23 The UK corporation tax system taxes profits and gains arising on assets on exit from the UK tax system. For simplicity and consistency, the Panel would suggest that there is a common approach for the tax base cost of assets to be revalued to market value for a body corporate re-domiciling into the UK where the assets are being brought into the charge to UK tax on re-domiciliation.

6.24 The Panel notes therefore that the following parts of UK tax legislation would need to be amended to address or clarify the tax basis of assets:

1. Capital gain assets - section 38 Taxation of Chargeable Gains Act 1992 ("**TCGA 1992**");

2. Intangible fixed assets - section 863 CTA 2009;

3. Stock - section 160 CTA 2009; and

4. Capital allowances - section 13 Capital Allowances Act 2001 ("**CAA 2001**").

6.25 The Panel comments specifically on the area of loan relationships and derivatives as that is an area of complexity. The taxation of loan relationships generally follows the accounting treatment (under either UK GAAP or IFRS) with special rules applying for connected party loan relationships. When a Company migrates its tax residence to the UK, loan relationship assets and liabilities are brought into the UK corporation tax net at their accounting value (calculated by reference to either UK GAAP or IFRS, even where the Company does not prepare accounts) with specific rules disallowing losses referable to periods where the loan relationship was not subject to UK corporation tax. Where a Company migrates its tax residence out of the UK, it is subject to an exit charge in respect of its loan relationships whereby it is treated as if it had disposed of all its loan relationships at their fair value immediately before ceasing to be UK resident, and immediately reacquired them at the same value.

6.26 The taxation of derivatives is covered by the derivative contract rules in Part 7 CTA 2009. The general principle is that, as long as the derivative contract has been accounted for under GAAP (i.e., FRS 102 or IFRS 9), the gains and losses flowing through the Company's profit and loss account will be taxed or relieved (with any movements recognised in other comprehensive income generally being ignored). Where a Company migrates its tax residence out of the UK, the Company is deemed to have assigned the derivative contracts it holds at the time of migration at fair value and debits or credits arise under Part 7 CTA 2009 accordingly.

6.27 The Panel considered whether loan relationships and derivatives should be brought in at their carrying value on the day of re-domiciliation but that approach has some complexities as not all bodies corporate re-domiciling into the UK would necessarily file accounts at Companies House under UK GAAP or IFRS. In addition, an approach which requires different treatments for different classes of assets would increase complexity. To maintain consistency with the proposal for market value rebasing in respect of other assets on entry into the UK tax regime, the Panel suggests that both loan relationships and derivatives should be also brought into the UK tax regime at their market value when a body corporate re-domiciles into the UK and becomes UK tax resident. This would ensure that any losses on loan relationships and derivatives that have accrued outside the UK are not imported into the UK (and likewise profits and gains pre-re-domiciliation remain outside the UK tax net). The Panel recognises that adjustments will be required to be made to UK tax computations which in certain cases might be complex, but such complexity should not be a major disincentive to re-domiciliation and could arise in other circumstances.

6.28 To the extent that such measures are adopted, UK tax legislation should, in the Panel's view, be consistent as to the tax treatment of Companies that simply migrate their tax residence to the UK and bodies corporate that re-domicile to the UK.

Controlled Foreign Companies

6.29 The Panel would recommend that the legislation sets out clearly that a body corporate re-domiciling to the UK (or where relevant, the members of the body corporate if the entity is deemed to be fiscally transparent for UK tax purposes) would be deemed to have disposed all of its (or their) assets at market value on entry into the UK tax system for the purposes of the UK Controlled Foreign Companies ("**CFC**") rules in Part 9A Taxation (International and Other Provisions) Act 2010 ("**TIOPA**

2010"). The Panel notes that profits on the revaluation of the assets to market value in the body corporate that was previously a CFC may become taxable in the UK subject to any existing CFC exemptions that are already available. A similar additional provision would likely be necessary for gains attributed to UK taxable persons under sections 3 to 3F TCGA 1992, subject to any existing reliefs that are already available.

6.30 Given the complexity of the CFC legislation, the Panel notes that bodies corporate that re-domicile to the UK might wish to have clarity that income from funds generated from trading activities outside the UK are not brought into a charge to UK tax under the CFC regime where there are no UK significant activities. The Panel would therefore suggest amending the CFC legislation in section 371EC TIOPA 2010 (together with relevant HMRC Guidance) to clarify that funds deriving from profits from trading activities carried on outside the UK in non-UK subsidiaries or in exempt non-UK branches of a Company are not treated as relevant UK funds.

Loss importation

6.31 The Panel has recommended in Sections 1 and 2 of this Report that bodies corporate that re-domicile to the UK should be solvent and produce a solvency statement and accordingly the Panel does not think it is necessary to comment on changes that might be required to address any tax matters for an insolvent body corporate (or associated risks of loss importation in such cases).

6.32 Under current tax legislation, relief is not available to a Company for its losses arising prior to it becoming UK tax resident and there are some existing UK tax provisions or guidance that address losses in respect of assets that were not subject to UK taxation. For example:

(i) section 327 CTA 2009 ensures that a loss arising on a loan relationship which is wholly or partly referable to a time when it was not subject to UK taxation is disallowed;

(ii) HMRC Manuals on "Inward Migration" state in CTM34070 that:

"The [Company] may claim that the deemed commencement under CTA09/S41 (2)(a) entitles the [Company] to relief for pre-trading expenditure under CTA09/S61."

6.33 The Panel considers that a specific provision that sets out that no relief would be available for any expenses or losses that arose prior to re-domiciliation and pre-UK tax residence (except where the body corporate is already regarded as a UK tax resident Company) is desirable as it would help manage any perceived concerns around anti-avoidance.

6.34 As part of Panel discussions, there were concerns that the re-domiciliation process might allow a non-UK tax resident body corporate that is anticipating to be loss-making in respect of its non-UK trades to re-domicile to the UK, become UK-tax resident and surrender its post re-domiciliation trading losses as group relief to shelter taxable profits in other Companies in the same UK tax group. Whilst there is some existing tax legislation that prevents the use of such losses in two territories, that legislation may not be sufficient to cater for such a risk of importing losses into the UK. The Panel considers that one way of mitigating this risk would be to introduce a period of time following re-domiciliation during which post re-domiciliation losses in respect of a non-UK trade may not be surrendered as group relief to any other Companies in the same UK tax group. The Panel notes that the period of time

would need to be limited such that bodies corporate are not penalised where they have re-domiciled to the UK and incur unexpected losses in later years after they have been profitable in the UK.

6.35 The Panel considers that it is unnecessary to include any further anti-avoidance provisions once a body corporate has re-domiciled to the UK and become a UK tax resident Company as the basic premise set out in paragraph 6.5 is that all the existing UK tax laws (including any specific existing anti-avoidance provisions) should apply to it. In addition, any such provisions would end up creating, in part, a separate tax regime for re-domiciled companies as compared to Companies that simply migrate their tax residence to the UK or those which are incorporated from inception in the UK. For instance, the unallowable purpose provisions in sections 441 and 442 CTA 2009 in respect of loan relationships would allow HMRC to examine the purpose of any loans in Companies that re-domicile to the UK. This would include whether to disallow the interest expense if, for example, one of the main purposes of any such loan becomes to claim an interest deduction to shelter existing UK taxable profits. The Panel considers that any further concerns around anti-avoidance could be addressed in HMRC Guidance.

Foreign branch exemption election

6.36 The Panel notes that a Company that is dual resident is not entitled to branch exemption in respect of profits arising from business activities in a foreign territory in which it is treated as resident under the terms of a treaty for as long as it remains a dual resident of that territory and the UK.

6.37 As stated in paragraph 6.18, there is the possibility that a body corporate that re-domiciles to the UK becomes a dual resident Company because it retains some activities in its territory locally. The Panel considers that the legislation should not require changes, as the position as to whether the Company is UK tax resident with a permanent establishment in its source jurisdiction as opposed to a dual resident Company should be clear under current UK law.

Withholding taxes

6.38 Section 874 Income Tax Act 2007 ("**ITA 2007**") deals with withholding tax on cross border payments of yearly interest and section 898 ITA 2007 deals with certain annual payments (including royalties) where the payments arise in the UK. Withholding tax applies to such payments where they have a UK source and there are established case law principles and HMRC Guidance as to how to determine UK source.

6.39 In this respect, it would be helpful if the relevant HMRC Guidance notes that re-domiciliation in and of itself should not mean that the source of a cross-border payment changes to the UK.

Other matters

6.40 The Panel recommends that a Unique Taxpayer Reference should be issued after a certificate of incorporation on re-domiciliation of a body corporate is issued by Companies House, unless it already has a Unique Taxpayer Reference, or is deemed not to be UK tax resident and is not otherwise within the charge to UK tax by virtue of a treaty tie-breaker. In addition, the Panel considers that HMRC should issue guidance as to how they would confirm UK tax residence (e.g. issue certificates of UK tax residence) to assist the body corporate that has re-domiciled to the UK in closing its tax affairs in the departing jurisdiction.

6.41 Based on the commentary in earlier Sections, it is expected that a body corporate that has re-domiciled to the UK would be treated as a company with issued share capital in the same way as a UK incorporated company. In addition, it has been assumed that the same capital maintenance and distribution rules would apply. The Panel does not therefore consider that any additional tax legislation would be required to address matters such as:

(i) whether a body corporate that has re-domiciled to the UK would be treated as having ordinary share capital as defined in section 1119 CTA 2010;

(ii) whether the disposal of shares in a body corporate that has re-domiciled to the UK by a UK tax resident Company would be deemed to be a disposal of shares for the purposes of the substantial shareholding exemption in Schedule 7AC, TCGA 1992 ("**SSE**");

(iii) whether any additional provision would be required to distinguish whether distributions post re-domiciliation constitute a capital gains disposal or a distribution under section 1000 CTA 2010.

6.42 The Panel would expect that the existing rules regarding the start and end of an accounting period for UK corporation tax purposes as are currently applicable to UK incorporated companies (or Companies that migrate to the UK) would also apply to a body corporate that has re-domiciled to the UK and therefore the proposals regarding accounting reference dates in Section 7 of this Report should not require further tax legislation.

6.43 Likewise, the Panel would expect that a body corporate that has re-domiciled to the UK would have to prepare its UK tax computations under existing rules which require that UK taxable profits be computed by reference to UK GAAP or International Accounting Standards ("**IAS**"). Therefore, to the extent necessary, the Panel notes that Companies may need to prepare separate management accounts for the purposes of preparing and filing UK corporation tax returns. It is beyond the scope of the Panel to analyse items which may give rise to adjustments due to GAAP differences and the Panel recognises that they may have a tax impact. The Panel notes there is precedent at https://www.gov.uk/government/publications/accounting-standards-the-uk-tax-implications-of-new-uk-gaap as to how transitional adjustments should be addressed for tax purposes and such an approach could be replicated or leveraged here.

6.44 The Panel recommends that legislation or HMRC guidance makes it clear that there should be no disposal of the interests in a body corporate which is regarded as opaque for UK tax purposes but is not treated as having issued share capital before it re-domiciles. This is relevant where these interests are held directly or indirectly by UK taxable persons as it could give rise to unintended disposal events. Without further clarity, it is possible that the UK members of the body corporate would be seen as having disposed of their interests in the body corporate and acquired new issued share capital in the Company. In such cases, the Panel recommends that it should be made clear that there is no disposal (or deemed disposal) of the existing interests in the body corporate for UK capital gains/chargeable gains purposes, albeit that any holding period in respect of newly issued share capital for the purposes of any UK tax relief (such as SSE) may only be counted from the date of re-domiciliation.

Outward re-domiciliation

Corporate tax residence

6.45 The Panel considers that an approach should be adopted which corresponds with the approach for inward re-domiciliation. With that in mind, the Panel considers that a Company re-domiciling out of the UK should be treated as ceasing to be UK tax resident from the date of re-domiciliation out of the UK (i.e. when it ceases to be registered in the UK) subject to addressing the question of whether it remains UK tax resident under UK case law principles (e.g. if its central management and control remains in the UK) and addressing any question of dual residence under section 18 CTA 2009 (treaty tie-breaker provisions) as relevant.

6.46 The Panel notes that there will likely be similar practical difficulties (see paragraph 6.19) in terms of timing as to when a company ceases to be recognised under CA 2006 and when it becomes registered in a foreign jurisdiction. To address such issues, the Panel suggests that some flexibility would be useful as to when a Company ceases to be UK tax resident and this may be easier to address by way of HMRC Guidance or a Statement of Practice to align, as far as possible, the position on UK tax residence to the suggested new provisions in CA 2006.

6.47 Similarly, a Company that re-domiciles out of the UK may not take a form that is recognised as a Company for UK tax purposes and the suggestion in paragraph 6.12 should also work in reverse.

Exit taxation

6.48 Under section 185 TCGA 1992, a Company ceasing to be UK tax resident is deemed to have disposed of all its capital assets and immediately reacquired them at their market value at that time. There are other similar rules for other assets in other parts of UK tax legislation.

6.49 In order to ensure consistency with the market value rebasing suggestions made in paragraphs 6.21 to 6.28, the Panel considers that there should be an exit charge applied (subject to existing reliefs and exemptions like the foreign branch exemption regime or SSE) on the assets of a Company that re-domiciles out of the UK and which ceases to be UK-tax resident as a result. Naturally, as is the case under the existing regime, such an exit charge should not apply if it continues to remain UK tax resident or to the extent that it retains assets that remain subject to UK corporation tax. There is precedent for such legislation, for example, in UK tax legislation dealing with capital gains assets and intangibles.

Administrative matters

6.50 Under section 109B Taxes Management Act 1970 (**TMA 1970**), a Company that ceases to be UK tax resident must make arrangements with HMRC to settle all tax liabilities arising prior to migration and there is existing guidance on how HMRC approaches outward migration. The Panel recommends that the same rules should apply for Companies ceasing to be UK tax resident as a result of re-domiciling out of the UK and that similarly HMRC should set out guidance on outward re-domiciliation.

Personal taxation

6.51 As noted in paragraph 6.7, the policy with respect to the tax regime for non-UK domiciled individuals is subject to change and therefore some of the comments that follow in respect of personal and inheritance taxation would need to be revisited and

amended to take into account any legislative changes. At the time of drafting this Report, the Panel considers that the following matters would need to be considered in establishing what parts of UK tax legislation might require amendments.

6.52 The Panel has considered to what extent a re-domiciliation of a body corporate to the UK would be regarded as a remittance for non-UK domiciled individuals who are/have previously been taxed on the remittance basis. If the shares of the body corporate include unremitted gains and/or income and it was treated as a remittance, the Panel would recommend that policymakers consider to what extent it would be possible to amend tax legislation to allow a claim to be made for business investment relief. The Panel considers that this could be achieved by amending the definition of "qualifying investment" in section 809VC ITA 2007 to include the transformation of shares from foreign situs to UK situs.

6.53 The Panel considers that legislation is likely to be required to ensure that latent capital gains inherent in shares are not removed from the charge to capital gains tax by a Company re-domiciling out of the UK by persons taxed on the remittance basis under the current non-domiciled rules or proposed new legislation concerning the taxation of foreign income and gains ("**FIG**") regime.

6.54 The Panel also suggests that policymakers consider whether a rule could be introduced for re-domiciled companies such that there is a rebasing for calculating the quantum of the capital gain which is deemed to be UK situs and non-UK situs for individuals taxed on the remittance basis under the current non-domiciled rules or the new FIG regime.

6.55 Finally, the Panel would suggest that a targeted anti-avoidance rule might be required for situations where a re-domiciliation out of the UK is followed by a dividend payment which would otherwise fall to be taxed on the remittance basis (under the current non-domiciled rules) or is not taxable under the proposed new FIG regime.

Inheritance taxation

6.56 The re-domiciliation of a body corporate to the UK would result in its shares and securities being treated as UK situs assets for the purposes of inheritance tax. Under current rules, this would be charged on individuals regardless of their residence/domicile status. Whilst this would maintain consistency with the position for UK incorporated companies, it could act as a significant disincentive for certain foreign entities to make use of the re-domiciliation regime. The Panel is of the view therefore that it may be necessary to ensure there is some form of relief (for example, the value of the shares or securities at the time of re-domiciling to the UK is excluded from inheritance tax calculations for non-UK resident/non-UK domiciled individuals).

6.57 The re-domiciliation of a company out of the UK would result in the shares and securities issued by the company being treated as non-UK situs assets for the purposes of inheritance tax. This could have significant benefits for non-UK domiciled individuals or individuals who are not subject to UK tax on their non-UK situs assets under the proposed residence-based regime. The Panel would therefore recommend that consideration should be given as to whether there is some form of charge calculated on the fair market value of the shares or securities in the company at the time of re-domiciling out of the UK. However, it would need to be considered to what extent this charge should be postponed until a future chargeable event for Inheritance Tax purposes (death of the owner/ settlement into trust).

Stamp duty/Stamp Duty Reserve Tax ("SDRT")

6.58 The Panel considers that transfer of shares in a body corporate that has re-domiciled to the UK would be subject to UK stamp duty/SDRT on the basis that it will be treated in all respects as a UK incorporated company. Otherwise, a 'two tier tax system' will be created which could open the UK system to potential abuse and avoidance.

6.59 A question arises as to whether there is any kind of disincentive for re-domiciling bodies corporate which are listed on foreign stock exchanges and whether they should be exempt from UK stamp duty/SDRT. The Panel notes that where the shares of a UK incorporated company are traded on a foreign stock exchange, they are generally traded through a clearance or depositary system and the trade of interests in those systems is exempt from stamp taxes. Furthermore, the issue of shares to such systems is also not within the scope of stamp taxes. Therefore, assuming that the shares continue to be held in the same form, the Panel does not see a major disincentive for the UK re-domiciliation of a body corporate listed on a foreign stock exchange. Furthermore, the actual event of re-domiciliation should not itself cause a stamp duty or SDRT charge provided there is no transfer of shares (e.g. the mechanics of the re-domiciliation does not involve a change in the owner of the shares).

6.60 The definition of chargeable securities for SDRT purposes currently includes shares of a UK incorporated company and a non-UK incorporated company that holds its register of shareholders in the UK (or where those shares are paired with shares issued by a UK incorporated company). Where a body corporate which has re-domiciled to the UK is treated in all respects (including for the purposes of Finance Act 1986) as though it had been incorporated in the UK, its shares should become chargeable securities. Likewise, where a company which has re-domiciled out of the UK is treated in all respects as a non-UK incorporated company, its shares should cease to be chargeable securities. The Panel recommends that the definition of chargeable securities should be carefully considered to ensure that shares of bodies corporate re-domiciling to the UK are treated as chargeable securities following entry, and to exclude shares of outward re-domiciling companies following exit.

6.61 In respect of re-domiciliation out of the UK, the Panel anticipates that the company will fall out of the charge to SDRT so that there is proper symmetry in the tax system. Consequently, a targeted anti-avoidance rule may be needed to counteract circumstances where a company is re-domiciled out of the UK shortly prior to an onward sale in order to avoid SDRT/stamp duty on such a sale or in circumstances where a company re-domiciles out of the UK and then back again within a short (e.g. 12 months) period of time.

6.62 The Panel notes the following comments from Freshfields Bruckhaus Deringer LLP in an article published in December 2021:

'*Foreign incorporated entities must list in the UK through a Depositary Interest (DI) structure. One assumes the plan is that following a re-domicile to the UK the entity's shares will be capable of a direct listing. DIs are subject to their own SDRT regime: DIs in respect of "foreign securities" are not chargeable securities for SDRT purposes (the need for this rule is based on the premise that the DI would otherwise be subject to UK SDRT on the basis that it is a security which itself is issued/registered in the UK). The definition of "foreign securities" for these purposes is a rare case of tax residency being relevant to SDRT treatment: the securities are not foreign if the entity is incorporated in the UK, the shares are registered in the UK, or the company's CMC is exercised in the UK. Unless a policy decision is made to take the shares of re-*

domiciled companies out of SDRT, one would expect that re-domiciling to the UK would result in the shares then becoming chargeable securities for SDRT purposes, and any existing DIs also becoming chargeable securities for SDRT purposes. Any policy decisions in this area would need to take account of the DI regulations inclusion of residency as a factor in determining taxability.'

6.63 Where a UK listing is preferred, the Panel notes there would be a commercial disadvantage of bodies corporate re-domiciling to the UK as the shares would no longer be exempt from SDRT but equally notes that a special rule for companies originally not incorporated in the UK would create a different regime.

6.64 It is worth highlighting that in respect of shares, SDRT chargeability will be relevant both to the 0.5% SDRT charge on transfers, but also to the 1.5% SDRT regime in respect of clearance services and depositary receipts services (the scope and future of which has been the subject of recent legislative changes and clarification following historic EU case law and then uncertainty following Brexit).

SDLT and non-UK real estate transfer taxes

6.65 The Panel considers that the legislation should make it clear that existing corporate group relationships for UK stamp purposes are maintained throughout and so do not trigger unexpected tax charges (e.g. clawbacks of reliefs claimed which are dependent on group relationships being maintained for a period of time) nor create deemed transfers of the relevant company's shares as this could trigger foreign tax charges (e.g. a charge to German real-estate transfer tax in respect of a company holding German real estate).

Value Added Taxes

6.66 The Panel notes that the existing UK VAT legislation provides a framework for the application of VAT to a body corporate that re-domiciles to the UK. Section 9 of the Value Added Tax Act 1994, which contains rules for determining whether a business is located in the UK for VAT purposes, includes reference to "business establishment" which is the seat from which it is run. Re-domiciliation to the UK would therefore create a VAT establishment in the UK and existing UK VAT legislation and guidance should apply to the body corporate that has re-domiciled to the UK. Likewise, the reverse would happen when a UK incorporated company re-domiciles out of the UK.

6.67 The Panel does not anticipate that VAT rules applicable to transactions in physical goods will be impacted by the re-domiciliation of a body corporate. These rules are determined by the location and physical movements of the goods, rather than the incorporation position of the company. However, the Panel notes that the application of UK VAT to services is determined by reference to the location of the supplier and the customer and that determination of location can include reference to where a company is incorporated. The Panel considers that existing UK VAT legislation should be sufficient to address these matters.

6.68 The Panel is of the view that existing UK VAT rules to determine the application of VAT and the point in time at which that VAT becomes due should provide a framework for applying VAT to transactions that the body corporate has entered into when it transitions from being domiciled outside the UK to being domiciled in the UK. It is difficult for the Panel to assess all potential transaction permutations, however, at this stage, the Panel is of the view that no specific legislation change would be required.

6.69 The Panel recommends that additional legislation be considered in order to implement VAT "entry" charges into the UK (noting that any such legislation would have to be subject to time limits). The re-domiciliation of a body corporate to the UK could provide an incentive for businesses that do not have a right to VAT recovery due to the nature of their trade to achieve a tax advantage. For example, a body corporate could purchase services that would be subject to VAT if purchased by a UK incorporated company in a non-UK location where there is no VAT regime or a regime with lower VAT rates than the UK during periods of high investment, and then re-domicile to the UK. This could effectively reduce the VAT cost for that business in comparison to a business established in the UK throughout the period. This could be relevant where, for example, the ongoing business requires a UK incorporated entity in order to meet wider regulatory requirements. However, the Panel is of the view that it is difficult to assess the potential impact of this and it could also be accepted as a logical outcome of existing VAT legislation in the UK rather than an outcome requiring additional legislative change.

6.70 The Panel expects that existing VAT legislation regarding registration and compliance requirements, and rules to determine the VAT liability of supplies, can accommodate the re-domiciliation of a body corporate to the UK. There may be differences in the application of VAT to companies incorporated outside the UK and those incorporated in the UK, for example the VAT registration threshold, however the Panel is of the view that the existing legislative framework can accommodate the re-domiciliation of a body corporate to the UK.

Customs/Excise taxes

6.71 As the application of customs duties and excise taxes is determined by the physical location of goods rather than the place of incorporation of the company owning those goods, the Panel is of the view that existing UK legislation and guidance should be sufficient to accommodate the re-domiciliation of a body corporate.

6.72 Existing legislation regarding registration for customs duties and excise taxes may create different rights and obligations for a UK incorporated company when compared to a non-UK incorporated body corporate, however, there does not appear to be any substantial gap in the legislation that would require any specific provisions. Additional guidance might be sufficient to clarify any perceived gaps.

7. Section 7 - Changes for accounting purposes and distributions

7.1 As a guiding principle, the Panel recommends that bodies corporate be required to follow the requirements of CA 2006 in relation to accounting matters once they have re-domiciled to the UK. The Panel has however noted certain areas of CA 2006 that require further consideration in the light of re-domiciling entities. These areas are set out below. The Panel has also recommended the inclusion of certain accounting information in the application form where previously disclosed (see paragraphs 2.3(xviii) and 2.16).

Accounting reference date and accounting reference period

7.2 The Panel recommends that bodies corporate be required to follow the provisions of CA 2006 in determining the accounting reference period and accounting reference date at the point of re-domiciliation, as well as in respect of any subsequent changes after re-domiciliation, with the adaptations noted below.

Accounting reference date

7.3 The Panel notes that the Societas Europaea ("**SE**") regime proposed that SEs transferring their registered office to the UK would have an accounting reference date set by Companies House based on:

(i) The anniversary of the last balance sheet date before the date of registration of the transfer under the law of the departing jurisdiction;

(ii) If no balance sheet had been required to be drawn up under the laws of its departing jurisdiction, the anniversary of the last day in the month in which the SE was first registered.

For the purposes of the regulations relating to SEs "the last balance sheet date" was the date as at which the balance sheet of a transferring SE was required to be drawn up under the provisions of the law of the member state in which it had its registered office, where the balance sheet was the last one required to be drawn up before the registration of the transfer in Great Britain.

7.4 The Panel notes that the SE regime applied to bodies corporate within the EU regime but that the new re-domiciliation regime could apply to bodies corporate which may not have legal obligations to produce the same level of financial disclosures.

7.5 The Panel recommends that bodies corporate be allowed to change the accounting reference date should they wish to do so at the point of re-domiciliation by including this in their application form, subject to some restrictions. The Panel also recommends the following with respect to the accounting reference date:

(i) Bodies corporate which are required to draw up a balance sheet under the law of their departing jurisdiction should be permitted to retain their existing accounting reference date or to change it. A company's accounting reference date following re-domiciliation should be the date stated in its application form; and

(ii) Bodies corporate other than those in (i) above should be required to use an accounting reference date falling on the last day of the month in which the anniversary of its re-domiciliation falls, which aligns to the approach taken under the SE regime. Alternatively, a body corporate could nominate a different accounting reference date on its application form.

For both (i) and (ii) bodies corporate will need to nominate in the application form whether the first accounting reference period is a short or long period (but no longer than 18 months).

In any event, a change to the accounting reference date could be made post re-domiciliation under section 392 CA 2006, once the body corporate is a UK company.

Accounting reference period (first and subsequent periods)

7.6 The Panel recommends the following in line with section 391 CA 2006:

(i) For bodies corporate that were required to draw up a balance sheet under the law of the departing jurisdiction:

(a) the Panel suggests that the first accounting reference period as a UK company would be the period of more than 6 months but not more than 18 months beginning with the date at which its last balance sheet was required to be drawn up before the date of re-domiciliation under the law of the departing jurisdiction and ending with its accounting reference date. The first accounting reference period should be required to end after the date of re-domiciliation. This means that the first accounting reference period for such a company may straddle the date of re-domiciliation and the accounts relating to this period would be prepared to CA 2006 standards, even where part of that accounting reference period occurred before the company became a UK company; and

(b) the Panel suggests that its subsequent accounting reference periods should be successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(ii) For bodies corporate that were not required to draw up a balance sheet under the law of the departing jurisdiction:

(a) the Panel suggests that the first accounting reference period as a UK company should be the period of more than 6 months, but not more than 18 months, beginning with its date of re-domiciliation and ending with its accounting reference date; and

(b) the Panel suggests that its subsequent accounting reference periods should be successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(iii) The Panel also discussed a scenario where a body corporate was not required to prepare accounts under the law of the departing jurisdiction but chose to do so. The Panel is of the view that such a company should be treated in the same way as a body corporate that was not required to draw up a balance sheet, on the basis that it may not be clear to what standard such accounts were voluntarily prepared. If such a body corporate had not at the date of re-domiciliation prepared or published its accounts in respect of its most recent accounting period, the Panel suggests that it should be permitted (but not required) to file accounts for that period at Companies House, provided that such accounts are prepared to CA 2006 requirements.

However, any such voluntary filing of accounts should not make this period the first accounting reference period.

7.7 The Panel also considered the scenario where a body corporate has historically been required to prepare and publish accounts, but at the time of its re-domiciliation it has not yet prepared and/or published accounts for its most recent complete accounting period (e.g., because the deadline for publication falls after the date of re-domiciliation and accordingly the obligation under the law of the departing jurisdiction no longer applies). In these circumstances, neither the law of the departing jurisdiction nor the UK requirements would require accounts to be published for that accounting period, and accordingly there could be a gap in the published financial information. The Panel considered whether any requirements should apply in such a case and recommends that the Government considers this issue in further detail. The main options would be:

(i) Requiring accounts to be drawn up to meet the CA 2006 requirements for that period and filed at Companies House within a certain period following re-domiciliation, if the requirement of the departing jurisdiction has not been satisfied;

(ii) Requiring accounts to be drawn up for that period but giving the company a choice as to whether these are prepared and published in accordance with the requirements of the departing jurisdiction or the UK (and in the former case, it would need to be determined how this information should be made available in the UK);

(iii) Not requiring anything to be drawn up for that period. This would be consistent with the approach taken for companies which were not, immediately before re-domiciliation, required to prepare or publish accounts; or

(iv) Make the ability to choose to change an accounting reference date (as described in paragraph 7.6(i)) conditional upon meeting the requirements in respect of the departing jurisdiction for publishing its accounts for that period. This would reduce the duration of any potential gap in accounting information but may not eradicate it.

The Panel noted that even if such accounts are drawn up under CA 2006 requirements, the accounting reference period ending before the date of re-domiciliation should not be treated as the first accounting reference period.

7.8 The Panel also notes that a body corporate may re-domicile into the UK part way through its first accounting reference period, from a departing jurisdiction where it was required to draw up a balance sheet. Such a company would be treated as a company required to have drawn up a balance sheet and as such would be required to prepare accounts meeting the CA 2006 requirements for its first accounting reference period. As a practical matter, the body corporate would have had to have kept adequate accounting records for UK purposes to assist in the preparation of accounts in the initial accounting reference period.

7.9 The Panel also discussed whether there would be more parity with the existing UK regime if every body corporate seeking to re-domicile into the UK was required to produce accounts for a certain period prior to re-domiciliation but considered that on balance this would likely be a complication which would make the UK regime too unattractive; it would certainly present a significant barrier to entry to bodies corporate from regimes where perhaps there are no obligations to maintain adequate

accounting records. Such an approach could, indeed, be justified: there is a difference between the types of bodies corporate which can take advantage of this proposed re-domiciliation regime and the types of bodies corporate that could take advantage of the SE regime; furthermore, bodies corporate that are required to prepare accounts under their existing legal framework are proposed to be subject to relatively stricter rules than are being proposed in respect of bodies corporate that are not required to produce accounts. However, a body corporate from e.g., the Cayman Islands would need a timeline of approximately 2 years of preparation in order to re-domicile to the UK if this requirement were introduced and bodies corporate moving from regimes with less robust governance regimes to a UK governance regime should not necessarily be disincentivised from doing so.

7.10 The Panel acknowledges that in some cases there could be a delay of up to 21 months from the date of re-domiciliation (following s442(3) CA 2006) before the first set of financial statements post re-domiciliation are filed.

Financial year (first and subsequent years)

7.11 The Panel recommends that, in line with section 390 CA 2006:

(i) A body corporate's first financial year after its re-domiciliation begins with the first day of its accounting reference period; and ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the company may determine.

(ii) The body corporate's subsequent financial years begin with the day immediately following the end of the company's previous financial year; and end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period, as the directors may determine.

Applicable Financial Reporting Framework

7.12 The Panel notes that bodies corporate that re-domicile may need to change their financial reporting framework. This may be onerous especially where their current framework significantly differs from that of International Financial Reporting Standards ("**IFRS**") (IFRS – accounting standards) or UK Generally Accepted Accounting Principles ("**GAAP**") owing to the cost and effort of undertaking a GAAP conversion as well as related incremental audit costs. The Panel notes that The Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2015 (as amended) provide a relaxation which allows UK incorporated parent companies whose securities are registered with the US Securities and Exchange Commission or admitted to trading on certain Japanese stock exchanges to prepare group accounts using US or Japanese GAAP for a transitional period of 4 years. The Panel recommends that this relaxation should automatically be available to such US or Japanese bodies corporate which were originally incorporated outside the UK and which re-domicile into the UK if their securities remain SEC registered or admitted to trading on certain Japanese stock exchange. This relaxation should be available for a transitional period of 4 years from the date of re-domiciliation.

7.13 The FRC in its FRS 100 publication (AG9) noted the UK government has recognised the equivalence to UK-adopted international accounting standards of the following GAAP, which include those GAAPs previously recognised by the European Commission as equivalent to EU-adopted IFRS:

(i) GAAP of Japan;

(ii) GAAP of the United States of America;

(iii) GAAP of the People's Republic of China;

(iv) GAAP of Canada;

(v) GAAP of the Republic of Korea;

(vi) IFRS as adopted by the EU; and

(vii) IFRS as issued by the International Accounting Standards Board.

7.14 As at November 2022, the FRS 100 publication (AG10) notes that at the date of publication of this FRS, the UK has not formally granted the equivalence of any other country's accounting standards, including the national accounting standards of EEA states or the International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs Accounting Standard), to UK-adopted international accounting standards.

7.15 The Panel recommends that listed bodies corporate that prepare accounts in a GAAP determined as being equivalent to UK-adopted international accounting standards as noted above should be allowed to file accounts with Companies House which have been prepared based on the GAAP deemed to be equivalent to UK-adopted international accounting standards. The Panel further recommends that such relaxation should be in line with the current requirements for Japan and the US. The Panel notes that the current relaxation relates only to the consolidated accounts and not the stand-alone parent accounts and is allowed for a transitional period of 4 years from the date of incorporation. In the case of a re-domiciled body corporate, the Panel is of the view that the transition period would be for a period of 4 years from the date of re-domiciliation. The Panel is of the view that this will help ease the burden of transition while also encouraging full transition to the UK accounting regime.

7.16 The Panel recommends that an assessment should also be done to determine which other additional GAAPs may be considered to be equivalent to UK-adopted international accounting standards.

7.17 The Panel discussed and acknowledged that the impact of a transition to UK GAAP or UK-adopted international accounting standards would differ depending on the accounting standards adopted by the body corporate prior to re-domiciliation. The expectation is that bodies corporate will factor this into their assessment and timeline prior to re-domiciliation.

7.18 The UK applicable accounting framework or its equivalent framework as adopted by a body corporate on re-domiciliation sets out the requirements for the preparation of comparative information. The Panel therefore expects that bodies corporate will include comparatives in the first set of financial statements including transition disclosures between the previous reporting framework and UK GAAP or UK-adopted international accounting standards where applicable. This would apply to bodies corporate whether or not they were required to prepare accounts under the law that applied to them prior to re-domiciliation.

Distributable reserves

7.19 The Panel observed that the current provisions of CA 2006 and Tech 02/17BL (Guidance on realised and distributable profits under CA 2006) provide restrictions

on distributions by companies unless they have sufficient distributable profits, which is an approach which may not be applied by other jurisdictions. It understands an increasing number of jurisdictions operate a "solvency test" approach instead of the "sufficient distributable profits" approach.

7.20 The Panel recommends that the requirements of CA 2006 and Tech 02/17BL in relation to distributable profits should be applied in their entirety by a company which has re-domiciled into the UK.

7.21 This would mean that, in order to determine its distributable profits, a company must determine its realised profits and realised losses. The Panel recognises that determining what is "realised" or "unrealised" may be challenging for profits and losses made prior to re-domiciliation. Section 850(3) CA 2006 provides that where directors, after making reasonable enquiries, are unable to determine whether profits or losses made before 1980 are realised or unrealised, they may treat the profits as realised and the losses as unrealised. (These provisions were introduced to cater for the implementation of the EU's Second Company Law Directive.) The Panel suggests that a similar approach is taken, by amending section 850(3) CA 2006 so that, for a company which has re-domiciled into the UK, the relevant date is the date of its re-domiciliation as opposed to 1980. The Panel considered whether the change in the relevant date to refer to the date of re-domiciliation as opposed to 1980 could be considered as more advantageous to re-domiciling bodies corporate. The Panel's view is that any other date would be arbitrary.

7.22 The Panel recommends that additional guidance be provided to bodies corporate on the use of this concession and that the bodies corporate disclose the use of the concession and how it has been applied in their first annual accounts prepared post re-domiciliation. The Panel also considered whether this concession should be subject to a condition that such a company includes a statement in its first audited accounts after re-domiciliation setting out the amount of its accumulated distributable profits (having applied this test). The Panel did not reach a firm view on this, noting that such a statement would provide some information to those transacting with the company about its capacity to make distributions, but also noting that any distribution must be made by reference to a set of properly prepared accounts and the company will in any case need to consider its realised profits and losses in preparing these. The Panel recommends that the Government considers the matter in further detail.

7.23 The Panel also considered whether, if such a statement is required, then in certain circumstances it would be permissible to disclose a minimum figure of distributable profits, for example where the calculation and disclosure would involve unreasonable expense or delay. The statement by the company would need to set out clearly why the calculation would involve unreasonable expense or delay and how the minimum figure was calculated.

7.24 The Panel also considered the status of reserves that are not share capital and how to apply Tech 02/17BL to them if capital in nature. Companies may welcome further guidance on the application of Tech 02/17BL and company law in respect of these reserves.

7.25 Where a re-domiciling body corporate had determined its accumulated realised profits and losses under the law of its departing jurisdiction, the Panel acknowledged that such accumulated realised profits and losses would be subject to the impact of changes in the accounting standards which apply on re-domiciliation and may therefore change as a result. The Panel suggests that the revised reserves position

should be the starting point when assessing any future changes required based on the requirements of CA 2006 and Tech 02/17BL.

7.26 The Panel acknowledges that the need to apply the requirements of CA 2006 and Tech 02/17BL may be less appealing to companies operating in jurisdictions which do not have a similar approach. The Panel is however of the view that this requirement will ensure a level playing field for all companies and also could help reduce the risk of companies re-domiciling out of the UK and then re-domiciling back into the UK to benefit from any concessions relating to distributable reserves upon such re-entry.

Preparation and audit of the annual report

7.27 The Panel discussed whether the annual report should include disclosures required by CA 2006 such as the strategic report. It also considered if any change might be needed for an audit report on accounts that straddle re-domiciliation. The Panel's recommendations are included in Section 11 of this Report.

7.28 The Panel also considered the practicalities of conducting an audit for a period that straddled re-domiciliation. It discussed the challenges with availability of information for periods prior to re-domiciliation if the body corporate was not required to retain such information. The Panel (as set out in Section 11 of this Report) recommends a detailed review of the provisions in sections 393 - 414 CA 2006 so as to reflect its conclusions in this Report. The Panel also proposes that it may be sensible to conduct a more detailed/targeted consultation exercise into any proposed changes to the accounting and audit provisions.

8. Section 8 - Changes to the insolvency regime and creditor protection

Bodies subject to restructuring or insolvency processes in their home jurisdiction

8.1 As explained in Section 1, the Panel recommends that bodies corporate subject to actual or pending restructuring or insolvency proceedings in their departing jurisdiction should not be eligible to apply for re-domiciliation to the UK. The Panel considers that the re-domiciliation process should be available to existing bodies corporate that plan to carry on business as going concerns in the UK after re-domiciliation. As is also explained in paragraphs 1.2 to 1.7, the Panel considers that re-domiciliation to the UK should not be available to bodies corporate which are at the time of that proposed re-domiciliation, subject to creditor composition proceedings which are equivalent to company voluntary arrangements, schemes of arrangement or restructuring plans.

Creditor Protection and re-domiciliation

8.2 The Panel considers that the issue of creditor protection in the context of a proposed re-domiciliation should be a matter addressed by the departing jurisdiction from which a body corporate intends to re-domicile to the UK. The Panel considers that creditors are entitled to expect that, unless and until re-domiciliation proceeds, they should remain able to look for protection in the jurisdiction from which the body corporate intends to re-domicile to the UK.

8.3 Conversely, the Panel regards as a matter for the UK "creditor protection" going forwards from re-domiciliation. If one regards re-domiciliation as a means of allowing trading businesses more easily to operate out of the UK, the Panel considers it appropriate to require companies seeking UK re-domiciliation to confirm their solvency at the time of their application to re-domicile to the UK. The proposed directors of bodies corporate seeking re-domiciliation in the UK should have to state whether or not in their opinion (which should be founded on reasonable grounds) the body corporate is "solvent".

8.4 As stated in paragraph 2.17, the Panel regards as an appropriate starting point the solvency statement which must be sworn when a private company limited by shares is seeking to reduce its capital in accordance with the mechanism available in sections 642-644 CA 2006 as set out in section 643 CA 2006. As one is looking at "solvency", the Panel did consider in the alternative whether a better starting point would be the declaration of solvency sworn by the directors of a company seeking to take advantage of the members' voluntary liquidation procedure under Part IV, Chapters II and III IA 1986. The Panel nevertheless concluded that the approach taken under section 643 CA 2006 was more appropriate, since first, a solvency statement under section 643 CA 2006 must be made by all the directors of a company; secondly, section 643 CA 2006 expressly refers to "contingent or prospective liabilities" and thirdly, there is no requirement for the statement to be supported by any form of auditors' opinion.

8.5 The Panel concluded that these matters, coupled with the imposition of criminal liability on proposed directors who made a solvency statement without having reasonable grounds for doing so would together ensure that a proposal to re-domicile a body corporate to the UK would be made with the appropriate levels of preparation and rigour. The Panel proposes, as set out in paragraph 2.17, that the applicant should be required to notify Companies House if the applicant becomes aware, before the re-domiciliation occurs, of any event or change which, if the proposed

directors had been aware of that event or change on the date the solvency statement was made, would have meant that the proposed directors would not have had reasonable grounds to make the solvency statement. In this case, Companies House should be required to refuse the application. The Panel also suggests. that if the application is not determined or withdrawn within 6 months of the application date, the solvency statement should be refreshed and, if the proposed directors are then unable to give the solvency statement, the application should be refused.

8.6 The Panel accepts, as a part of this analysis, that if the Government is minded to apply a solvency test to the re-domiciliation process, that test must be both easily understandable and workable in practice. Other possibilities include requiring the company to confirm both balance sheet solvency and cashflow solvency for a forward-looking period of 12 months or to adopt the test in section 123 IA1986 (with no specific forward-looking period).

8.7 The Panel recognises difficulties in insisting that any solvency statement is independently "audited" and the Panel recognises in selecting the test in section 643 CA 2006 that auditors may be unwilling to offer the necessary level of comfort to support a solvency statement. Given that any solvency statement is by its nature forward-looking, at most any auditor's opinion (were the Government to insist on such an opinion) should be limited to confirming that the auditor is unaware of anything to indicate that the proposed directors' opinion as set out in the solvency statement is unreasonable in all the circumstances. That is similar to the statement that may be given under section 714 CA 2006 in respect of permissible payments out of a company's capital.

The interrelationship between re-domiciliation and UK restructuring and insolvency proceedings

8.8 As a matter of general principle, the Panel does not consider that bodies corporate would choose to use any re-domiciliation regime as a means of taking advantage of UK restructuring and insolvency processes such as administrations, schemes of arrangement, restructuring plans or indeed liquidations.

8.9 Each of these procedures is governed by its own, well-established, criteria (and is not limited to companies incorporated under the English company legislation). These criteria can and would continue to operate independently of the proposed new re-domiciliation process. Each process employs tests to determine whether it is appropriate to apply the particular regime. The tests are based principally on the factual location of the company ("centre of main interests" or the presence of an "establishment" in the UK). The existing body of case-law and practice addressing how cross-border corporate restructuring and insolvency processes should be initiated and managed can therefore stand independently from the new re-domiciliation procedure.

8.10 The same is true where companies seek to take advantage of the scheme of arrangement procedure under Part 26 CA 2006 or the restructuring plan under Part 26A of that Act. In each of these processes, the term "company" bears a wider meaning than a corporate entity incorporated under the English company legislation. In the case of both a Part 26 scheme of arrangement and a Part 26A restructuring plan, a company seeking to put forward a scheme of arrangement or a restructuring plan can be incorporated in any jurisdiction. The relevant entity need only show that it is "liable to be wound up" in the UK. That is a low jurisdictional threshold, focusing upon the relevant company having sufficient connections with the UK – including the use of English law agreements. The courts will also look at the likely benefit to

creditors in the UK or the utility of any other relief the English courts may grant. Each of these tests is proven in its application. Hence the Panel considers that it is neither necessary nor advisable to change their application in the context of companies which have re-domiciled to the UK.

8.11 In the Panel's view, once a body corporate has re-domiciled to the UK, it should be treated as having been incorporated in the UK for all purposes as at and from the date of its re-domiciliation to the UK.

Addressing Director Misconduct and Antecedent Transactions

8.12 As a general principle, the Panel considers that UK law regarding directors' misconduct should apply in relation to actions taken during the period where a person is a director of a re-domiciled company. This would result in actions and omissions prior to the re-domiciliation of a body corporate to the UK being dealt with by the law of that jurisdiction unless and until the re-domiciled company became subject to a UK insolvency or restructuring procedure.

8.13 The Panel recognises that the concept of a "director" or "manager" can have different meanings in different jurisdictions. The Panel further notes that section 251 IA 1986 defines a "director" as including "any person occupying the position of a director, by whatever name called." The Panel considers that this definition should be amended to make clear that the term "director" should include any person concerned with or taking part in the management of a body corporate in the period before its re-domiciliation to the UK.

8.14 Where a re-domiciled company becomes subject to a UK insolvency or restructuring procedure, UK law should govern all aspects of those proceedings. These would include treatment of the assets included in the company's estate, the respective powers of the company's directors and any insolvency practitioner, together with the effect of restructuring or insolvency proceedings on contracts to which the company is a party. UK law would also prescribe the rules relating to voidness, voidability or unenforceability of transactions detrimental to the general body of the re-domiciled company's creditors. Such transactions would include preferences, transactions at an undervalue and transactions defrauding creditors.

8.15 UK law would therefore prescribe the "vulnerable period" for each of these matters – for example 6 months in relation to preferences and 2 years in the case both of transactions at an undervalue and "connected transactions". The Panel recognises that there will be incidences where re-domiciled companies become subject to UK restructuring and insolvency proceedings within 2 years of their re-domiciliation. In that event, the Panel would expect English insolvency practitioners and courts applying the "look back" periods referred to in this paragraph 8.15 to take into account acts and omissions of company directors which took place in periods before re-domiciliation to the UK.

8.16 A couple of examples illustrate how this would apply in practice. First, under section 239 IA 1986, a preference (to paraphrase, one creditor being treated more favourably than another creditor in the same class) given within six months of liquidation or administration is open to challenge by the liquidator or administrator. That six month period is increased to two years where the preference is given to a "connected person", meaning for example a holding company or a subsidiary. Suppose therefore that a body corporate is re-domiciled to the UK on 1 June 2024 and goes into an English administration on 1 October 2024. Suppose further that on 1 May 2024, the body corporate had paid supplier A (an unsecured creditor unconnected with the

body corporate) and that such payment met all the other requirements of a preference.

8.17 The Panel's view is that the IA 1986 should be adjusted as needed to make clear that in calculating the six month period, the period is to be treated as extending back beyond the body corporate's re-domiciliation to the UK on 1 June 2024.

8.18 The Panel notes that the one transaction avoidance provision that could operate slightly differently for a body corporate which had re-domiciled into the UK is section 245 IA 1986. Section 245 IA 1986 renders voidable floating charges created within 12 months of a company's liquidation or administration, save in respect of money paid, goods or services supplied at the same time as, or after the creation of the purported floating charge. A floating charge is a common law concept. Floating charges can also be created in jurisdictions such as the Isle of Man, Bermuda and Hong Kong but not in civil law jurisdictions such as France or Germany. Bodies in civil law jurisdictions may therefore have created and perfected, prior to re-domiciliation in the UK, security interest(s) that do not amount to a floating charge. The validity or otherwise of such a security Interest (assuming that it had been properly perfected at the time of its creation) would therefore most likely depend upon whether that security interest could be challenged under one of the other UK law transaction avoidance provisions such as preferences or transactions at an undervalue.

8.19 The Panel would also accept the logic of the Government applying an exception to the application of English rules on antecedent transactions in terms similar to Article 16 of the EU Regulation on Insolvency Proceedings 2015 – Regulation (EU) 2015/848.

8.20 Article 16 provides that if a person benefits from an act detrimental to creditors – e.g. an antecedent transaction such as a preference – where that act is subject to a law other than UK law – the relevant act should not be set aside. The precondition to the operation of this exception would be that the law of the country to which it was subject did not itself provide any means for challenging that act.

8.21 The Panel believes that UK law – including the provisions of the Company Directors Disqualification Act 1986 ("**CDDA 1986**") should apply to the review of the conduct of the directors of a re-domiciled company. The rationale is again that after a company has been re-domiciled to the UK, it should be treated as if it had always been incorporated here. That, as has been previously stated, would mean the company and its officers would be afforded the rights and made subject to the same obligations as apply to a company that had been incorporated in the UK.

8.22 The Panel also considers that a liquidator or administrator of a re-domiciled company should ensure that their review of directors' conduct takes into account conduct both before and subsequent to re-domiciliation. Specifically, the Panel expects that liquidators, administrators and the courts will, when reviewing the causes of a company's failure, take account of a person's conduct as a director of the re-domiciled company in the period before re-domiciliation. The conduct to be considered – section 6(1)(A) CDDA 1986 – would be conduct in relation to any matter connected with or arising out of the company's subsequent liquidation or administration in the UK.

Re-domiciliation and Security Interests

8.23 Security interests created by a body corporate before its re-domiciliation will be subject to certain rules of validity and priority under the law of the jurisdiction of the

body corporate at the time. The rules of priority may change as a result of re-domiciliation and the Panel considers that automatically changing those rules in respect of existing security interests could create uncertainty and unfairness. The Panel proposes that the re-domiciliation legislation should make it clear that:

(i) The priority of all charges created 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, UK conflict of law rules.

8.24 The result would be that an unregistered security interest that was created before re-domiciliation could have priority over a security interest created and registered in the UK after re-domiciliation, provided that the first security interest was not required to be registered under the law of the departing jurisdiction in order to be perfected. The Panel considers this approach to be consistent with the principle that a body corporate which has re-domiciled to the UK should only be treated as having been incorporated in the UK for all purposes as at and from the date of its re-domiciliation to the UK. Prior to that time, the body corporate should be treated in the same way as any other body corporate incorporated outside the UK.

8.25 The Panel believes it would be valuable to those dealing with a re-domiciled company to have visibility as to the security interests granted by that company. The Panel therefore recommends that a body corporate seeking to re-domicile into the UK be required to include on its application form the details of any existing charges that would have been capable of registration, had it been a UK incorporated company at the time of the creation of the charge. This should include all the details that would be necessary to have enabled the charge to be filed with the Registrar had the body corporate been a company at the time of creation of the charge. Details of the charge(s) existing at the date of re-domiciliation would then be included on the company's register of charges. It would be an offence on the part of the applicant and its directors if this information was incomplete. A chargee should be entitled to register a charge at or following re-domiciliation if the company has failed to do so.

8.26 The re-domiciliation legislation would need to make clear that a charge which had been recorded in the company's register of charges in the manner described above would be treated as if it had been registered by the company in accordance with Part 25 CA 2006. However, for charges created prior to the re-domiciliation which are not so registered, the Panel proposes that section 859H CA 2006 (consequence of failure to deliver charges) would not have the effect of rendering the charge void against liquidators, administrators or creditors.

9. Section 9 - Additional powers needed for the Registrar of Companies

Companies House Part 35 CA 2006 – possible changes

9.1 The Registrar's function is to perform functions conferred on it by or under CA 2006 or any other enactment and to perform such functions in relation to the registration of companies or other matters as the Secretary of State may direct (section 1061 CA 2006). The Panel thinks this power is wide enough to deal with the proposed activities of the Registrar in dealing with re-domiciliations.

Public notice of issue of a certificate of incorporation

9.2 Section 1064 CA 2006 requires the Registrar to publish notice when it issues a certificate of incorporation by a company. The Panel suggests it is made clear that this also applies to a certificate of incorporation on re-domiciliation to the UK. The Panel suggests that the Registrar should also be required to publish notice when it issues a certificate that a company wishing to re-domicile out of the UK has met the relevant requirements to do so (see paragraph 10.41) and when it issues a certificate that a company has ceased to be incorporated as a company under CA 2006 by virtue of re-domiciliation (see paragraph 10.47).

Right to a certificate of incorporation

9.3 Section 1065 CA 2006 provides any person may require a copy of any certificate of incorporation. The Panel suggests it is made clear this includes a certificate of incorporation on re-domiciliation to the UK, a certificate that a company wishing to re-domicile out of the UK has met the relevant requirements and a certificate that a company has ceased to be incorporated as a company under CA 2006 by virtue of re-domiciliation.

Enhanced disclosure documents

9.4 The Registrar is required to publish the receipt of enhanced disclosure documents (section 1077 CA 2006). Enhanced disclosure documents is defined in section 1078 CA 2006. The Panel suggests that consideration should be given to whether there are documents relating to a body corporate wishing to re-domicile that should be added to this list so that, for example, the application form filed in connection with the application would be an enhanced disclosure document.

Duty to notify directors

9.5 The Registrar must notify directors on receipt of certain specified documents (section 1079B CA 2006). The Panel suggests that it should be made clear this also applies where the Registrar receives notice of the statement of proposed officers on an application to re-domicile to the UK. The Registrar should be able to send the notice to any address for the person that the Registrar has received from the applicant.

Power to require information

9.6 The Registrar has power to require a person to provide information to it in certain cases. The Panel suggests that this section should be reviewed so the Registrar can require information in connection with an application to re-domicile (see Section 11 of this Report section 1092A).

Records relating to companies that have been dissolved

9.7 The Registrar is not required to keep any records relating to a company that is dissolved for more than 20 years. A company that has re-domiciled to another jurisdiction will not have been dissolved. The Panel suggests that the position of such companies should be clarified and that the records relating to such companies should continue to be publicly available for 20 years from the date when the company ceases to be incorporated in the UK (see paragraph 10.48).

The Registrar's index of company names

9.8 The Registrar must keep an index of the names of certain companies and bodies (section 1099 CA 2006). The Panel suggests that this should be changed so it includes companies which were formerly UK registered companies and which have re-domiciled to another jurisdiction (see paragraph 10.48).

Documents that may be drawn up and delivered in languages other than English

9.9 Generally, documents that must be delivered to the Registrar must be in English (section 1103 CA 2006). Certain documents may be drawn up and delivered in other languages. Once the list of documents to be provided to the Registrar on an application to re-domicile has been determined, the Panel suggests that this section should be reviewed to see if there are any documents which ought to be added to this section, for example because the applicant to re-domicile is providing copies of documents which exist already and have been written in another language e.g. charges. Such documents must be accompanied by a certified translation into English.

Disclosure by the Registrar

9.10 Section 1110F CA 2006 will, from the appointed day, allow the Registrar to disclose information to any person for purposes connected with the exercise of any of the Registrar's functions and to a public authority for purposes connected with the exercise of any of that public authority's functions. A public authority includes any person or body having functions of a public nature. The Panel believes this would allow the Registrar to deal with public authorities outside the UK if it wishes to do so, for example allowing it to liaise about the date of a proposed re-domiciliation. If there is any doubt about this, the position should be clarified. The Panel notes that the Registrar may wish to enter into a memorandum of understanding with an overseas registrar to facilitate the sharing of information.

Enforcement of company's filing obligations

9.11 The Registrar can give notice to a company requiring it to comply with an obligation to deliver a document to it or give notice to the Registrar of any matter (section 1113 CA 2006). The Panel suggests that the section should make it clear that a company that has re-domiciled to another jurisdiction is deemed to be a company for the purposes of this section in connection with any obligation which arose whilst it was a company. The Panel also suggests that the Registrar should be able to give notice to a body corporate that is applying to re-domicile to the UK to deliver a document to it or give notice to the Registrar of any matter related to the application.

Certified documents and certificates from Companies House

9.12 The Panel notes that Companies House will provide a company certificate with certified facts and a certified copy of a document held on the Register. The certified

facts can include directors' names, details such as date of birth or nationality, secretaries' names, registered office address, the company's objects and, for certain private companies, a summary statement (previously known as the good standing statement) which says that a company has been in continuous, unbroken existence since its incorporation and that no action is currently being taken to strike the company off the register. For a company that has re-domiciled to the UK, the Panel suggests that it would be helpful if Companies House would also include, if requested, details of the company's name immediately before it re-domiciled to the UK, its identifying number before it re-domiciled to the UK and the jurisdiction in which it was previously incorporated, as stated in the company's application form to re-domicile. Companies House may also wish to review the precise form of wording used for re-domiciled companies, so it is clear that certain information in the summary statement is limited to the time since the company's incorporation by re-domiciliation.

10. Section 10 - Requirements for an outward regime

Outward re-domiciliation

10.1 Respondents to the Government's consultation were broadly supportive of the UK introducing an outward re-domiciliation regime. This was primarily because they thought allowing this would increase the demand for inward re-domiciliation. The Panel considers that the existence of an outward re-domiciliation regime may also encourage individuals and companies considering where to incorporate a company to incorporate a company in the UK, as they will know that they will have the option to re-domicile out of the UK if they wish to do so. The Panel notes that not all jurisdictions which have an inward re-domiciliation regime also allow companies to re-domicile to another jurisdiction. The Panel has suggested how an outward re-domiciliation regime could work. The principles underlying the Panel's approach have been to protect existing members and creditors of the company, to provide a clear process for companies wishing to re-domicile to follow and to provide a process so that UK national security interests can be protected.

Companies eligible to re-domicile

10.2 The Panel suggests that any company incorporated under CA 2006 (including companies incorporated by re-domiciliation) should be eligible to apply to re-domicile as a body corporate incorporated in another jurisdiction and thus to be registered in that jurisdiction and to cease to be incorporated as a company under CA 2006. The Panel does not suggest that limited liability partnerships should be eligible to re-domicile at this stage, but this is something the Government might wish to consider in due course if it believes there is a call for it. The Panel does not suggest that the UK should have a list of eligible jurisdictions to which a UK company could re-domicile. Instead, the Panel suggests that the company wishing to re-domicile should confirm to the Registrar that the law of the jurisdiction to which the company wishes to re-domicile permits a UK company to re-domicile to that proposed jurisdiction. The Panel suggests that there should be a reserve power for the Secretary of State to make regulations, laid under the affirmative procedure, to stop a company re-domiciling to a specified country. This would allow regulations to prevent a re-domiciliation to a country which has been identified as problematic in some way. In addition, the Panel suggests that the Government may wish to explore the extent to which (i) any company subject to, or whose majority shareholders or other controlling parties are subject to, UK or international sanctions, should be ineligible for outward re-domiciliation, and (ii) any proposed outward re-domiciliation to a jurisdiction which is subject to UK or international sanctions should not be permitted.

Companies not eligible to re-domicile

10.3 The Panel suggests that a company should not be able to apply for outwards re-domiciliation in certain cases:

(i) If the company is being wound up or is in liquidation;

(ii) If the company is unable to pay its debts within the meaning of section 123 IA 1986;

(iii) If a receiver, manager or administrator has been appointed in respect of any part of the company's property or possesses or controls any of the company's property; or

(iv) If the company has entered into a compromise or arrangement with some or all of its creditors. This should include a company voluntary arrangement under Part 1 IA 1986 and a scheme of arrangement or restructuring plan under Part 26 or 26A CA 2006. The Panel would be content for an outward re-domiciliation to proceed so long as the relevant creditor compromise had been implemented in accordance with its terms.

10.4 For the purposes of these exclusions, it should be immaterial where the company is being wound up or put into liquidation, where a receiver, manager, administrator or similar official is appointed, where a compromise or arrangement is entered into or where any application before a court is pending.

10.5 The Panel is aware that some other jurisdictions also exclude bodies corporate from applying for re-domiciliation in other situations. The Panel suggests that the Government consider whether a company should be ineligible if they are subject to resolution tools, powers and mechanisms provided for in the PRA Rules which implemented Directive 2014/59.

10.6 The Panel considers that a company should not be prevented from being eligible to re-domicile because an application is pending before a court to wind up or liquidate the company, have it declared insolvent or to appoint a receiver, manager or administrator because it may be easy to make such an application as a way to prevent an application to re-domicile which could otherwise satisfy the relevant requirements.

10.7 Provided the relevant procedures are followed, the Panel does not think it is necessary to restrict an application to re-domicile to companies that have existed for a certain time or that have prepared accounts even if the company is one that has previously re-domiciled to the UK. This is because the UK may have been chosen as the place of incorporation with a view to re-domiciling elsewhere and also because the Panel believes it is not appropriate to restrict a company's strategy. The protections proposed in this Section would apply to all companies wishing to re-domicile.

Application for authorisation to re-domicile outside the current place of incorporation

Information to be provided

10.8 The Panel suggests that a company wishing to apply to re-domicile somewhere other than its current place of incorporation should apply to Companies House. The application should be accompanied by:

(i) A copy of a special resolution passed by the company approving the proposal to apply to re-domicile to another jurisdiction; if there is more than one class of members, a copy of a consent to the proposed re-domiciliation by each class of shares (which may be given either in accordance with a provision in the company's articles for such consent or, if there is no such provision, consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any treasury shares) or a special resolution passed at a separate general meeting of the holders of that class sanctioning the proposed re-domiciliation) and, in addition, the consent of any individual member if the proposed re-domiciliation would in any way increase that member's liability to contribute to the company's share capital, require the member to subscribe for additional shares for value, or otherwise require the member to pay money to the company;

(ii) A statement of solvency which meets the relevant requirements (see paragraph 10.23);

(iii) Confirmation that the laws of the jurisdiction to which the company wishes to re-domicile allow it to re-domicile there as a body corporate incorporated under its laws which will be registered;

(iv) Confirmation that those laws provide that when the company re-domiciles and becomes a body corporate in that jurisdiction, that will not operate to create a new legal entity or prejudice or affect the continuity of the company;

(v) Confirmation that any authorisation or other action required by the company's constitution has been given and that the company is not prevented from re-domiciling because it is subject to any restriction on re-domiciling. It would be acceptable for such confirmation to be conditional upon the approval of the re-domiciliation by the relevant authorities in the destination jurisdiction, provided that the application form is updated when this is obtained (see paragraph 10.43);

(vi) Confirmation that the requirements on disclosure have been met and either no creditor has applied to court within the specified period for an order in connection with the re-domiciliation or the court has determined any such application in a way that does not stop Companies House granting the application;

(vii) Confirmation either that no member has applied to court for an order on the ground of unfair prejudice within the specified period or that the court has determined any such application in a way that does not prevent Companies House granting the application;

(viii) With respect to matters pertaining to the NSIA 2021:

(1) confirmation as to which of the following applies: (1) the company has made a mandatory or voluntary filing under the NSIA 2021; or (2) the company intends to make a mandatory or voluntary filing under the NSIA 2021; or (3) the company has not made, and does not intend to make, a mandatory or voluntary filing under the NSIA 2021;

(2) a copy of any final notification clearing, and any call-in notice or interim or final order issued in respect of, the proposed re-domiciliation under the NSIA 2021; and

(3) confirmation from the directors that the company and (if applicable) the directors are not in breach of the requirements imposed by any interim or final order received (see further paragraph 10.29);

(ix) The application fee;

(x) The date proposed by the company as the date of re-domiciliation when it wants the removal from the register to take effect (which should be subject to a minimum period set by Companies House). The Panel proposes that the company should be able to apply to Companies House to change that date to a later date if it wishes;

(xi) Details of a representative in the UK, including name and address and evidence of their consent to act, authorised by the company to accept service

of proceedings on behalf of the company for 10 years from the date the company ceases to be registered in the UK; and

(xii) Details of an address in the UK at which the records which the company is to continue to make available for inspection after re-domiciliation under requirements of the CA 2006 as amended will be kept and made available for inspection (see paragraph 10.49).

False statements

10.9 The Panel notes that it is an offence under sections 1112 and 1112A CA 2006 to deliver a document to the Registrar which is false, misleading or deceptive in a material particular or to make a statement to the Registrar which is false, misleading or deceptive in a material particular either knowingly or without reasonable excuse. The Panel believes these sections should apply to information provided in connection with an application to re-domicile out of the UK.

Abusive, fraudulent and criminal purposes

10.10 The Panel has considered whether an applicant should be required to confirm that an application is not being proposed for abusive, fraudulent or criminal purposes. The Panel recommends that the regime does not include any such requirement. If such a requirement were to be included, there would need to be guidance published to explain when an application would be regarded as abusive or fraudulent. However, please note the Panel's comments on sanctions in paragraph 10.2.

Ways to apply

10.11 The Panel recommends that Companies House should accept applications for re-domiciliation via its electronic filing service, by post and through agents and third party software. The Panel suggests that, as for inward re-domiciliations, Companies House and/or the relevant Government department should publish guidance on the application process and that Companies House should have a specialist team to deal with applications.

Obligation to update information

10.12 The Panel suggests that there should be a continuing obligation on a company which has applied to notify Companies House of any change in the information provided and of any information that would have had to have been provided if it had existed when the application was made. The Panel also suggests that, in certain cases, the company would have to notify Companies House of a change or event affecting the solvency statement and that the solvency statement should have to be refreshed (see paragraph 10.25).

Approval by members of a proposal to re-domicile and related matters

10.13 The Panel recommends that any proposal by a company to re-domicile should be approved by a special resolution. If the company has more than one class of members, the proposal should also be approved by each class of members (as set out in paragraph 10.8(i)). If the re-domiciliation would increase any member's liability to contribute to the company's share capital, require the member to subscribe for additional shares for value, or otherwise require the member to pay money to the company, the Panel believes the company should also need to obtain the consent of that member.

10.14 The Panel expects that companies may want to pass a resolution or resolutions that not only approve the proposed re-domiciliation but also make changes to the company's articles of association conditional on re-domiciliation occurring. The company may also want to pass other resolutions conditional on re-domiciliation occurring, so the company will meet the requirements of the law of the proposed jurisdiction. Such resolutions could, for example, relate to share capital, authority to allot shares, remuneration policy and appointment of directors. Questions may arise as to whether such resolutions should have to meet the requirements of UK law and/or the law of the proposed jurisdiction.

10.15 The Panel suggests that it should be made clear that all resolutions passed by the company before the date on which the company is de-registered in the UK should have to meet the requirements of the CA 2006 insofar as applicable (e.g. as to the calling of the meeting and passing of resolutions), that any such resolution should be filed with Companies House within 15 days of the date of being passed even if the resolution is conditional on re-domiciliation occurring (and/or on something else) and that the company should have to confirm separately to Companies House when the condition(s) have been satisfied. The Panel notes that there is a similar approach where a company passes a special resolution to change its name which is conditional. In such a case a form is filed when the special resolution is passed and a further form is filed to confirm when the condition(s) have been satisfied. There may be areas where the laws of the proposed jurisdiction differ from the laws of the UK. For example, under the CA 2006, there is a minimum requirement for the age of directors of UK companies and a motion to appoint directors of a public company must be voted on individually. The Panel believes that the company will need to consider each particular section and its wording to determine whether or not the section will impose requirements at the time the resolution is passed as this will depend on the particular wording used. If a company passes a resolution which meets UK procedural requirements (e.g. as to calling the meeting and voting at the meeting), the Panel believes the resolution will be validly passed and it will not be invalid as a matter of UK law purely because it is being passed to meet a requirement of the proposed jurisdiction after re-domiciliation occurs.

10.16 The Panel notes that, under section 311(2) CA 2006, a notice of meeting must, among other things, state the general nature of the business to be dealt with at the meeting. Under common law principles the members must be put in a position to determine whether they should attend the meeting. The Panel suggests that, in view of this principle, it is not necessary to prescribe information to be contained in a circular accompanying the notice of meeting to approve a special resolution to re-domicile. In some cases, for example where the members are also directors of the company and so are closely involved in the business and the proposal to re-domicile, detailed information about the proposal may not be needed. However, in other cases the directors are likely to want to set out detailed information about the proposal so members are able to decide properly whether to vote in favour or not. The Panel thinks that such information is likely to include:

(i) The place to which it is proposed the company should re-domicile;

(ii) The proposed legal form and name and the proposed location of its registered office or other official address;

(iii) The proposed instruments of constitution of the company;

(iv) The proposed indicative timetable for the re-domiciliation;

(v) Any significant changes to the rights of shareholders arising as a result of the re-domiciliation and their tax position;

(vi) Any significant changes to the rights of creditors arising as a result of the re-domiciliation;

(vii) Any significant changes to the locations of the company's business and any effect on employees;

(viii) Any changes to the directors proposed in connection with the re-domiciliation; and

(ix) The reasons for the proposed re-domiciliation and any implications for the company's future business including changes to the company's tax and/or regulatory position.

10.17 If the Government decides that it would be appropriate to prescribe information to be provided to members in a circular in connection with passing a special resolution to re-domicile, the Panel suggests that there should be an option available so that a circular is not required if all members of the company agree that they do not need to receive a circular containing the prescribed information (which should be referred to e.g. by reference to the relevant section number). This would facilitate re-domiciliations for wholly owned subsidiaries and companies where there is a small number of members who may also be directors of the company and so be well informed already about the proposal.

10.18 The Panel notes that a re-domiciliation might technically involve a reduction of capital, for example, where shares in the company will become shares of a smaller amount, for example because of the translation of the currency from sterling to a different currency, where the company wants to round the number down. The Panel suggests that the process for re-domiciliation makes it clear that the provisions of Chapter 10 CA 2006 relating to reductions of capital and section 626 (reduction of capital in connection with redenomination) should not also apply in such a case. This would avoid differing forms of creditor and member protections also applying.

Protection of members

10.19 The Panel has considered whether any specific provisions are required to protect members who do not vote in favour of a proposal to re-domicile. The Panel notes that, under section 994 CA 2006, a member of a company may apply to the court for an order on the ground that the company's affairs are being conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of the members (including the applicant) or that an actual or proposed act or omission would be so prejudicial. Under section 996 CA 2006 the court may, if satisfied the petition is well founded, make such order as it thinks fit for giving relief in respect of the matters complained of. This may include an order for the company to purchase the shares of any members. The company may not want to be ordered to purchase a large number of shares. Although the company can protect itself from this risk, for example, by making the resolution approving the re-domiciliation conditional on it not being required to purchase more than a certain number of shares, the company will also need certainty on the timing of any applications as it will want the position to be clear before the re-domiciliation takes effect. For this reason, the Panel suggests that any member who objects and does not vote in favour of, or consent to, the resolution to re-domicile (including any member who does not have a right to vote or consent) should have a specified period after the application form to re-domicile is published in the register in which to apply to court on the ground of unfair prejudice.

This could be, for example, 21 days (which is the approach adopted in Jersey). The Panel considered whether there should also be an express ability for a person who was a member before the re-domiciliation to bring an unfair prejudice claim under section 994 CA 2006 after re-domiciliation in respect of matters which occurred prior to re-domiciliation. Whilst this would provide additional protection for a shareholder who did not apply to court prior to re-domiciliation, there could be practical difficulties in a UK court making an appropriate order by way of remedy in respect of a body corporate which by that time had been re-domiciled to another jurisdiction. The Panel suggests this issue is given further thought.

10.20 The Panel notes that, where a company has different classes of shares, sections 629 to 635 CA 2006 contain provisions relating to the variation of class rights and include a right for at least 15% of members of a class who have not voted in favour of a resolution to vary their rights to apply to court to have the variation cancelled. The Panel is suggesting that the process for approving a re-domiciliation should include protections for cases where there are different classes of shares and suggests it should be made clear that it is these procedures and processes that are to apply, including the right to apply for a court order on the ground of unfair prejudice, and that the provisions of sections 629 to 635 should not also apply in such a case.

Protection of creditors

10.21 The Panel believes that protection should be afforded to creditors of the company including actual, contingent and prospective creditors, whose rights, including contingent and prospective rights, predate a specified date and whose claims have not yet fallen due. The Panel suggests the specified date should be 21 days after the date on which the copy of the special resolution approving the re-domiciliation is filed with Companies House (see paragraph 10.8(i)).

10.22 The Panel suggests that a company wishing to re-domicile should have to provide a solvency statement dated not more than 15 days before the date on which either (i) notice is given of a general meeting at which a special resolution approving the proposed re-domiciliation is to be proposed or (ii) a written resolution to approve a special resolution to approve the re-domiciliation is circulated.

10.23 The Panel suggests that a solvency statement should be based on the requirements of section 643 CA 2006 and that this approach should be available both to private and public companies. The requirements for a solvency statement made under section 643 have been frequently used and, in the Panel's view, this has worked well in practice. All directors of the company should have to make the statement and it should be an offence for a director to make a solvency statement without having reasonable grounds for the opinions expressed in it. The Panel believes that, as is the case for solvency statements made under section 643, there should be no requirement for an auditor's report on the solvency statement. The Panel also suggests it should be made clear that a re-domiciliation should not be affected if a director commits an offence in making a solvency statement. This is to provide certainty for the company and those who deal with it. There will be sanctions available against the relevant director(s) in such cases.

10.24 The Panel believes that any creditor who can show that there is a real likelihood that the re-domiciliation either (i) would result in the company being unable to discharge their debt or claim when it falls due; or (ii) would materially prejudice their rights; should have the right to apply to court to object to the re-domiciliation. The Panel thinks that there should be a short period in which creditors should be able to apply to court so as to provide certainty for the company, whilst balancing the need for

creditors to have time to prepare to file their application. The Panel suggests the period should be within 21 days of the date on which the application form to re-domicile is published in the register. The Panel believes that the existence of such a right will encourage companies to consider whether any creditors will be materially prejudiced by the proposed re-domiciliation and suggest protections and it would also provide an opportunity for creditors who believe they may be materially prejudiced to raise concerns with the company and negotiate suitable protections so as to avoid court proceedings. The Panel suggests that if the court is satisfied that the petition is well founded it should have the power to make such order as it thinks fit for giving relief in respect of the matters complained of, including interim relief.

10.25 The Panel suggests that the company should be required to notify Companies House if the company becomes aware, before the re-domiciliation occurs, of any event or change which, if the directors had been aware of that event or change on the date the solvency statement was made, would have meant that the directors would not have had reasonable grounds to make the solvency statement. In this case, Companies House should be required to refuse the application. The Panel also suggests that if Companies House has not issued a certificate confirming that the relevant requirements are satisfied (see paragraph 10.41) within 6 months of the date the application is first filed with Companies House or if the application has not been withdrawn or refused in that period, the directors should be required to make a new solvency statement and file it with the Registrar. If the directors are then unable to give the solvency statement, the application should be refused. This would afford a means of re-confirming solvency and continuing to ensure that the re-domiciliation process is made available only to solvent companies.

Protections in relation to national security

10.26 The Panel considers that the outward re-domiciliation of a qualifying entity (as defined by section 7(2) NSIA 2021) should be made a 'trigger event' for the purposes of the NSIA 2021 regime. This will prevent outward re-domiciliations being used as a loophole to avoid the requirements of the current NSIA 2021 regime. In the absence of an outward re-domiciliation regime, in order to move a company (and its assets) out of the UK, an overseas acquirer would need to gain control of the company. This falls within the scope of the current NSIA 2021 regime, even if the transfer is part of an internal reorganisation where the ultimate beneficial owner of the company remains the same. However an outward re-domiciliation would not fall within the scope of the current NSIA 2021 regime, as it does not involve any acquisition of control of the company. To the extent that the Government decides to exempt certain intra-group transfers from the mandatory filing regime (as it is currently considering), the scope of any filing obligation for outward re-domiciliations should be defined accordingly, so that there is no inconsistent treatment of intra-group transfers and outward re-domicilations.

10.27 The Panel considered whether it would be appropriate for the Government to issue a 'white-list' of jurisdictions to which outward re-domiciliation would not be notifiable under the NSIA 2021 and/or a 'black-list' of jurisdictions to which outward re-domiciliation would be subject to mandatory notification. The Panel concluded that such an approach would represent a significant departure from the current regime and that determining the criteria for inclusion on such lists would be both practically and politically complex. The Panel recommends that the outward re-domiciliation of a company carrying on a specified activity in a specified sector under the NSIA 2021 should be subject to mandatory notification, and, otherwise, a company should be able to make a voluntary notification in respect of a proposed outward re-domiciliation in order to obtain a clearance decision by the Secretary of State. As

noted in paragraph 10.2, the Panel suggests that the Secretary of State be given a reserve power to stop re-domiciliations to specified countries (whether on national security grounds or otherwise).

10.28 The Panel notes that the addition of outward re-domiciliation as a trigger event under the NSIA 2021 will not prevent a company that has successfully re-domiciled from the UK subsequently falling into the control of a nefarious actor where the company does not carry on activities in the UK, supply goods or services to people in the UK or have assets that are used in connection with such activities or supplies. However, this is equivalent to the current position where the Government has already allowed the acquisition of control of a qualifying entity by an overseas acquirer, and the absence of any territorial nexus between the company's activities and the UK means that such transactions are seen as less likely to be susceptible to giving rise to national security issues. Consequently, the Panel does not consider it appropriate for the outward re-domiciliation regime to deviate from the approach of the current NSIA 2021 regime.

10.29 The Panel suggests that any application for outward re-domiciliation should require a confirmation that the company has made, or intends to make, a mandatory or voluntary filing under the NSIA 2021 in respect of the re-domiciliation, or a confirmation that the company has not made and does not intend to make any such filing. Where an NSIA 2021 filing has been made, if available at the time the application for re-domiciliation is made, copies of any final notification clearing, or final order issued in respect of, the proposed re-domiciliation should be provided together with the application. The Panel also recommends that the application should require a confirmation that the company and its directors are not in breach of the requirements imposed by any final or interim order received. Where the applicant has indicated on its application for re-domiciliation that it intends to make a filing under the NSIA 2021 (but has not yet done so), the applicant should be required to confirm subsequently to Companies House once it has made such an application or, if it no longer intends to make any application (for example, because it has subsequently concluded that no such filing is necessary), notify Companies House of that change of intention as soon as practicable. Where the applicant has indicated on its application for re-domiciliation that it does not intend to make a filing under the NSIA 2021 (and has not done so), the applicant should be required to notify Companies House if it subsequently decides to make a filing (for example, because it has subsequently concluded that such a filing would be prudent or necessary). Although the Panel notes that it would be an offence for a company to implement a re-domiciliation that is subject to mandatory filing without having obtained clearance, the Panel considers that Companies House should be kept informed of whether or not a filing is to be made.

10.30 In the case of a proposed outward re-domiciliation that has been or will be the subject of a notification (either mandatory of voluntary) under the NSIA 2021, the Panel suggests that Companies House should not confirm to the company that the requirements for its proposed re-domiciliation have been satisfied (and should not issue a certificate to this effect – see paragraph 10.41) until the applicant has confirmed that:

(i) It has received clearance of, or a final order issued in respect of and permitting, the re-domiciliation under the NSIA 2021; and

(ii) It and (if applicable) its directors are not in breach of the requirements imposed by any such final order;

and, in addition, the Panel suggests that if the Secretary of State has notified the Registrar that clearance has been refused under the NSIA 2021 then Companies House should be required to refuse the application, and should inform the applicant accordingly (and, for the avoidance of doubt, should not issue a certificate confirming that the requirements for the proposed re-domiciliation have been satisfied).

10.31 To the extent not already provided at the time of the application, the company should be required, within a specified short period following receipt thereof, to provide Companies House with copies of any final notification clearing, or final order issued in respect of, the proposed re-domiciliation issued after the application for re-domiciliation was made to Companies House.

10.32 In the case of an outward re-domiciliation that is not the subject of a notification (either mandatory or voluntary) under the NSIA 2021, the Panel considers that such a re-domiciliation should be subject to the Secretary of State's existing power to call in trigger events for a full national security assessment. Under the current NSIA 2021 regime, this call-in power should be exercisable at any time while the re-domiciliation is in progress or contemplation, or within six months of the Secretary of State becoming aware of the re-domiciliation if it has already taken place (provided that this occurs within five years of the re-domiciliation where it was not subject to mandatory notification).

10.33 Whilst there may be practical and/or legal difficulties in reversing an outward re-domiciliation that has already taken place, the Panel considers that the scope of final orders under section 26(5) NSIA 2021, which provides that a final order "may include provision requiring persons to do, or not to do, particular things", should be sufficiently wide to address any national security concerns by, for example, requiring the transfer of sensitive assets to a UK company. However, the Panel notes that under section 26(6) NSIA 2021, provision made by or under a final order may extend to a person's conduct outside the UK only if the person is a UK national, ordinarily resident in the UK, a UK legal entity ("a body incorporated or constituted under the law of any part of the United Kingdom") or carries on business in the UK. Therefore, to be effective in relation to outward re-domiciliations that have already occurred, the scope of final orders under the NSIA 2021 may need to be amended to include entities that were formerly incorporated or constituted under UK law and which carried on activities in the UK or supplies to persons in the UK at the time of the re-domiciliation.

10.34 To the extent there may be practical difficulties in enforcing an order in an overseas jurisdiction, these difficulties would not be greater in connection with a re-domiciliation than they would be in connection with the acquisition of control over a UK entity by a third party under the existing regime and, therefore, the Panel does not consider that the re-domiciliation legislation should address this further.

Disclosure

10.35 The Panel believes it is important that a company wishing to re-domicile to another jurisdiction should publicise its proposal to do so. This is important both for creditors of the company and for third parties dealing with that company. The Panel suggests that the company should have to notify Companies House that it has sent a notice of meeting or circulated a written resolution to propose a special resolution to approve a re-domiciliation. The notice to Companies House should include details of the proposed place of re-domiciliation and the proposed form of body corporate in that jurisdiction. The notice should have to be filed within 7 days of giving such notice or circulating such written resolution.

10.36 The Panel suggests that the Registrar should then be required to publish those details in the Gazette (or any alternative to the Gazette that is permissible for other notifications). If the company has a website, the Panel suggests that the company should be required to place a notice prominently on its website from the date that a special resolution approving re-domiciliation is passed (even if it is still subject to one or more unsatisfied conditions). This notice should state that the company is proposing to re-domicile, give details of the proposed place of re-domiciliation and the proposed form of body corporate and state that a copy of the application form to re-domicile is or will be available from Companies House. This notice should remain in place until either:

(i) The company ceases to be incorporated in the UK; or

(ii) Companies House refuses the application; or

(iii) Any condition to which the special resolution to re-domicile is subject fails to be satisfied; or

(iv) The application is withdrawn.

10.37 Once the company has applied to the Registrar to re-domicile, the Panel believes that the application form, including the copy of the solvency statement (and any further solvency statement), should be made publicly available in the register at Companies House, save that the confirmations with respect to filings, and copies of final notifications, call-in notices and interim or final orders, in each case, under the NSIA 2021 should not be published (this being consistent with the existing NSIA 2021 regime pursuant to which such matters and documents would not need to be made public).

10.38 The Panel suggests that the special resolution to re-domicile should be filed within 15 days of being passed, even if the resolution is conditional and that the company should confirm when the condition(s) have been satisfied. Copies of these filings should also be published by the Registrar in the normal way.

Determination of the application for authorisation to re-domicile

Good faith

10.39 The Panel has considered whether a UK authority should have discretion to assess applications to re-domicile and satisfy itself that an application is being made in "good faith". The Panel recommends that the regime does not include any good faith element, in the same way as for inward re-domiciliations. If there were such a requirement, an authority would have to determine whether the requirement were met or not. This would be burdensome and require considerable resources. It would also be necessary to provide guidance as to what would or would not constitute good faith or bad faith to provide more certainty to companies wishing to re-domicile. The Panel does not believe that re-domiciliation to another jurisdiction, of itself, would amount to bad faith, even though the re-domiciliation could result in a change in the position of members, creditors and third parties who deal with the company. The Panel has suggested other mechanisms to protect members, creditors and national security interests.

10.40 If, notwithstanding the Panel's recommendation, the Government deems it necessary to incorporate a good faith requirement in the regime, the Panel recommends that this should be adopted as a reserve power for the Secretary of State, such that, if the Secretary of State considers that the re-domiciliation is being undertaken in bad faith

he or she could require Companies House to refuse an application to re-domicile. This would mean that a Government department would have to have sufficiently robust resources and policies to make an assessment. There would also need to be certainty about the process for any such determination, the involvement of the company, the timescale for making an assessment and whether there should be an appeal against any decision to refuse an application. Guidance would need to be issued and this should make clear that re-domiciliation motivated by a desire to be governed by the law of a different jurisdiction and cease to be subject to the requirements of CA 2006 and/or UK tax and regulatory requirements will not be considered bad faith. The Panel believes including a good faith requirement would add a significant layer of complexity and uncertainty to the regime.

Confirmation that the requirements are met

10.41 If Companies House is satisfied that the application meets the relevant requirements and the company has paid the relevant fees, the Panel suggests that Companies House should confirm to the company that the requirements under the relevant legislation are satisfied and issue a certificate to this effect. As noted above, the Panel suggests that Companies House should not make such a confirmation, and should not issue such a certificate, until the applicant has provided certain confirmations relating to the NSIA 2021, and, if the Secretary of State has notified the Registrar that clearance has been refused under the NSIA 2021, then Companies House should be required to refuse the application, and should not issue a certificate (see paragraph 10.30).

10.42 The Panel suggests that this certificate should be valid for a specified period (see paragraph 10.43) and should state this and explain that this specified period may be extended for a further specified period. The company may need to provide evidence to the authority in the jurisdiction to which it wishes to re-domicile that it has satisfied the UK requirements to cease to be a UK company before it can become incorporated in that jurisdiction and a certificate would help it to meet such a requirement. The applicant will be responsible for ensuring that any other consents or clearances required to re-domicile have been obtained by the relevant time, for example from HMRC or any regulator.

10.43 The Panel suggests that the company should be subject to obligations (i) to inform the Registrar of the date on which it is expected re-domiciliation will be granted in the proposed jurisdiction and (ii) to deliver a certified copy of the certificate or other evidence that the company has re-domiciled in that other jurisdiction as soon as possible after it is received. The Panel believes that imposing these obligations is preferable to making the confirmation that the company has met the requirements to re-domicile conditional on informing the Registrar and delivering the certificate. The Panel suggests that there should be a longstop date by which the applicant must have delivered the evidence that the company has re-domiciled to the other jurisdiction, for example 60 days, with an ability to extend the time period on application for, say, a further 30 days. If the applicant has not provided this evidence within the relevant period, the certificate confirming that the applicant has met the relevant requirements to re-domicile should cease to be valid. If the company has been registered as a body corporate in the proposed jurisdiction, the Panel suggests that it should be an offence if the company fails to provide evidence that the company has re-domiciled in the other jurisdiction, but that it should be a defence to show that the failure to provide evidence is for a reason beyond the company's control. The Panel also suggests that the Registrar should have the power to strike the company off the UK register if it has reasonable evidence that the company has been registered in the proposed jurisdiction and has not provided evidence within the

specified period. Paragraph 10.47 addresses the issuance by the Registrar of the certificate of the company ceasing to be incorporated in the UK.

The effective date of a re-domiciliation

10.44 The Panel suggests that the applicant should be primarily responsible for liaising with Companies House and with the registry or other authority in the jurisdiction to which the company proposes to re-domicile (and any other regulators or authorities interested in the proposed re-domiciliation). The Panel suggests that it would be helpful for Companies House to be able, but not obliged, to liaise with a registry or other authority in the relevant jurisdiction if it wishes to do so (see Section 9 on Companies House's powers). If possible, the date of re-domiciliation to the new jurisdiction and the date on which the company ceases to be a UK company should be the same. Where it is not possible to achieve this on the same date, in practice the applicant and Companies House should try to make the dates as close together as possible. The Panel thinks it would not be appropriate to require the two dates to be on the same date as this will not be in the applicant's control.

10.45 To deal with a case where it is not possible to de-register the company on the date it becomes incorporated in the new jurisdiction, the Panel suggests that it would be helpful to make it clear that:

(i) A company will continue to be a company for the purposes of CA 2006 until it is removed from the register;

(ii) UK law, including CA 2006, will continue to apply to it if there is a period when it is incorporated both in the UK and in another jurisdiction; and

(iii) That it is a single legal entity during this period.

Paragraph 6.46 sets out some tax considerations in such a case.

Appointment of a representative to accept service of process in the UK

10.46 The Panel believes it would be helpful to require a re-domiciled company to appoint and maintain an authorised representative in the UK to accept service of proceedings for 10 years after ceasing to be registered in the UK for actions that arise from something which occurred before the company ceased to be registered in the UK. The Panel suggests that a re-domiciled company should be able to change the details of the authorised representative from time to time within that 10 year period by providing new details. The Panel suggests that there should be a provision (similar to section 1139 CA 2006) to say that, for 10 years after the date when a re-domiciled company ceased to be a UK company, a document may be served on that company by leaving it at, or sending it by post to, the address of the authorised representative. If for any reason, the company has failed to maintain an authorised representative in the UK as required, service of a document related to something that occurred before re-domiciliation at the address of the last authorised representative should be deemed to be good service, including if the authorised representative is a legal entity that has ceased to exist or is a natural person who has died. The Panel believes that, for something that occurs after the company has re-domiciled, the usual provisions for service of documents on a foreign company should apply.

Continuing information about the company after re-domiciliation

10.47 If the certificate or other evidence that the company has re-domiciled in the other jurisdiction does not include the place of incorporation, the company's name,

registered number or other identification and its registered address, the company should also provide those details to the Registrar. When the company has met these obligations the Registrar should then record in the register that the company has ceased to be incorporated as a company under CA 2006 and issue a certificate to the company to this effect. This certificate should be conclusive evidence that the company has ceased to be a company incorporated under CA 2006 by virtue of re-domiciliation. The Panel suggests that the certificate or other evidence of re-domiciliation from the new jurisdiction should be made publicly available in the register and that the register should record the date on which the company ceased to be a company incorporated under CA 2006, its name, registered number or other identifier, registered address and the place of its incorporation in the new jurisdiction.

10.48 The Panel notes that Companies House's policy is to retain records of dissolved companies on the register for 20 years from the date of dissolution before exercising any discretion to move them to the National Archives and that there is a similar policy for overseas companies that have closed their UK establishment The Panel suggests that Companies House's policy should also apply to companies that have re-domiciled, so the records relating to them whilst they were a UK company would continue to be available for 20 years from the date when the company ceases to be incorporated under CA 2006. The Panel notes that after 20 years has elapsed Companies House removes copy documents and the company's history but that, for dissolved companies, there is still some basic index information available via a dissolved names index. For companies dissolved since 1998 Companies House includes the company name (and previous names), company number and dates of incorporation and dissolution. The Panel suggests that Companies House should keep an index of re-domiciled companies and that details of a re-domiciled company should be included in this index from the date of its outward re-domiciliation. The Panel suggests that this should include the date on which the company ceased to be a company incorporated under CA 2006, its name, registered number or other identifier, registered address and the place of its incorporation in the new jurisdiction.

10.49 The Panel notes that, without a change, there would be no continuing obligation under the CA 2006 on a company that has re-domiciled to keep records that were required to be kept whilst it was a company and to continue to make those records available as required by the CA 2006 after re-domiciliation. The Panel suggests that an obligation should be introduced so that a company that has re-domiciled should continue to be required to keep certain records it was required to keep under requirements in the CA 2006 as those records existed immediately before re-domiciliation for 10 years from re-domiciliation. The Panel suggests that the records should be limited to those records that, on the re-domiciliation date, the company is required to make available for inspection e.g. the company’s register of members, copies of directors’ service contracts, directors’ indemnities, record of resolutions and meetings. Such records might be of assistance to anyone wishing to bring proceedings against the re-domiciled company arising from events before the re-domiciliation. Where these records were required prior to re-domiciliation to be made available for inspection e.g. by members or by others, those requirements should continue to apply for the 10 year period. The Panel suggests that, as the re-domiciled company will no longer have a registered office in the UK, the company should have to notify an address in the UK at which the records will be available, with a possibility to change that address to another UK address during the 10 year notice period. This should make such records more accessible for persons wishing to inspect the records.

Unsuccessful applications

10.50 If Companies House refuses an application it should inform the applicant of its decision. If the applicant asks, Companies House should give written reasons for its decision within a specified period, say 14 days. The Panel does not think there needs to be special provision to deal with a case where the company wishes to take action against the decision. In an extreme case the decisions of Companies House would be capable of legal challenge in the same manner as other administrative decisions.

Consequences of a re-domiciliation to another jurisdiction

10.51 The Panel believes that the law of the jurisdiction to which the company re-domiciles should determine the consequences of the re-domiciliation, for example that the company's assets and liabilities will continue to be those of the re-domiciled company, and that the rights and obligations of the company will continue to be those of the re-domiciled company as far as the law of its new place of incorporation is concerned. The Panel suggests that UK legislation should make it clear that:

(i) The re-domiciliation does not affect any obligations or liabilities incurred before the re-domiciliation or any personal liability of any person incurred before the re-domiciliation;

(ii) Convictions, judgments, rulings, orders, debts, liabilities and obligations and causes against the company or any member, director, officer or agent are not released or impaired as a result of the re-domiciliation and that proceedings by or against the company, a member, director, officer or agent may still be enforced, prosecuted, settled or compromised and are not abated or discontinued;

(iii) The re-domiciliation does not affect the choice of law applicable to the company with respect to matters arising before the re-domiciliation;

(iv) The re-domiciliation does not require the company to wind up its affairs or pay its liabilities or distribute its assets and is not deemed to constitute a dissolution of the company;

(v) The re-domiciliation does not operate to create a new legal entity or prejudice or affect the company's continuity or affect its property.

10.52 The Panel notes that a company re-domiciling to another jurisdiction may become an overseas company which is required to provide particulars under the CA 2006, for example because the overseas company has a branch in the UK. The Panel recommends that a company that re-domiciles should be subject to these requirements in the same way as any other overseas company.

11. Section 11 - Changes required to the Companies Act 2006

11.1 Many jurisdictions which allow re-domiciliation have taken a "light touch" legislative approach in clarifying how re-domiciled companies would be treated under their company law. For example, Jersey law simply states "the body corporate becomes a company incorporated under this Law, to which this Law applies accordingly" (article 127P Jersey Companies Law). There is no further detailed drafting to distinguish companies which become Jersey companies by continuance (the Jersey name for re-domiciliation) from companies originally incorporated there. The position is similar for outward continuance (article 127V Jersey Companies Law).

11.2 The Panel recommends a more comprehensive treatment of re-domiciled companies for the purposes of the CA 2006 as the UK company legislation is more detailed than many other regimes and the legal position is likely to receive greater scrutiny. In broad terms it recommends: (a) that a provision is included in the new part of the CA 2006 dealing with re-domiciliation, which effects certain "global" changes required to accommodate re-domiciled companies; and (b) that a detailed review is carried out to ascertain where further specific changes are required to existing provisions. The Government draftsperson will have a view on the best way to achieve this but should consider whether it would be preferable to house the detailed amendments in a separate schedule. This would mean that a reader who is considering re-domiciled companies can see the relevant provisions in a single place, whilst the bulk of CA 2006 provisions would not need to incorporate additional complexities which would be irrelevant to companies which have not undergone a re-domiciliation.

11.3 This Section 11 of the Report seeks to identify the changes that would be needed to existing CA 2006 provisions to accommodate the new re-domiciliation regime – i.e. areas where existing legislation may not function appropriately unless specific changes are made to cater for re-domiciled companies. It does not consider the detailed new drafting that the re-domiciliation regime itself would require (e.g. application requirements or other provisions necessary to reflect the Panel's requirements).

11.4 A review has not been undertaken of other pieces of legislation, nor of regulations made under CA 2006. Generally speaking, the Panel would support an approach whereby the changes made to the CA 2006 are made in a manner which would eliminate, or at least minimise, the need for specific changes to be made to legislation in other areas (e.g. by deeming a re-domiciled company to be a "company" from the time of re-domiciliation). Further details of the Panel's views on the provisions necessary to reflect the legal effect of re-domiciliation are set out in Section 5 of this Report. If the Government wishes to proceed with the proposed regime, it will need to consult other stakeholders including regulatory authorities (such as the Financial Conduct Authority, the Prudential Regulatory Authority, the Takeover Panel, and the Pensions Regulator) and other governmental bodies such as the Pension Protection Fund. Once the regime has been consulted upon and detailed rule changes are drafted, the Panel suggests a further consultation exercise would be required as the changes will be significant.

11.5 At a high level, legislation would need to make clear the following:

(i) A body corporate which re-domiciles into the UK is to be treated as a "company" as defined in section 1 CA 2006 from the date of the issuance of the certificate of re-domiciliation and, unless expressly stated to the contrary, must comply with all the provisions of CA 2006 (and other legislation) which are applicable to a "company" from that time. If a company re-domiciles out

of the UK, it would cease to be treated as a "company" from the time it is removed from the register and, unless otherwise stated, provisions of the CA 2006 applying to companies would cease to apply to it (see further Section 10 of this Report);

(ii) The company will, upon issuance of the certificate of re-domiciliation, have the features stated in its application form (e.g. name, share capital, articles of association, accounting reference date, corporate status (private/public etc. under section 89), directors, secretary, registered number, registered address). An entity which re-domiciles only becomes a "company" after the re-domiciliation is effective (i.e. from issue of the certificate) so CA 2006 provisions which impose an obligation on a company as a result of a change should not apply where the change occurs as part of the re-domiciliation (e.g. under section 31, there would be no need to give notice to the Registrar upon a change of articles which takes place as part of the re-domiciliation). Legislation should make clear that the re-domiciliation itself does not engage the provisions relating to change of directors/ name/articles etc. as these take effect as part of the re-domiciliation; CA 2006 provisions will only be relevant to subsequent changes in those matters. Similarly, although the share capital of the entity may change upon re-domiciliation, provisions relating to allotments (e.g. section 551, 561, 593 and 617) would not be engaged at the point of re-domiciliation but would only apply to subsequent allotments. The Panel has sought to apply this principle consistently and considers that the filing of the re-domiciliation application form should address concerns about such matters needing to be publicly available; and

(iii) There will need to be a new section of the CA 2006 dedicated to the process of re-domiciliation. There will be a significant overlap between this new section and the provisions for incorporation set out in sections 9 to 16 but also some divergences (e.g. it will not need to cover companies without share capital, and there will be no "initial shareholdings" in respect of re-domiciling companies) as well as additional requirements. Accordingly, the Panel suggests that legislation includes provisions which are equivalent to sections 9 to 16, with the necessary adjustments, in the re-domiciliation section rather than applying these sections to re-domiciliation by cross reference.

11.6 Where certain expressions are used repeatedly in CA 2006, it might be sensible to make a general clarification of how those expressions are to be read in the context of companies which have re-domiciled. It will need to be decided whether these should be addressed "globally" (i.e. a single change amending all references) or individually (i.e. a schedule setting out each change); in any case there are certain principles that should be agreed upon and reflected in the legislation. Generally speaking, the Panel believes there to be a risk of unintended consequences from trying to deal with too many concepts on a "global change" basis and it would be better to deal with sections individually.

11.7 That said, the Panel suggests that legislation would address the following:

(i) The expression "at all times" (used, for example, in sections 86 (a company's registered office), 115 (index of members), 162 (register of directors), 275 (register of secretaries), 358 (inspection of records of resolutions and meetings)) should generally be read as "at all times after re-domiciliation". However, in the context of the accounting provisions in sections CA 2006 Parts 15 and 16), when the expression is related to the accounting period in question, it should generally be read as "at all times within the accounting

period in question, whether before or after re-domiciliation". The same approach would be taken to "at any time" where that expression is used;

(ii) CA 2006 uses three separate expressions for a similar concept ("formed", "registered" and "incorporated", and the equivalent "formation", "registration" and "incorporation") and the Panel suggests that a catch-all provision makes clear that a company which has re-domiciled is to be treated as formed and registered from the date of its re-domiciliation and is, from that date, incorporated under the Companies Act, unless otherwise stated;

(iii) References to "certificate of incorporation" should include "certificate of re-domiciliation" (e.g. section 4 (private and public companies); section 32 (constitutional documents to be provided to members));

(iv) The Panel proposes allowing a body corporate, before re-domiciliation occurs but conditional upon it occurring, to pass shareholder resolutions which could have effect under the CA 2006 post re-domiciliation (see further paragraphs 5.5 – 5.7). Legislation should establish that any shareholder resolution passed by a body corporate prior to re-domiciliation would not be invalid for UK purposes merely because it was passed prior to the body corporate becoming a UK company. The body corporate should not be required to apply UK procedural requirements to these types of votes. This would enable, for example, a listed company to ensure that from the moment it effects the re-domiciliation, it has in place the shareholder authorities which listed companies normally hold (e.g. allotment authorities under section 551 and section 570; buy-back authorities under sections 690 – 708; and approval of remuneration policies under section 439). Where those resolutions are required to be special resolutions under CA 2006, the Panel suggests imposing a requirement that the requisite approval threshold (75% of those voting) is met and that the resolution is described as a resolution that would need to be passed as a special resolution under CA 2006, but the other procedural requirements should be governed by the body corporate's existing constitution. It may also be useful to include a similar provision to make it clear that board resolutions passed prior to re-domiciliation may continue to have effect on and following re-domiciliation (see paragraph 5.6);

(v) The Panel does not consider it would be necessary for a company to obtain fresh approval for matters which have been entered into prior to re-domiciliation and remain outstanding (e.g. section 188 ((directors' long-term service contracts), section 197 (loans to directors), section 201 (credit transactions) would not be offended if the company becomes re-domiciled while such loans are outstanding). The Panel did consider whether to require notification of these matters in the application form, but on balance believes that these are just some of the matters which may be different for a re-domiciled company and notification should not be required. The Panel is conscious that there could be some risk of abuse here (by applicants entering transactions immediately prior to re-domiciliation that would otherwise be regulated) but on balance the inclusion of "anti-avoidance" provisions could hinder the effectiveness of the regime and there should be other ways for a company's shareholders to hold the board to account. Furthermore, those dealing with the company will be on notice that it has re-domiciled, and therefore would be aware that there are differences between the departing jurisdiction and the UK regime which may continue to have ongoing effect; and

(vi) Where the CA 2006 contains provisions enabling the Secretary of State to make regulations, it would be sensible to review these and amend as necessary to ensure the relevant power is wide enough to make regulations on the relevant topic which also cover companies who have re-domiciled, and companies who are applying to re-domicile. It should also be considered whether the new legislation should include a power to make regulations to deal with any unforeseen issues which relate specifically to re-domiciled companies or the re-domiciliation process.

11.8 The sections relating to accounts and auditing are particularly complex and the Panel recommends that the Government should carry out further consultation on these matters before making any firm changes. In particular, the Government may wish to test whether there would be any particular impact on an audit opinion (e.g. whether a qualification or an "emphasis of matter" might be required) which is given in respect of an accounting period which straddles the date of re-domiciliation as this could affect the attractiveness of re-domiciliation.

11.9 The table below sets out the Panel's considerations on specific CA 2006 sections and notes where further amendment is likely to be necessary.

CA 2006 section reference	**Proposed change / commentary**
1 (companies)	See paragraph 11.5(i).
4 (private and public companies)	See paragraph 11.7(iii).
7 (method of forming company); 8 (memorandum of association)	It will need to be clear that section 7 does not apply to re-domiciled companies; and that the requirements relating to a memorandum (section 8) do not apply.
9 – 13 (requirements for registration); 14 – 16 (registration and its effect)	See paragraph 11.5(iii).
12A (statement of initial significant control)	This may need to apply on re-domiciliation – see further the commentary in respect of sections 790A – 790ZG in this table.
20 (default application of model articles)	The application form should set out the form of the articles of association to be adopted upon re-domiciliation. If no articles are provided, the relevant model articles would be adopted upon re-domiciliation in accordance with section 20.
22 (entrenched provisions of the articles) / 23 (notice to registrar of existence of restriction on amendment of articles).	The Panel considers that the ability to entrench matters prior to re-domiciliation taking effect is a matter for the law of the departing jurisdiction. Accordingly, an entrenchment made before re-domiciliation or in the articles adopted upon re-domiciliation taking effect should be permitted under this section (and should be included as part of the application form requirements).

CA 2006 section reference	Proposed change / commentary
29 (resolutions and agreements affecting a company's constitution) / 30 (copies of resolutions or agreements to be forwarded to registrar)	Where resolutions or agreements will bind the company after re-domiciliation, these should be required to be disclosed in the application form. No amendments will be required to these sections as the company would only be required to notify subsequent changes.
31 (statement of company's objects)	See paragraph 11.5(ii).
32 (constitutional documents to be provided to members)	Where any relevant order, resolution or enactment etc. under this section was in place before re-domiciliation but continues to have effect after re-domiciliation, the Panel believes this should be identified in the application form. Accordingly, to mirror the existing requirements of section 32, the Panel suggests that a company must supply a copy of the re-domiciliation application form if requested, which should contain all the relevant details. See also paragraph 11.7(iii).
34 / 35 (notice to registrar where company's constitution altered by enactment / order)	The Panel would consider it necessary that where an enactment or order is binding on the company at and following re-domiciliation, it would be required to state this in its application form which is notified to the Registrar and publicly available. Accordingly, these sections should operate without further change as notification to the Registrar will only be needed for subsequent changes.
36 (documents to be incorporated in or accompany copies of articles issued by company)	This section may require an amendment to make clear that a resolution, order or enactment entered into before re-domiciliation that has ongoing effect after the re-domiciliation is caught. The Panel would suggest that the requirement to have the articles accompanied by the relevant copy of the resolution, order or enactment could be fulfilled by having an accompanying copy of the application form (although in most cases it would be more convenient to incorporate the resolution, order or enactment into the articles).
46 (execution of deeds) / 47 (execution of deeds or other documents by attorney)	The Panel does not consider any specific changes are needed here. All matters binding on the company which were validly executed under the relevant law would continue to be binding regardless of UK formality requirements. Similarly, powers of attorney which were validly given before re-domiciliation should continue to be binding.

CA 2006 section reference	Proposed change / commentary
51 (pre-incorporation contracts)	If there is a global deeming of the word "formed" to include re-domiciled, this would need to be disapplied here. It would not be the intention that a person who signs a contract on behalf of the company before re-domiciliation would become liable under it. The Panel does not suggest that this section should apply to contracts entered into before the original incorporation of the company in the departing jurisdiction, as this would be a matter for the law of the departing jurisdiction to govern.
86 (a company's registered office)	See paragraph 11.7(i).
90 – 96 (private company becoming public)	A body corporate which applies to re-domicile as a public company in the UK would not automatically be caught by the requirements of sections 90 to 96 as it would not be re-registering from being a private company. However, the Panel is of the view that the requirements for re-registration should generally apply to the re-domiciliation of a body corporate applying to become a public company, subject to certain modifications. The Panel sees re-domiciliation as more analogous to a re-registration than a new incorporation. There are relatively few additional requirements for a public company to be newly incorporated but it is prohibited from trading until it has obtained a trading certificate under sections 761 and 762, for which it needs to demonstrate, among other things, that it has the requisite minimum share capital. By contrast, on a re-registration, a company must demonstrate not only that it has the requisite minimum share capital, but also that its net assets are not less than its share capital and reserves; this is presumably because a newly incorporated public company without a trading certificate would not have had the opportunity for its net assets to fall below that standard. A re-domiciling company will normally have traded previously and will be trading on the date of re-domiciliation, so in the Panel's view it should meet requirements similar to those in sections 90 – 96 and a trading certificate under section 761 should not be required. In the Panel's view, the additional requirements for registration as a public company on re-

CA 2006 section reference	Proposed change / commentary
	domiciliation (which are equivalent to those found in section 90) would be: (1) That the company will have a share capital upon re-domiciliation; (2) That the applicant must have a proposed company secretary who has consented to act, and the required particulars given (sections 277 to 279); (3) That the company's share capital upon re-domiciliation will fulfil the requirements of section 91 (i.e. nominal value not less than authorised minimum; paid up as to one-quarter and the whole of any premium; where any shares have been paid up by an undertaking to do work, that undertaking has been performed or discharged (or, for certain undertakings, are covered by a contract meeting the requirements of section 91(1)(d)(ii) with the 5 years running from the date of re-domiciliation)); (4) Evidence that the company's net assets are not less than the aggregate of the company's called up share capital and undistributable reserves. The Panel considered whether the full requirements of sections 92 and 93 should apply in this case, but considers that there will be practical difficulties in obtaining the required auditors' report (given that, for example, the body corporate may not even have had a share capital at the time the balance sheet is drawn up). Instead (and taking into account the fact that the application must include a solvency statement), the Panel suggests that confirmation is given by the proposed directors in the application form that the net assets as at the date of the application are not less than the called-up share capital and undistributable reserves proposed to be in place upon re-domiciliation, and the general requirement that there has been no material change to the application information should apply to cover the period between the date of the application and the effective date of re-

CA 2006 section reference	Proposed change / commentary
	domiciliation. On that basis, section 93 would not be relevant; (5) A statement of compliance (which can be part of the application form) that the requirements are met. On this basis, the other requirements of section 90 need not apply, and upon the issuance of the certificate of re-domiciliation as a public company, the company would be treated under section 761 as if it had re-registered as a public company and therefore would not need to apply for a trading certificate.
112 (members of company) / 113 (register of members)	Section 112 could be amended to make clear that the persons on the share register at the time of re-domiciliation are deemed to become "members of the company" for the purposes of the CA 2006 at that time (as well as subscribers and those who agree to become a member). The register requirements under section 113 should apply from the date of re-domiciliation. As such, at re-domiciliation a company should have a register setting out a full list of current shareholders, though it need not include information about former shareholders and the date on which current shareholders became a member. Decisions may need to be made as to how to reflect a body corporate's existing ownership in the new register of members (e.g. where the body corporate which is re-domiciling has some form of ownership interest other than shares) but the Panel recommends that these matters are left to the applicant to determine in accordance with the law of the departing jurisdiction. From a UK perspective, members of the company at the time of re-domiciliation (i.e. legal ownership) will be defined conclusively by those whose names appear on the share register prepared by the applicant at that time. If any persons have been prejudiced by this approach, that would be a matter for the departing jurisdiction to regulate.
113A/B (required information about members: individuals / corporate members and firms)	This should make clear that name and service address must be available at least from the date of re-domiciliation, for shareholders on the register at the point of re-domiciliation. It would be unusual for a departing jurisdiction not to require these minimum details (and it should be noted that there is no requirement to publish the register at that time or include it in the application form). Should the company be unable to enter a name or

CA 2006 section reference	Proposed change / commentary
	address of any shareholder, it would be in breach of the register requirements. It would be able to use the CA 2006 provisions to try to locate a member; e.g. section 113F (power for company to require information from members) may assist a re-domiciling company to complete any missing information after the re-domiciliation takes effect.
115 (index of members)	See paragraph 11.7(i).
121 (removal of entries relating to former members)	The Panel does not propose that there is any requirement for the company to keep a register for UK purposes of shareholders before the date of re-domiciliation. On the basis such a person would never have been a "member of the company", the Panel does not believe amendment is needed to section 121.
126 (trusts not to be entered on register)	The Panel believes no change is needed here. Even if trusts were previously recognised, they would simply no longer be entered on the register and the company would deal only with the registered owner. A re-domiciling body corporate will need to consider whether various forms of "shared" ownership which are noted on its register before re-domiciliation should be treated in this way, or as joint ownership where the joint owners are entered onto the register (but the Panel suggests this is left to the body corporate undergoing re-domiciliation). See also the commentary on section 286 in this table.
128B (conditions for keeping central register)	All members need to assent to this election and there are special provisions relating to overseas branch registers. The Panel suggests it should be left to the re-domiciling body corporate to make the election with the consent of all members once re-domiciled. A similar approach is suggested for section 167A (right to elect not to keep central register of directors). In practice, companies with a significant number of shareholders are unlikely to want to make this election in any case.
136 (prohibition on holding shares in holding company)	This provision applies to all bodies corporate (whether or not UK incorporated) holding shares in a UK incorporated holding company. If a company re-domiciles to the UK and has subsidiaries which hold shares in that company, section 136 would apply. However, section 137 provides that where the shares are acquired before the section 136 prohibition applies, then the shares may continue to be held (save that those shares are disenfranchised). The Panel

CA 2006 section reference	Proposed change / commentary
	considers that no further changes are needed to the legislation here, so that the subsidiaries or other bodies corporate holding shares in a re-domiciled company would not have to take any action (as their shares would have been acquired in circumstances in which the prohibition in section 136 did not apply), but their shares would be disenfranchised.
156A (prohibition on directors who are not a natural person)	The Panel suggests that upon re-domiciliation, the company meets all the relevant requirements including as to directors being natural persons. Accordingly, there is no need to make special provision as to how to deal with existing directors who are not natural persons, as they will not be capable of being "appointed" upon the re-domiciliation taking effect once section 156C is in force. The same applies to minimum age (section 157/159), and 159A (disqualification). (See Section 5 of this Report regarding the effect of the appointment of new directors upon re-domiciliation.)
162 (register of directors)	See paragraph 11.7(i).
170 - 181 (general duties of directors); 182 – 187 (declaration of interest in existing transaction or arrangement)	Generally the directors' duties will apply from the time of re-domiciliation. Section 177 requires a director to declare an interest in a "proposed" transaction so this can be addressed by a director making a declaration after re-domiciliation if needed, but before the transaction is entered into. By contrast, section 175 requires a director to avoid a conflict of interest situation from the moment that re-domiciliation has effect unless the conflict matter has been authorised. Since this could lead to a director being in breach of legislation from the time of re-domiciliation, the Panel considered whether this should be dealt with by a short grace period after re-domiciliation, or by allowing the authorisation to be sought before re-domiciliation as if the CA 2006 applied at that time. On balance, there was a preference for the grace period approach because of the particular authorisation requirements, which differ depending on whether the company is private or public, and which may be affected by provisions in the company's articles of association. Section 182 requires a director to declare an interest in an existing transaction or arrangement, and would also apply from the effective time of the re-domiciliation. These requirements are simpler than section 175, so the Panel proposes that a

CA 2006 section reference	Proposed change / commentary
	declaration of interest should be effective even if made before the re-domiciliation takes effect, provided it meets the requirements of sections 182 to 187 as if they applied at that time.
188 (directors' long-term service contracts)	See paragraph 11.7(iv).
190 (substantial property transactions) and 191 (meaning of "substantial")	The Panel believes that the requirement for members' approval of substantial property transactions will only apply to such transactions after the re-domiciliation. "Substantial" is assessed by reference to the company's "most recent statutory accounts" or the company's called-up share capital if no statutory accounts have been prepared. The Panel suggests that the most recent statutory accounts are the most recent Part 15 statutory accounts, necessarily prepared after re-domiciliation. Accordingly, if there have been no statutory accounts prepared since re-domiciliation, the provisions in section 191(3)(b) would apply, with the amount determined by reference to the company's called-up share capital.
197 (loans to directors); 201 (credit transactions)	See paragraph 11.7(iv).
217 (payment by company: requirement of members' approval) and 226B (remuneration payments)	This requires members' approval to make a payment to a director for loss of office, and section 220 provides an exemption for the discharge of pre-existing legal obligations. On this basis, no further change should be needed, as contractual commitments entered prior to re-domiciliation should still be able to be honoured without fresh approval. There is also an exemption for damages for breach of an obligation which may be relevant. However, it would be desirable to ensure that a directors' remuneration policy may be approved for CA 2006 purposes prior to re-domiciliation, in order for a quoted re-domiciled company to be able to make remuneration payments to its directors consistent with an approved directors remuneration policy (under section 226B) and to make a payment for loss of office consistent with a directors remuneration policy.
232 – 237 (provisions protecting directors from liability et seq.)	The Panel does not see any reason to change these provisions and considers that they would have effect from re-domiciliation to render void any provision to which they apply. The exemptions for qualifying third party indemnity

CA 2006 section reference	Proposed change / commentary
	provisions under section 234 or qualifying pension scheme indemnity provisions under section 235 should be capable of applying even where these are entered into before re-domiciliation. The Panel does not consider it necessary that these matters are entered on the application form given they are already required to be disclosed in the directors' report (section 236) and available for inspection (section 237) (which would be consistent with the approach taken for newly incorporated companies).
239 (ratification of acts of directors)	This should be amended to make clear that ratification of an act taken prior to re-domiciliation by a person who was a director under the law of the re-domiciled company's departing jurisdiction is possible. This would at least be effective as a matter of UK law although the law of the departing jurisdiction might take a different view.
260 (derivative action) et seq.	In principle the Panel believes that it should be possible to bring a derivative claim in respect of an act or omission which occurred before the re-domiciliation of the company; it may be sensible to clarify this.
275 (register of secretaries)	See paragraph 11.7(i).
279(A) – (E) (right to make an election re particulars of secretaries)	The election should be capable of being made in the application for re-domiciliation (and could be deemed to occur when re-domiciliation takes effect).
281 – 361 (resolutions and meetings)	Generally these provisions should not require significant amendment as they will apply to resolutions, votes and meetings that occur after re-domiciliation, but the Panel recommends that a saving provision is included to make clear that a resolution passed before the re-domiciliation which purports to have effect upon the re-domiciliation taking effect should not be considered invalid as a result of not meeting the procedural or all substantive requirements for a resolution or meeting (see further paragraph 5.8).
286 (votes of joint holders of shares)	This section should not require amendment *per se* as the voting requirements apply to the joint holders as their names appear on the share register on and following re-domiciliation. The Panel considered whether a specific provision is required to deal with shares or other interests which are owned by more than one person before re-domiciliation. On balance, the Panel believes it

CA 2006 section reference	Proposed change / commentary
	is best to leave this to the applicant to determine, subject to the requirements that trusts should not be entered into the register, and that the number of legal owners of a share does not exceed the permitted maximum (normally four).
323 (representation of corporations at meetings)	In principle, a corporate representative appointed before re-domiciliation which would otherwise be validly appointed under this section may continue to represent the member after re-domiciliation. It may be necessary to include an express saving in this section to make clear that this can occur before re-domiciliation (i.e. the appointing shareholder need not be "member of a company" when it makes the appointment).
324 (right to appoint proxies) - 331	The Panel believes proxies should be treated in a similar manner to corporate representatives under section 323 and a similar saving provision should be included. In practice, companies may include additional requirements for the appointment of proxies (see section 331) and in many cases it may be necessary or desirable for proxies to be appointed afresh in advance of the first general meeting after re-domiciliation.
336 (public companies: annual general meeting)	This provision requires that an AGM for public or traded companies is held within 6 or 9 months following the company's accounting reference date. For a re-domiciled company, the accounting reference date could be up to 18 months after the re-domiciliation but the Panel does not see any particular problem if the first AGM remains tied to the first accounting reference date which falls after the re-domiciliation.
355 (records of resolutions and meetings etc) – 358	The Panel suggests clarifying that this provision only applies to resolutions passed after the company is re-domiciled. As a general principle, the Panel considers that any records relating to the period before re-domiciliation which are required to be kept under the law of the departing jurisdiction should be retained after re-domiciliation for a period of 10 years. There should be no requirement on a company to retain records which it was not required to maintain at the time of re-domiciliation. See further paragraph 5.13.
358 (inspection of records of resolutions and meetings)	See paragraph 11.7(i).

CA 2006 section reference	Proposed change / commentary
378 (donations not amounting to more than £5,000 in any twelve month period)	In the Panel's view, given the de minimis nature of this provision, the relevant period should commence upon re-domiciliation, rather than applying a 12 month "look back" from the time the donation is made (which could extend to the period before re-domiciliation). As currently drafted, section 378 provides that the entity would only be a "company" from re-domiciliation so the donations would not be "other relevant donations" until then. Accordingly, these provisions should not need to change.
380 – 474 (accounts and reports)	As a general principle, a company's "financial year" may straddle a re-domiciliation, and, in such a case, the "first financial year" would be the period from the last accounting reference date before the re-domiciliation until the first accounting reference date after re-domiciliation. Where the words "at any time" are used in relation to a financial year (e.g. "at any time within that financial year") the provision would generally be amended to make clear that this meant at any time within that financial year, whether before or after re-domiciliation (but see the comments on sections 467,478 and 479 in this table). Where there are references to a company having to prepare reports or accounts for "each financial year" (e.g. section 394 (duty to prepare individual accounts); section 415 (duty to prepare directors' report)) this should not be construed as requiring a company to reconstruct reports or accounts for prior years. See Section 7 of this Report for further commentary on the treatment of accounting periods after re-domiciliation.
381 (companies subject to the small companies regime) – 384	The Panel believes that the tests should apply to the first financial year as described above (i.e. the period which may straddle re-domiciliation). It may be necessary to clarify, where the period straddles re-domiciliation, that "persons employed by the company" should include persons employed by the body corporate before re-domiciliation. Section 384 can apply as drafted (i.e. the tests in (a) and (b) would only apply after re-domiciliation because the entity would only be a "company or a public company" from that point. The Panel does not believe it would be easy to apply an equivalence test to the period before re-domiciliation.
386 (duty to keep accounting records)	The Panel suggests that the requirements are unchanged and will apply to a re-domiciled company from re-domiciliation. In practice, a re-

CA 2006 section reference	Proposed change / commentary
	domiciling body corporate will need to determine if it will have adequate accounting records to enable it to prepare statutory accounts after the re-domiciliation. If it concludes it will not have adequate accounting records from the period before re-domiciliation it may need to delay its re-domiciliation until it will have adequate accounting records for that purpose.
384A (companies qualifying as micro-entities) – 384B	The same principles as apply to small companies apply to micro-companies.
390 (a company's financial year) / 391 (accounting reference periods and accounting reference date)	As noted above, these provisions would require amendment to make clear that a company's first financial year after re-domiciliation may straddle the effective date of re-domiciliation. Section 391(5) will need amending to reflect the conclusions made in Section 7 of this Report.
393 – 414 (audited accounts)	The Panel recommends a detailed review of these provisions to reflect its conclusions in Section 7 of this Report. It may be sensible to conduct a more detailed/targeted consultation exercise into any proposed changes to the accounting provisions.
394A (individual accounts: exemption for dormant subsidiaries)	These sections should apply to the first financial year as described above (the same principles as for small companies and micro-companies). This would mean that the re-domiciled company would only be entitled to the exemption if it had been dormant throughout the whole of the financial year (including any period before re-domiciliation) and if the other conditions were met.
396 (Companies Act individual accounts) / 397 (IAS individual accounts).	The Panel would suggest that the accounts should also state the date of the re-domiciliation if this has occurred within the financial year covered by the accounts. The same principle should apply for group accounts under sections 404 and 406 in respect of the parent company. Companies (and where relevant their auditors) are likely to want to mention the impact of the re-domiciliation but the Panel does not consider that any particular legislative requirements are needed.
411 (information about employee numbers and costs) - 412 / 413 (information about directors' benefits: remuneration / advanced credit and guarantees)	The Panel suggests it is made clear that, for a first financial year that straddles re-domiciliation, these contents requirements apply in respect of the full financial year and include persons employed by the body corporate before re-domiciliation and other information from before the re-domiciliation

CA 2006 section reference	Proposed change / commentary
	(even though the body corporate was not a "company" before the re-domiciliation).
414A – 414D (strategic report), 415 – 419 (directors' report), 420 – 422A (quoted companies: directors' remuneration report)	For a first financial year that straddles re-domiciliation, the strategic report, directors' report and remuneration report should be prepared for the full financial year. Generally, the Panel believes that the contents of the strategic report and the non-financial and sustainability information can be prepared for the full financial year. However, the Panel suggests that the section 172(1) statement should only apply to the period after re-domiciliation as directors would not have been subject to the requirements of section 172(1) prior to re-domiciliation, and these provisions should not apply retrospectively. The Panel has not reviewed regulations relating to the contents of reports and accounts, or considered whether there are any practical impediments in applying these requirements to a first financial year which straddles re-domiciliation.
431 / 432 (right of member or debenture holder to copies of accounts and reports)	The Panel suggests that, where the relevant documents (or reasonable equivalents, where these have been published) were required to be provided or made public under the law that applied before the re-domiciliation, these sections should entitle a member or debenture holder to copies of those documents. It should not require any new documents to be created.
433 (name of signatory to be stated in published copies of accounts and reports); 434 (requirements in connection with publication of statutory accounts); 435 (requirements in connection with publication of non-statutory accounts)	In the Panel's view, these requirements only apply to documents that are published "by the company" after the date of re-domiciliation. The Panel does not suggest that the requirements should apply to any documents e.g. copies of reports and accounts created before re-domiciliation which are published after re-domiciliation.
439 (quoted companies and traded companies: members' approval of directors' remuneration report)	See paragraph 11.7(iv).
448A (dormant subsidiaries exempt from obligation to file accounts)	The Panel believes that the exemption should apply only if the company has been dormant throughout the whole of the financial year (so, for a first financial year that straddles re-domiciliation, both before and after re-domiciliation).

CA 2006 section reference	Proposed change / commentary
465 (companies qualifying as medium-sized: general)	The Panel believes that the exemption should apply to the company's first financial year as described above (i.e. the requirements should be satisfied both before and after re-domiciliation and there should be clarification that "persons employed by the company" should include persons employed by the body corporate before re-domiciliation).
467 (companies excluded from being treated as medium-sized) / 478 (companies excluded from small companies exemption) / 479 (availability of small companies exemption in case of group company)	These provisions exclude public companies (and certain other entities) from benefitting from certain relaxations. In the Panel's view, what should be relevant here is the period between re-domiciliation and the end of the first accounting period. The company cannot have been a public company before re-domiciliation and any attempt to judge equivalence would be challenging.
480 (dormant companies: conditions for exemption from audit) / 481 (companies excluded from dormant companies exemption)	The Panel suggests that the conditions in section 480 should apply to the first financial year that straddles re-domiciliation (both before and after re-domiciliation). For section 481, the Panel suggests that the requirements should only apply to the period between re-domiciliation and the end of the first financial year.
485 (appointment of auditors of private company: general)	As the re-domiciling body corporate will be treated as having a "first financial year" which will run until its first accounting reference date after re-domiciliation, the Panel believes that this section works as drafted.
485A/B (appointment of auditors of private company: additional requirements for public interest entities); 489 – 491 (appointment of auditors of public company: additional requirements for public interest entities)	There could be practical difficulties in applying the auditor selection procedures set out in sections 485A – C (for public interest entities) and 489A – 491 (for public companies) if these had to be put in place shortly after re-domiciliation. However, the Panel's understanding is that these provisions only apply where the auditor appointment is made by the members under section 485(4) (or section 489(4) for public companies). In the company's first financial year, the directors may appoint the auditors under section 485(3) (or 489(3)) and the selection procedure requirements do not apply. Accordingly, these provisions should not require amendment.
494ZA (the maximum engagement period)	In the Panel's view, it would be practically easier to apply these requirements only to the period following the re-domiciliation. Different audit entities are likely to be engaged (even within the same audit groups) where a body corporate undergoes a re-domiciliation and it is suggested it

CA 2006 section reference	Proposed change / commentary
	would be too difficult to apply these restrictions to take account of the period before re-domiciliation.
495 (auditor's report on company's annual accounts) / 498 (duties of auditor)	Where the audit report relates to a period which straddles the date of re-domiciliation, auditors will need to give an opinion in part relating to a period prior to re-domiciliation. The Panel believes that auditors could give an appropriate opinion provided that the company plans ahead sufficiently for the re-domiciliation (e.g. implementing accounting systems which are appropriate for the new requirements well before the re-domiciliation takes effect).
499 (auditor's general right to information)	The Panel believes it would be sensible to amend this to clarify that the auditor has the right of access to information created prior to re-domiciliation (without imposing any obligation to create documentation that was not previously in place).
532 (voidness of provisions protection auditors from liability) and 534, 536, 536	Agreements purporting to limit auditors' liability are void unless they comply with the requirements of section 535 and are authorised by members under section 536. Section 535 provides that the limitation of liability must not apply for longer than one financial year. The Panel suggests that it is made clear that existing liability limitation agreements may remain in place at the date of re-domiciliation provided they meet the requirements of section 535 (including the requirement that it covers no more than one financial year), and fresh members' approval would not be required at this time. The company would need to obtain a fresh members' approval under section 536 if it wished to put in place a similar agreement for the next financial year.
542 (nominal value of shares)	The Panel considers that all companies with a share capital should have a nominal value for each share (despite a number of other jurisdictions not requiring a nominal value). It may be helpful if the legislation makes clear that the body corporate can determine the nominal value as part of its application form and that this would be sufficient to fulfil the requirements of this section.
546 (issued and allotted share capital); 547 (called-up share capital)	Similarly, in section 546 the references to "issued share capital" and "allotted share capital" should include shares which have been issued or allotted prior to re-domiciliation or created as part of the re-domiciliation (as specified in the application

CA 2006 section reference	Proposed change / commentary
	form). (The same point would apply to section 547 (the expressions should include the relevant called-up share capital and equity share capital as specified in the application form)). Assuming "issued share capital" is amended as proposed, then there is no need to change section 548.
549 (exercise by directors of power to allot share etc.)	The Panel suggests there should be a provision to make it clear that subsection 549(3) has the effect that if a right to subscribe for, or convert securities into, shares (including share warrants) has been granted before re-domiciliation, no fresh authority would be required for the directors to allot shares after re-domiciliation pursuant to those rights, provided that any outstanding rights are specified in the application form (including the maximum number of shares issuable if the exact number is not certain). Commitments made under an employee incentive scheme may or may not meet the definition of "employees share scheme" in section 1166 but where rights to subscribe have already been granted, it is suggested that it should be made clear that this would not matter and the directors should be treated as being already empowered to allot shares to satisfy such rights to subscribe without requiring fresh authority.
551 (power of directors to allot shares: authorisation by the company)	The five-year limit in subsection (3) should run from the date of re-domiciliation (including where the authorisation is given before re-domiciliation but conditional upon re-domiciliation). See also paragraphs 11.5(ii) and 11.7(iv).
560 (meaning of "equity securities" and related expressions); 561 (existing shareholders' right of pre-emption); 566 (exemptions to pre-emption right: employees' share schemes)	Subsection (2) should make clear that the allotment of equity securities does not include an allotment pursuant to a right to subscribe for, or convert securities into, ordinary shares where details of the outstanding rights to subscribe for or convert securities into ordinary shares have been specified in the application form (see the commentary on section 549). The equivalent position should apply for equity securities allotted pursuant to an employee share scheme, including an employee share scheme which does not meet the requirements in section 1166. See also paragraph 11.5(ii).
571 (disapplication of pre-emption rights by special resolution)	Subsection (4) should make clear that this saving may also apply to an allotment pursuant to an offer or agreement made before re-domiciliation if authorised at the time such offer or agreement was made and details are specified in the

CA 2006 section reference	Proposed change / commentary
	application form in the same manner as contemplated for section 549.
584 (public companies: shares taken up by subscribers of memorandum)	The Panel considers that this section should not apply upon a re-domiciliation as there will be no subscribers to a memorandum.
585 (public companies: must not accept an undertaking to do work or perform services)	The reference "at any time" would mean that the public company must not accept such an undertaking at any time after re-domiciliation. For the treatment of shares issued before re-domiciliation where the undertaking remains unfulfilled, see the commentary on sections 90 – 96 in this table.
593 (public company: valuation of non-cash consideration for shares)	See paragraph 11.5(ii).
598 (public company: agreement for transfer of non-cash asset in initial period) and 603 (adaption of provisions in relation to company re-registering as public)	This section requires a valuation report and shareholder approval where a subscriber to a company on incorporation transfers material non-cash assets to that company within a two-year initial period after the company is formed as a public company. Section 603 applies similar provisions in the case of a company which re-registers as a public company (for a two-year initial period after re-registering). It would be logical to provide that section 598 does not apply; section 603 would apply equally to a re-domiciliation in respect of any person who is a member upon re-domiciliation and who transfers such non-cash assets within two years of re-domiciliation.
610 (application of share premiums), 611 (group reconstruction relief) and 612 (merger relief)	As noted in Section 2 of this Report, the Panel believes that upon re-domiciliation, the company should state its share capital and any amount held as share premium. The Panel recommends leaving some flexibility to applicants to determine how their existing capital and reserves would be "translated" into a UK company structure. The Panel would suggest that an applicant should be able to choose whether anything that is stated to be share premium in the application form is to be treated as share premium for all purposes under the CA 2006 after re-domiciliation. If so, it would be used in the manner set out in existing legislation and the company's articles. Clarification would be required in section 610 that the share premium account would include such amounts as stated on re-domiciliation. As regards

CA 2006 section reference	Proposed change / commentary
	group reconstruction relief and merger relief under sections 611 and 612, the Panel does not recommend that a body corporate should be able to "re-create" such reliefs in respect of reconstructions or mergers which took place prior to re-domiciliation (and consequently these provisions would apply only to reconstructions and mergers taking place subsequently and should not require further amendment). See Section 2 of this Report in relation to the treatment of other reserves.
617 (alteration of share capital of limited company)	See paragraph 11.5(ii).
629 – 640 (classes of share and class rights)	The Panel has recommended (see Section 10 of this Report) that on an outward re-domiciliation approval is obtained from each class of shares, so the re-domiciliation is treated similarly to a variation of class rights. The Panel has also suggested protection for members on an outward re-domiciliation. Consequently, the provisions of section 630 to 640 should not apply in the context of an outbound re-domiciliation. Any member of any class would have the right to petition the court for unfair prejudice.
641 – 657 (reductions of share capital)	The Panel suggests that it would be sensible to clarify that an outward re-domiciliation would not be treated as a reduction of share capital (even if upon re-domiciliation the share capital may be reduced and/or be recognised in a different form) provided that the company follows the requirements for an outward re-domiciliation, and consequently Chapter 10 of Part 17 CA 2006 will not also apply. Otherwise there could be an overlap between the creditor and member protection provisions for the re-domiciliation and the capital reduction (e.g. creditors having two separate statutory claims to object) – see Section 10 of this Report.
643 (solvency statement)	To the extent that a solvency statement test is used in the context of an outward re-domiciliation, the Panel has suggested using the formulation set out in section 643 (including limb (b)(i) (for situations where the destination jurisdiction might permit a re-domiciliation where a liquidation is contemplated). The Panel suggests including a new solvency statement test in the section dealing with outbound re-domiciliations rather than cross-referring to the section 643 test. It is assumed that directors would be required to take into

CA 2006 section reference	Proposed change / commentary
	account the impact of the re-domiciliation itself in making the solvency statement, although the Panel does not consider this needs to be made explicit in the legislation.
654 (treatment of reserve arising from reduction of capital)	In the Panel's view, it is clear that this section would only apply to reserves created in respect of capital reductions after the company is re-domiciled in the UK. There should be no attempt to apply this to similar or equivalent reserves created before the re-domiciliation.
658 (general rule against limited company acquiring its own shares)	This section (and the related sections which follow it) would only apply following re-domiciliation. It would not affect shares already held by the company itself at the point of re-domiciliation.
662 (duty to cancel shares in a public company held by or for the company) and 668 (application of provision to company re-registering as public company)	The Panel suggests that any shares held by the body corporate at the point of re-domiciliation which are not cancelled may be considered held in treasury; the rules on treasury shares should then apply to all those shares (see further the commentary on sections 724 - 732 in this table). The Panel would recommend that it is made clear in sections 662 and 668 that these provisions would only apply to acquisitions, forfeitures and surrenders etc. made after re-domiciliation.
670 (public companies: general rule against lien or charge on own shares)	Subsection (4) provides that a charge is permitted if it was in existence before the application for re-registration as a public company. This should be amended to include also a charge that was in existence prior to re-domiciliation where the body corporate becomes a public company on re-domiciliation.
677 – 683 (financial assistance)	These sections only apply to financial assistance given by a company, and therefore operate so that assistance given prior to re-domiciliation (or as part of re-domiciliation) would not be caught. The Panel agrees this is the right approach. Although not strictly necessary, it may be desirable in section 681 (unconditional exceptions) to make clear that an inward re-domiciliation should be included in the list of transactions which are not prohibited by virtue of financial assistance.
684 -689 (redeemable shares)	The Panel suggests that any shares that are, by their terms, capable of redemption at the option of the company or the shareholder at the point of re-domiciliation to the UK may continue to be held and should be treated as "redeemable shares" for the purpose of the CA 2006. Details of these

CA 2006 section reference	Proposed change / commentary
	shares would be contained in the re-domiciliation application form. A re-domiciling company would presumably need to include the terms of redemption in the company's articles or in a resolution accompanying the articles for the purposes of section 685 (terms and manner of redemption). In order to redeem those shares after re-domiciliation, a company would still need to comply with the requirements of section 687 (financing of redemption) in the same way as a company originally incorporated in the UK.
690 – 708 (purchase of own shares)	As a general principle, these provisions would apply to the company after re-domiciliation and should not require substantive amendment. The authorities for purchases (or variations/revocations) referenced in sections 693, 693A, 694, 697, 700 and 701 should be capable of being obtained prior to re-domiciliation as further explained in paragraph 11.5(iv). The Panel suggests that the requirements for members to abstain from voting on resolutions which relate to shares held by them (sections 695 and 698) should still apply to such resolutions, as should the requirements to disclose details of the contract or variation (sections 696 and 699). Where a contract has been entered into prior to re-domiciliation requiring the company to acquire shares from a member, the Panel suggests that fresh authority should not be required to give effect to the repurchase provided that details of the contract are disclosed on the application form. The Panel believes that the requirements as to the financing of the purchase of own shares under section 692 should still apply (even where the company made a commitment to repurchase shares before re-domiciliation). The Panel also suggests that the requirements of section 691 (payment for purchase of own shares) should apply.
709 - 723 (redemption or purchase by private company out of capital)	The procedures (including shareholder authorisation) for a purchase of shares out of capital are quite complex. Given that this would generally be done only in the context of a specific transaction, and can only be done by a private company (which is likely to have fewer shareholders and thus less practical difficulty in holding shareholder meetings), the Panel does not believe it is necessary to enable such authorisation to be effective if voted upon prior to re-domiciliation. A company wishing to take

CA 2006 section reference	Proposed change / commentary
	advantage of these provisions must therefore comply with the requirements in full after it re-domiciles. To keep the treatment relatively simple, the Panel suggests that the "relevant accounts" under section 712 should be prepared in respect of a period which starts on or after the date of re-domiciliation so that the "relevant period" should fall entirely after the re-domiciliation; in that way, the sections should work with minimal amendment. Where a private company purchases shares out of capital after applying available profits, sections 711 and 712 address the calculation of available profits. Appropriate amendments would need to be made to reflect the approach taken more generally to distributable profits.
724 – 732 (treasury shares)	The Panel suggests that any shares which are held by the body corporate itself at the point of re-domiciliation should be treated as treasury shares (including for the purposes of section 974), and section 724 may require amendment to make this clear. The number and class, if applicable, so held would be stated on the company's re-domiciliation application form. Sections 725 to 732 would then apply to the use of those shares in the same way as they apply to all other treasury shares. A more detailed provision is unnecessary here given there are no longer any restrictions on the maximum number of treasury shares which a company may hold.
733 (the capital redemption reserve)	This would apply only in respect of purchases out of capital after the company had re-domiciled to the UK. There should be no need to provide for equivalent reserves held prior to re-domiciliation to be treated as a capital redemption reserve.
736 (meaning of "distributable profits")	Assuming that section 830 is amended as the Panel suggests (see Section 7 of this Report), this section should not require further changes.
741 (registration of allotment of debentures)	A company must register an allotment of debentures. The Panel suggests that the aggregate amount of outstanding debentures at the time of re-domiciliation is noted in the application form, and (except for in respect of bearer debentures) a register of debentures is created by the company to reflect the position of outstanding debentures from the point of re-domiciliation in a similar manner to the share register. The place at which the register is held

CA 2006 section reference	Proposed change / commentary
	should also be noted on the application form if this is different from the registered office. Similarly, where the company holds bearer debentures, the aggregate amount allotted should be recorded in the application form, but it would not be necessary to create a register of debenture holders.
750 (liability of trustees of debentures) – 751	Section 750 provides that certain exemptions from liability contained in trust deeds are void, and section 751 contains savings in respect of trust deeds already in force when these rules were introduced. The Panel suggests consideration is given to whether it would be necessary to include a saving in respect of trust deeds already in force on the date of re-domiciliation (and it may be sensible to consult with bond issuers and providers of trustee services on this).
755 (prohibition of public offers by private company)	This section provides that it is treated as an offer to the public where a private company allots shares in the 6 months prior to those shares being offered by the holder to the public, unless the contrary is proved. As the prohibition only applies to a company allotting or agreeing to allot securities, it does not catch allotments made before re-domiciliation so should not require amendment.
761 – 767 (minimum share capital requirement for public companies)	See the commentary in respect of sections 90-96 in this table.
768 (share certificate to be evidence of title) / 769 (duty of company as to issue of certificates etc on allotment)	The Panel suggests that following re-domiciliation, the company should have share and debenture certificates (other than bearer debentures) ready for delivery within two months so section 769 would need to be amended to make clear this applies to members listed on the register of members at the point of re-domiciliation as well as for any allotment after re-domiciliation.
779 (prohibition on issue of new share warrants)	This section prohibits the issuance of bearer shares (known as share warrants to bearer). The Panel suggests that it is made clear that new share warrants cannot be issued as part of the re-domiciliation. The Panel recommends that a body corporate with bearer shares in issue must ensure that these are converted into registered shares at the point of re-domiciliation and the applicant must be able to prepare a register of members. The alternative would be to apply the 9-month

CA 2006 section reference	Proposed change / commentary
	transitional provisions set out in Schedule 4 of the Small Business, Enterprise and Employment Act 2015 but the Panel considers that it would be preferable to avoid having to make applications to court etc. to cancel unvolunteered bearer shares and if necessary this can be done pursuant to the procedures in the departing jurisdiction. The Panel would prefer an approach whereby unidentified bearer shares are cancelled as part of the re-domiciliation process and clarity is provided that persons subsequently claiming to be entitled to such cancelled bearer shares should have no claim under UK law.
790A – 790ZG (information about people with significant control) / 12A (statement of initial significant control)	The Panel recommends that Part 21A would apply to re-domiciling companies from the effective time of their re-domicile (unless those companies are exempt, e.g. because they have voting shares admitted to trading on a regulated market). The applicant would also be required to detail people with significant control in the application form, and the PSC register should be up to date from the date of the re-domiciliation. The Panel notes that (unlike newly incorporated companies) applicants may experience practical difficulties in confirming their PSCs unless certain of the obligations imposed on PSCs apply at the time the applicant is seeking the information, since a re-domiciling company may have a more diverse shareholder base. It would be possible to expand the provisions of Part 21A to meet this concern. In that case, the duty set out in section 790D may require amendment to apply to a body corporate which is applying to re-domicile, and the various definitions in the Part would need to apply to people who will become people with significant control when the body corporate becomes a company. The duty to supply information in section 790G should also apply to persons in respect of a body corporate applying for re-domiciliation. The new verification of identity requirements in sections 790LA to 790LT inserted by ECCTA 2023 would also need to be reviewed to ensure they apply to persons who would have significant control over a body corporate which is applying to re-domicile. There should be no need for a person with significant control to specify the date of becoming such where this was before the effective date of re-domiciliation. Various changes may be required to sections 790A – 790ZG to reflect the

CA 2006 section reference	Proposed change / commentary
	above, including to the sections empowering the Secretary of State to make regulations. The Panel notes that applying the above duties to persons with significant control would have an extra-territorial effect and could compel persons to disclose information that they have not previously been required to disclose, even before there is any approval of the re-domiciliation (indeed, the provisions could be abused if there is no genuine intention to re-domicile). It may be more sensible to require that the company should produce PSC information in its application to the best of its knowledge, and then should verify that information after re-domiciliation, using the powers contained in Part 21A if required. This would need to be considered further as a policy matter and consulted on.
790W – 790ZE (alternative method of record-keeping)	The Panel recommends that the ability to make an election under section 790X for the PSC register to be kept on the central register held by the Registrar may only be made after re-domiciliation, by all the members. This is consistent with the approach taken in section 128B.
793 (notice by company requiring information about interests in shares)	For the reasons indicated in respect of Part 21A, the Panel does not recommend that an applicant for re-domiciliation should have the powers set out in Part 22 for the period prior to re-domiciliation, nor for the members to have equivalent rights to section 803 (Part 22 is even more expansive than the PSC regime as it catches all shareholders). The Panel also suggests that the 3 year "look-back" period referred to in section 793 should not apply to the period prior to re-domiciliation as this requirement could effectively impose obligations on individual shareholders retro-actively.
808 (register of interests disclosed)	Since the Panel recommends that the powers in Part 22 only apply from re-domiciliation and in respect of the period from re-domiciliation, there should be no need for information held before re-domiciliation to be included on any register of interests. The register need only contain information received pursuant to section 793 requests after re-domiciliation.
830 (distributions to be made only out of profits available for the purpose)	See the commentary in paragraphs 7.19 – 7.26 relating to distributions. Section 830 would need to be amended to make clear that profits available

CA 2006 section reference	Proposed change / commentary
	for distribution (i.e. accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less accumulated realised losses) are defined in accordance with those principles, which will require a number of amendments to Part 23 (e.g. section 853).
832 (distributions by investment companies out of accumulated revenue profits) / 833A (distributions by insurance companies authorised under Solvency 2 Directive)	The Panel recommends consulting investment companies and insurance companies with the final proposals as to how the general proposal for distributions would impact on the specific rules for these types of companies, in particular whether the election to be treated as an investment company may be made at the time of the re-domiciliation application; and whether the relevant period assessed for the purposes of calculating distributions should only commence after the date of re-domiciliation.
836 (justification of distribution by reference to relevant accounts)	The Panel has set out its views in Section 7 of this Report that a company's first accounting period may straddle the effective date of re-domiciliation. It is assumed that the "last annual accounts" under subsection (2) would have to be the accounts for the first accounting period, (which would need to be audited unless the company is exempt and the directors have taken advantage of that exemption). Accordingly, a distribution will only be capable of being justified by reference to the "last annual accounts" in section 837 some time after the re-domiciliation date (i.e. the end of the first accounting period, and the subsequent preparation of the annual accounts). If a company wishes to make a distribution before then, the Panel recommends it should be able to do so by reference to initial accounts prepared following a re-domiciliation, including the requirement for an auditor's report if the company is a public company. Section 836(2)(b) would need to make clear that "first accounting reference period" means the first after re-domiciliation in the case of a re-domiciled company.
853A (duty to deliver confirmation statements)	Sub-sections (3) and (5) should make clear that the reference to the company's incorporation means the effective date of the company's re-domiciliation. Given the information that will be included in a company's application form, the Panel sees no need for the confirmation period to cover the period prior to re-domiciliation.

CA 2006 section reference	Proposed change / commentary
853E (duty to notify trading status of shares)	No particular changes are needed to this section, but since it is information of which Companies House is required to be notified annually, then logically it should be included in the re-domiciliation application form. It would also serve to inform Companies House as to whether the company is exempt from the obligation to keep a PSC register.
859A – 859Q (company charges)	See paragraphs 8.23 to 8.26 for a commentary on the Panel's recommendations on the validity and priority of charges. Sections 859A to 859D currently apply only where a company creates a charge or acquires property subject to a charge, so those sections should not require amendment. They would only have effect in respect of charges created or property acquired after re-domiciliation. Additional provisions will be needed to reflect the Panel's suggestions in paragraphs 8.23 to 8.26. Section 859E would need amendment to make clear that this is subject to those provisions in respect of charges created prior to re-domiciliation. Section 859H requires charges created by a company to be registered within 21 days of their creation, otherwise they will be void in the circumstances set out in section 859H. Again, this only applies to charges created after re-domiciliation so should not require amendment, although it will be important to be clear that a failure to register a charge created prior to re-domiciliation does not have the impact on validity set out in this section. It may be sensible to clarify that the power to extend the period for registration under section 859F and to rectify the register under section 859M can still apply if there was an accidental failure to register the charge at the point of re-domiciliation.
902 – 941 (mergers and divisions of public companies)	The Panel does not consider any specific changes are needed to Part 27, which is not widely used partly due to concerns relating to the effectiveness of the principle of universal succession in respect of contracts to which a merging company is party. In principle, the re-domiciliation regime would allow parties to re-domicile out of the UK in order to effect mergers in a jurisdiction which facilitates them more easily. The Panel would consider that section 910 (supplementary accounting statement

CA 2006 section reference	Proposed change / commentary
	(merger)) should apply so that if there are no "annual accounts" for CA 2006 purposes since the date of re-domiciliation, the supplementary accounting statement would be required to be produced; the same point would apply for section 925 in respect of divisions. Sections 911 and 926 (inspection of documents) may need to be amended to clarify that the annual accounts for the last three financial years referred to in those sections may be satisfied by providing equivalent documentation even in respect of periods occurring prior to the date of re-domiciliation.
942 – 992 (takeover etc.)	The Panel suggests that the Panel on Takeovers and Mergers is consulted to ascertain any specific comments either on Part 28 CA 2006 or on the impact of a re-domiciliation regime more generally upon the City Code on Takeovers and Mergers. In particular, consideration will be needed as to what would happen if a body corporate comes within the jurisdiction of the Takeover Panel as a result of an inbound re-domiciliation (or vice versa for an outbound re-domiciliation). The Panel assumes that for an in-bound re-domiciliation of a body corporate which becomes subject to the jurisdiction of the City Code on Takeovers and Mergers, the Takeover Panel may want the applicant to make a concert party submission similar to that used for an initial public offering to clarify the control position. In the Panel's view, the "squeeze-out" rights in section 979 should not apply unless the "takeover offer" in question was made when the company was a UK company (which would appear to be the effect of the section 974 (meaning of "takeover offer") in any case). In other words, an offeror cannot squeeze-out minority shareholders where it acquired 90% via an offer which was made prior to the re-domiciliation into the UK. The sell-out rights in sections 983 – 985 would operate in the same way. Theoretically, a minority shareholder could find that a company seeks to undertake an outward re-domiciliation whilst that minority shareholder benefits from the sell-out rights, but in practice the Panel believes these rights would continue to apply during the outward re-domiciliation application process (and any shareholder who believes they have suffered unfair prejudice could clearly bring a claim at that point).

CA 2006 section reference	Proposed change / commentary
993 (offence of fraudulent trading)	The Panel does not believe this section needs amendment. The fraudulent trading offence can only be made out if a company carries out trading fraudulently after it has re-domiciled, because before that date a different set of rules will apply and an offence should not be created with retroactive effect. It may be possible for a court to take into account behaviour which occurred prior to the date of re-domiciliation but the Panel does not believe the section would prevent this at present.
994 – 999 (protection of members against unfair prejudice)	The Panel recommends that, in the case of re-domiciled companies, it is made clear that the court may take into account matters which occurred before the effective date of re-domiciliation (or else a prejudiced shareholder may be left without a remedy if the departing jurisdiction would no longer permit a claim to be brought). The Panel suggests that it should be made clear that, in considering any matter that occurred before re-domiciliation, the court would take into account the law that applied to the body corporate at the relevant time, as opposed to the current position under the CA 2006. As noted in Section 10 of this Report, the Panel believes that the unfair prejudice regime should apply to address concerns of dissenting shareholders who consider that they are being unfairly prejudiced as a result of an outward re-domiciliation.
1004 (circumstances in which application not to be made: activities of company)	The premise of section 1004 is that a striking off application by the company should not be made within three months of certain significant corporate events (e.g. name change). The Panel suggests that an in-bound re-domiciliation should be included as one of these events (and also in section 1009 (circumstances in which application to be withdrawn)).
1040 (companies authorised to register under this Act)	For a company which was not formed under the CA 2006 but which is authorised to register under Part 33, the Panel suggests that such companies are required first to become registered under CA 2006 before they are permitted to make an application to re-domicile out of the UK. The normal requirements for re-domiciliation would then apply. This would simplify the legislation. Section 1040(1)(b)(iii) may require amendment to make clear that a company which was incorporated outside of the UK and re-domiciled

CA 2006 section reference	Proposed change / commentary
	into the UK would not be authorised to register (as it would already be registered by virtue of the re-domiciliation).
1043 (unregistered companies)	This section does not apply to companies which have re-domiciled into the UK as a re-domiciled company would be registered under the CA 2006. It should not therefore require amendment.
1044 (overseas companies) – 1048 (registration under alternative name)	It should be clarified that a re-domiciled company which was originally incorporated outside of the UK should not be considered an "overseas company". Clearly it should be possible for an "overseas company" to apply to re-domicile into the UK. The provisions which apply to an overseas company applying to re-domicile would apply up to the effective time of the re-domiciliation. The company would need to give notice under section 1058 at that time that it has ceased to have a branch (because it has re-domiciled as a UK company). Similarly, a company which re-domiciles out of the UK may become an "overseas company" following its re-domicile. The re-domiciling company may register the relevant particulars under section 1046 either as part of, or shortly after, the re-domiciliation application; to the extent that provision is made for this application to be made as part of the re-domiciliation application, sections 1046 – 1048 would need to be amended so that these sections may permit a company to make the relevant registrations before re-domiciliation (but with effect from re-domiciliation).
1063 (fees payable to the registrar)	See paragraph 2.5 of this Report.
1064 (public notice of issue of certificate of incorporation); 1065 (right to certificate of incorporation)	These sections should apply equally to the issue of a certificate of re-domiciliation.
1077 (enhanced disclosure documents)	See paragraph 9.4 of this Report.
1080 (the register)	It would need to be determined whether any of the documents existing prior to the re-domiciliation should be treated as "the register" for the purposes of this section (e.g. to what extent this should include materials on the application form or

CA 2006 section reference	Proposed change / commentary
	other registers kept by the company prior to re-domiciliation). Generally, the Panel recommends applying a principle whereby documents that have previously been publicly available remain available for inspection for a minimum time period, but documents which have not previously been publicly available are not required to be. This would be relevant, for example, to the rights of inspection/copies under section 1085/1086.
1084 (records relating to companies that have been dissolved etc.)	It should be made clear that the separate rules should apply relating to companies which have undergone an outward re-domiciliation (see paragraph 9.7), rather than the rules in this section.
1092A (power to require information)	The powers of the Registrar to require a person to provide information could be expanded to make clear that the Registrar may seek further clarification in respect of re-domiciliation applications and the requirements applicable to re-domiciled companies more generally (see the Panel's recommendations on this in Section 9 of this Report).
1099 (the registrar's index of company names)	See paragraph 9.8.
1103 (documents to be drawn up and delivered in English)	The Panel suggests that this requirement (and the related rules relating to Welsh and other languages in sections 1104 to 1110) should apply equally to documents submitted in relation to a re-domiciliation application. Certain provisions in sections 1111 to 1119 (e.g. section 1113) may need amending to clarify that they apply to applicants and not just existing companies. See paragraph 9.9.
1110F (disclosure by the registrar)	See paragraph 9.10.
1113 (enforcement of a company's filing obligations)	See paragraph 9.11.
1121 – 1133 (offences under the Companies Act)	The Panel does not believe significant amendment is needed to these sections.
1134 – 1138 (company records)	The Panel suggests that these provisions are reviewed to reflect the proposals in respect of records relating to the period before a company's re-domiciliation into the UK (see paragraphs 5.11 – 5.13). As a general principle, the Panel suggests that records which were required prior to

CA 2006 section reference	Proposed change / commentary
	re-domiciliation are required to be kept by the company for a period of ten years; and public records which were previously to be available for inspection should remain available for inspection.
1139 (service of documents on company); 1140 (service of documents on directors, secretaries and others)	The Panel suggests that, for a body corporate which has re-domiciled out of the UK, provision is made to enable service of a document on that entity at an address it must specify as part of its re-domiciliation procedure (see paragraph 10.46). This is to prevent the situation where, as a result of its re-domiciliation, a body corporate makes it more difficult to serve notice of a valid claim or notice, which relates to the period prior to re-domiciliation. As regards the similar provisions in section 1140 in relation to service addresses of directors, the Panel does not consider that any special arrangements would be needed. Section 1140(6) provides that service cannot be effected at the registered address after notice of the termination of the director's appointment, and so it would follow that those service provisions would not apply after the person in question ceases to be a director of a company due to it re-domiciling out of the UK.
1192 – 1208 (business names)	As Part 41 applies to the name under which a person (whether or not a company or body corporate) carries on business in the UK, the Panel does not consider any specific changes are required.

GLOSSARY

In this Report:

"**CA 2006**" see paragraph 1.1;

"**CAA 2001**" see paragraph 6.24;

"**CDDA 1986**" see paragraph 8.22;

"**CFC**" see paragraph 6.29;

"**CTA 2009**" see paragraph 6.15;

"**CTA 2010**" see paragraph 6.11;

"**EEA**" means the European Economic Area;

"**EU**" means the European Union;

"**ECCTA 2023**" see paragraph 2.1;

"**FIG**" see paragraph 6.53;

"**FRS 102**" means the Financial Reporting Standard 102 applicable in the UK and Republic of Ireland;

"**GAAP**" see paragraph 7.12;

"**HMRC**" means His Majesty's Revenue and Customs;

"**HMT**" means His Majesty's Treasury;

"**IAS**" see paragraph 6.43;

"**IFRS**" means the International Financial Reporting Standards;

"**ITA 2007**" see paragraph 6.38;

"**NSIA 2021**" see paragraph 3.13;

"**OECD**" means the Organisation for Economic Co-operation and Development;

"**Panel**" means the Independent Expert Panel on Corporate Re-domiciliation;

"**Pillar Two taxes**" see paragraph 6.20;

"**PRA**" means the Prudential Regulation Authority;

"**PSC**" means people with significant control, as contemplated by Chapter 3 Part 21A CA 2006;

"**Registrar**" see paragraph 2.1;

"**SDRT**" see paragraph 6.58;

"**SSE**" see paragraph 6.41;

"**TCGA 1992**" see paragraph 6.24;

"**TIOPA 2010**" see paragraph 6.29;

"**TMA 1970**" see paragraph 6.50;

"**UK**" means the United Kingdom of Great Britain and Northern Ireland;

"**UK GAAP**" means GAAP as adopted in the UK incorporating the standards published by the Financial Reporting Council; and

"**VAT**" means value added tax as contemplated by the Value Added Tax Act 1994.

ANNEX 1
INDEPENDENT EXPERT PANEL ON CORPORATE RE-DOMICILIATION – TERMS OF REFERENCE

Published in December 2023 at https://www.gov.uk/government/groups/independent-expert-panel-on-corporate-re-domiciliation

1. **Purpose**

1.1 The purpose of the Independent Expert Panel on Corporate Re-domiciliation is to work up a specific proposal for changing the legal framework to enable companies incorporated in overseas jurisdictions to transfer to the UK while retaining the same legal personality.

2. **Context**

2.1 Government signalled its intention to introduce a corporate re-domiciliation regime in its summary of consultation responses, published in April 2022, which followed an initial consultation. Government also indicated that it would undertake further formal consultation as appropriate.

2.2 The Panel has been convened by the Department for Business and Trade ("**DBT**"). The Panel will develop its proposal independently from Government. It is intended that the Panel's specific proposals, along with an economic research study being undertaken by DBT, will inform the basis for further public consultation.

3. **Objectives**

3.1 To work up a specific proposal for changing the legal framework to enable companies incorporated in overseas jurisdictions to transfer to the UK while retaining the same legal personality by:

(a) Proposing a regime design, taking into account the responses to the Government's 2022 consultation. The design should set out the various components of the regime including: eligibility criteria, checks and balances including access to information on overseas registers, conversion mechanism, measures needed for regulated industries, additional powers for the registrar, changes required to tax law, implications for accountancy requirements, insolvency implications and creditor protection, design of an outward regime and any other significant components which the Panel identify.

(b) Investigating the extent to which the Companies Act and other legislation would need updating to reflect the introduction of a re-domiciliation regime.

4. **Roles and responsibilities**

4.1 DBT will support the Chair in convening the Panel, including by providing initial suggestions on issues requiring consideration and a proposed workplan. DBT will facilitate links with officials at HMT and HMRC.

4.2 The Chair is responsible for outlining the strategic direction of the work and identifying key challenges, refining and agreeing a workplan, and bringing about progress, discussion, challenge and feedback to ensure the Panel's report remains on track and aligned to the objectives.

4.3 Panel members are responsible for reviewing the project against its stated objectives, contributing to making progress against the agreed workplan, providing expertise based on their knowledge, experience and by considering the wider academic and industrial research landscape, and contributing to the production of the final report.

4.4 The Panel will operate on collective decision-making principles, and with any decisions agreed by a majority view.

4.5 Names of individual Panel members and their respective organisations may be published within the Panel's Terms of Reference and the final report. Panel members are appointed in their personal capacity and not as representatives of their organisations.

5. Meetings

5.1 The Panel will meet every six weeks but can meet more frequently if needed.

5.2 Unless the Panel itself decides otherwise, a hybrid model will be operated to allow Panel members to meet in person or virtually to suit individual needs.

6. Secretariat

6.1 The Secretariat will be responsible for producing an agenda for meetings.

6.2 The Secretariat will record a minute of meetings and actions. The actions will usually be circulated to Panel members within two working days of meetings and the minutes within five working days.

6.3 The Secretariat function will be performed by DBT.

7. Confidentiality

7.1 Panel members may consult other individuals in respect of the content of Panel meetings, communications, and documents to draw in additional expertise as appropriate.

7.2 Participation in the Panel will not restrict the normal provision of services to clients for Panel members. The information being discussed will not be sensitive nor confidential and therefore it is expected that there will not be any restrictions on the disclosure of information between Panel members and their clients.

8. Membership

Panel chair: Professor Vanessa Knapp, OBE, Brunel Law School

Panel members: Joe Bannister, DAC Beachcroft; Rachel Hossack, Deloitte; Raj Julleekeea, PwC; Jane Musyoki, EY; Jon Perry, Norton Rose Fulbright; and Nick Spurrell, Clifford Chance. The Panel may draw upon additional expertise as required either by inviting guests to Panel meetings or by adding members to the Panel.

Panel observers will be drawn from officials at Companies House, the Department for Business and Trade, HM Treasury and HM Revenue & Customs.

Panel secretariat will be provided by Department for Business and Trade (Company Law and Governance Directorate).