

Global mergers and acquisitions' activity in 2021 broke all prior records – with over 63,000 transactions recorded and a global M&A value of more than \$5.1 trillion. We expect 2022 to be another very strong year in terms of M&A deal volume. We have outlined five trends we predict to significantly frame M&A activity this year: (i) enhanced deal scrutiny; (ii) ESG's aspects significance; (iii) the continued growth in the use of W&I insurance; (iv) carving-out of assets increasing deal complexity; and (v) the introduction of a potential corporate re-domiciliation regime for the UK.

TREND #5: CORPORATE RE-DOMICILIATION REGIME FOR THE UK?



A public consultation on the establishment of a re-domiciliation regime ran from October 2021 to January 2022 (the Consultation). The Government published a summary of responses confirming its intent to introduce such a regime but without providing a timeline and simply stating that it intends to carry out more detailed analysis and engagement before bringing forward a legislation.

The proposals represent a fundamental reform and modernisation of UK company law, and would bring the UK into line with around 50 countries and jurisdictions which also have re-domiciliation regimes (including Australia, Belgium, the British Virgin Islands (BVI), Canada, Guernsey, Hong Kong, Jersey, Luxembourg, New Zealand, Singapore, and several states within the United States).

WHAT IS RE-DOMICILIATION?

A corporate re-domiciliation regime allows a company to transfer its place of incorporation from one jurisdiction to another, while maintaining its identity as a legal person, with its unique corporate history, management structure, assets, IP and property rights, contracts, and regulatory approvals.

There are two types of re-domiciliation:

- **"inward" re-domiciliation**, allows a company formed under the laws of another jurisdiction to move its place of incorporation to a jurisdiction (i.e. here, to the UK); and
- **"outward" re-domiciliation**, which allows a company to move its place of incorporation from a jurisdiction (e.g. the UK) to another jurisdiction.

The primary focus of the Government's proposals is inward re-domiciliation, allowing companies incorporated outside the UK to re-domicile to the UK, although the Consultation did ask for views on a potential outward re-domiciliation regime. However, the Consultation noted, with reference in particular to Singapore, that not all jurisdictions that offer an inward re-domiciliation regime also offer an outward re-domiciliation one.

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It is currently not possible for a company to re-domicile in the UK. In practice, the closest approach to re-domiciliation is to transfer assets and liabilities to a newly incorporated company, but it is not possible to retain the same corporate identity. The ability to maintain corporate personality can be extremely attractive as, for example, there is no need for assets to be disposed of and re-acquired. In addition to the advantages of simplicity offered by a standardised administrative process, re-domiciliation can allow otherwise complex commercial issues to be sidestepped (e.g. where the disposal of an asset is forbidden or require consent that it may not be easy to obtain).

THE PROPOSED RE-DOMICILIATION REGIME

The proposed regime is intended to be as broad as possible and is not intended to be limited to any sectors or industries. The Government does not intend that the re-domiciling entity need to satisfy any additional economic substance requirements in order to qualify for re-domiciliation (although substance can be important for other reasons, for example to take advantage of a tax treaty).

Under the proposals, the following requirements would need to be satisfied for a foreign company or other legal entity to re-domicile to the UK:

- Authorisation from the departing country: the current jurisdiction of incorporation must allow outward re-domiciliation.
- Legal form compatibility: the corporate form must be compatible with UK company law.
- Directors' good standing: the directors must be of good standing in the current country of incorporation and have no legal or enforcement action against them. The directors will also need to satisfy UK company law requirements relating to directors.
- National security: the application must pose no national security risk and not be contrary to the public interest. UK authorities will assess this as part of the re-domiciliation application.
- Payment of a registration fee: there will be a registration fee for each re-domiciliation application.
- Financial reporting track record: the entity must have passed its first financial period end and provide the relevant documentation, to ensure that the entity has some track record before re-domiciling to the UK.
- Solvency: the entity must be solvent and able to pay debts as they fall due for at least 12 months after the application. No entity in liquidation or undergoing similar insolvency/administration processes will be able to re-domicile to the UK.
- Impact report: directors will need to prepare and attest a report explaining the full legal and economic impact of re-domiciliation, including for creditors, shareholders and key stakeholders.

TAX CONSIDERATIONS

Re-domiciliation of a legal entity can also have significant implications from a tax perspective, both in the jurisdiction that a company leaves and also in the UK. Key areas of focus of the Government in the Consultation included the following:

- Tax residency: whether a company re-domiciling to the UK should be treated as UK resident by virtue of the re-domiciliation or only be treated as UK resident if the central management and control is in the UK (subject to the provisions of any double tax treaty).
- Loss importation: whether the ability to re-domicile in the UK would increase the existing risk of an entity becoming UK tax resident in order to set off foreign losses against UK profits of other group companies under the UK's group relief provisions.
- Base costs: the Government is considering on what valuation basis the assets of a company re-domiciling in the UK should be brought within the UK tax net.

The overall attractiveness of the regime is likely to depend upon the extent to which there is clarity across a range of tax considerations (including, for example, whether re-domiciliation is regarded as changing the source of interest for withholding tax purposes).

CONCLUDING THOUGHTS

The introduction of re-domiciliation regime is well timed for three reasons, in particular:

- Firstly, in recent years the considerable advantages that used to be associated with holding UK real estate in an offshore company have largely been removed and in operational and efficiency terms it may be preferable to re-domicile a company owning UK real estate to the UK.
- Secondly, in light of the current international situation (for example in Hong Kong), re-domiciliation to a European jurisdiction (rather than, for example, to Singapore) may be particularly attractive to anyone with close connections to France.
- Thirdly, with the introduction in April 2022 of the UK's new tax neutral "qualifying asset holding company" (QAHC) regime, which builds upon the UK's wide networks of both tax treaties and also investment treaties, interesting opportunities (traditionally only generally offered by Luxembourg) could be opened up for funds and asset managers.

Ultimately, the success of the regime will depend on its administrative simplicity and the extent to which the tax implications are clear and well understood.

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