

The purpose of this guide/FAQ is to assist clients in understanding the purpose of corporate re-domiciliation, the advantages and disadvantages, and to give an indication of the costs involved.

To avoid repetition, the terms “outgoing” to refer to the existing jurisdiction from which the company is to be re-domiciled, to “incoming” to referring to the jurisdiction into which the company wishes to be re-domiciled.

### What does re-domiciliation mean?

Much in the way that a company can change its registered office/registered agent within the same jurisdiction, it can also “move” to a new jurisdiction. Corporate re-domiciliation is the process by which a company moves its ‘domicile’ (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, whilst maintaining the same legal identity. The ease with which re-domiciliation may take place has increased in recent years.

Not all countries allow re-domiciliation. Those that do, tend to be Commonwealth “common Law” (as opposed to Civil law jurisdictions). Notable exceptions are Austria, Hungary, Latvia, Luxembourg, & Liechtenstein which are civil law but do permit re-domiciliation.

### Why should I want to re-domicile?

There can be many reasons. Companies’ may re-domicile for a variety of reasons including:

- a) To take advantage of more favourable tax laws
- b) To take advantage of less stringent regulatory provisions;
- c) To align their place of registration with their shareholder base;
- d) To access specialist capital markets.

### From and to which countries can a company be re-domiciled?

#### *Countries/jurisdictions from which redomiciliation is possible.*

Andorra	Cook Islands	Lichtenstein	Seychelles
Anguilla	Costa Rica	Luxembourg	St Kitts and Nevis
Antigua and Barbuda	Cyprus	Macao	St Lucia
Aruba	Dominica	Malaysia (Labuan)	St Vincent Grenadines
Austria	Gibraltar	Maldives	Switzerland
Bahamas	Grenada	Malta	Turks and Caicos Islands
Bahrain	Guernsey	Marshall Islands	United Arab Emirates (Dubai)
Barbados	Hungary	Mauritius	Uruguay
Belgium	Ireland	Montserrat	US Virgin Islands
Belize	Isle of Man	Nauru	USA (Delaware)
Bermuda	Israel	Netherlands Antilles	Vanuatu
British Virgin Islands	Jersey	Panama	
Brunei	Latvia	Philippines	
Cayman Islands	Lebanon	Portugal (Madeira)	
	Liberia	Samoa	

#### *Countries/jurisdictions from which redomiciliation is not possible.*

Hong Kong	United Kingdom
Monaco	Singapore
Netherlands	

... together with most “civil law” countries

To re-domicile, both the existing jurisdiction (where the company is currently registered) **and** the target jurisdiction (where the company is to be 'continued') need to be on the list of countries where re-domiciliation IS possible. There are certain countries (UK, Hong Kong, Singapore) that one might expect to allow re-domiciliation, but don't.

In such cases other solutions must be found.

## What is required to re-domicile?

There are two separate parts to re-domiciliation:

### *The outgoing jurisdiction: -*

- a) The outgoing company must be fully up to-date (where, for example, accounts are required these must be filed up to date together with any outstanding annual returns etc.).
- b) There must be no on-going legal process against the outgoing company.
- c) Various documents need to be filed with and obtained from the outgoing registry e.g. resolutions and consent to re-domicile etc.
- d) A certificate of good standing and certificate of incumbency must be obtained in every case.

### *The incoming jurisdiction:-*

The requirements of the incoming jurisdiction vary wildly. As a minimum, a resolution to re-domicile and a Certificate of Good standing (CoGS) may suffice. Other jurisdictions require detailed information, certificates of solvency etc., all of which are expensive and time consuming to obtain. In broad terms; Belize, The Marshall Islands and The Seychelles are the least demanding and consequently the cheapest, whereas Dubai/RAK, Cyprus, Mauritius, and the BVI are more expensive.

## What are the advantages of re-domiciliation?

The advantages are subjective and often involve the balancing of the additional costs of re-domiciling against the inconvenience (and costs) of not doing so.

As an example **Mr. X** formed a Gibraltar company in 2002. He has established bank accounts for this company and the company has a number of commercial contracts. For various reasons Mr. X wishes to re-domicile the company to the Seychelles.

If he re-domiciles, he will pay certain costs, but:

- a) The company continues its legal existence with effect from the original incorporation date – 2002 in this example. ... It can quite properly state "in business/incorporated for over 10 years" for example.
- b) Websites can remain "as is" with only minor changes to privacy policies and T&C.
- c) All of its legal contracts therefore remain valid although notification of the change of jurisdiction may be required to counter-parties.
- d) Bank accounts may remain in place as it is still the same company. Please note that banks will almost certainly require a full set of documents pertaining to the incoming jurisdiction.

By contrast, **Mr. Y** also has a company registered in Gibraltar and wishes to transfer/continue his business in Belize. He has no contracts and his bank accounts are (relatively) easily replaced. In such a case he might be better advised to register a company (perhaps with the same name) in Belize, establish new banking relationships, and simply arrange for the Gibraltar Company to be struck off.

## Costs of re-domiciliation

These vary according to jurisdiction. The cheapest being Belize, Seychelles and the Marshall Islands, where the re-domiciliation process will generally cost less than US \$1,000 / €750, to which must be added

- The cost of first year domiciliation services in the incoming jurisdiction (registered office, registered agents etc.) in the new jurisdiction
- The cost of compliance in the outgoing jurisdiction – this could be as simple as a notarised resolution and a certificate of good standing.

Other jurisdictions e.g. Mauritius, BVI the Emirates (RAK etc) and Cyprus, although ending up with the same thing, require considerably more work and are thus much more expensive (up to around €4,500 in the case of the Emirates/RAK and Cyprus). The existence of a unique feature (eg VAT registration in the case of Cyprus, or a beneficial tax treaty could well make the more expensive option more attractive.

## Should I re-domicile or should I just create a new company with the same name elsewhere?

This will depend entirely on the circumstances of the existing company and the following factors will probably decide this.

- The existence of contracts that cannot easily be re-negotiated.
- The existence of assets held by the company in the outgoing jurisdictions e.g. property which may be expensive and time consuming to sell and buy back.
- Existing bank accounts with banks that no longer offer accounts for “offshore companies” (e.g. certain Swiss banks).

If one or more of the above factors are applicable it is probably worth considering re-domiciling the company.

If not, it will probably be more cost effective to simply close the “old” company and establish a new one in a more congenial jurisdiction, with the same, or different name depending on circumstances.

## What if my existing or chosen jurisdiction is not on the list?

You may wish to contact us for advice, but, assuming the unanimity of the shareholders, the simplest method would be to create a new company (NewCo) in the chosen jurisdiction. NewCo would then acquire 100% of the issued shares of the existing company (OldCo). Assets would be transferred from OldCo to NewCo over time and NewCo would also take on all new business.

After a suitable period and after all assets had been transferred to NewCo and creditors had been paid, OldCo could be struck off or otherwise dissolved.

The above would necessarily require the consent and agreement of **all** shareholders.

## Glossary: -

**Certificate of good standing** – a registry issued document that confirms that the company is fully up to date in its filings. In some cases this document will also confirm the directors and shareholders, thus obviating the need for a Certificate of incumbency.

**Certificate of incumbency** – this document is normally issued by the company secretary/registered agents and confirms the current directors and shareholders.