

**SHOOSMITHS**

# Doing business in the UK

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# Contents

## Features

<b>1</b>	Introduction	<b>3</b>
<b>2</b>	Choice of business structure	<b>5</b>
<b>3</b>	Private company limited by shares – key features	<b>8</b>
<b>4</b>	Property issues	<b>11</b>
<b>5</b>	Human resource issues	<b>14</b>
<b>6</b>	Intellectual property rights	<b>24</b>
<b>7</b>	Trading contracts & compliance issues	<b>28</b>
<b>8</b>	Taxation	<b>33</b>
<b>9</b>	About Shoosmiths	<b>37</b>

# Introduction



# Introduction

The United Kingdom remains a key location for companies with international aspirations. Compelling reasons for establishing a commercial base here include:

- A new and distinct market for your goods or services
- A highly skilled workforce
- Access to UK know-how and technology
- Excellent employee relations
- Familiarity of the English language
- Proximity to continental Europe
- A government keen to attract inward investment.

To take full advantage of what the UK has to offer, you will need to understand the commercial environment within which your business will operate. This guide will give you an overview of some of the key considerations when deciding whether to establish a business presence in the UK.

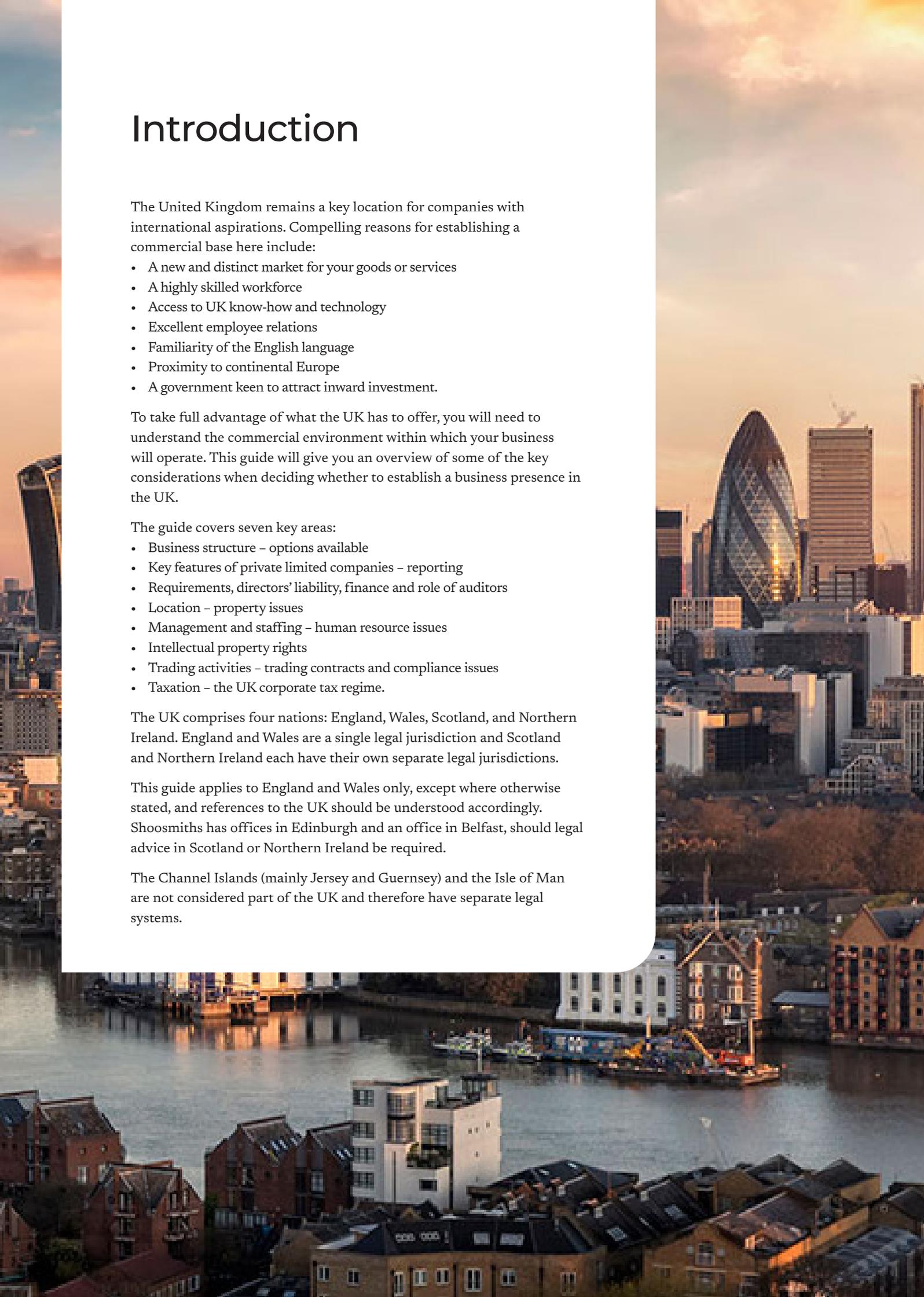
The guide covers seven key areas:

- Business structure – options available
- Key features of private limited companies – reporting
- Requirements, directors' liability, finance and role of auditors
- Location – property issues
- Management and staffing – human resource issues
- Intellectual property rights
- Trading activities – trading contracts and compliance issues
- Taxation – the UK corporate tax regime.

The UK comprises four nations: England, Wales, Scotland, and Northern Ireland. England and Wales are a single legal jurisdiction and Scotland and Northern Ireland each have their own separate legal jurisdictions.

This guide applies to England and Wales only, except where otherwise stated, and references to the UK should be understood accordingly. Shoosmiths has offices in Edinburgh and an office in Belfast, should legal advice in Scotland or Northern Ireland be required.

The Channel Islands (mainly Jersey and Guernsey) and the Isle of Man are not considered part of the UK and therefore have separate legal systems.



# Choice of business structure



# Choice of business structure

There are several business structure options open to overseas businesses wishing to do business in the UK. These include:

- Opening a UK establishment
- Incorporating a UK company
- Acquiring an existing UK company
- Entering into a joint venture or partnership arrangement
- Putting in place an agency, distributorship or franchise arrangement.

As well as legal, tax and regulatory considerations, there are a number of commercial factors to consider when deciding which of these alternatives is the most appropriate, such as, product origin, available funding/ resources, size and permanency of the UK operation and the level of risk to be incurred.

In relation to acquiring an existing UK company, consent from a regulatory body may be necessary or appropriate. For example, the acquisition of a UK company that is active in any one of 17 sectors listed in the National Security and Investment Act 2021 requires consent from the regulator prior to completion of the transaction. Likewise, if the acquisition would result in the creation of a substantial share of a market, it may be appropriate to seek consent from the competition authority prior to completion, to avoid the authority deciding to impose remedies, such as divestment of the acquired company.

Many overseas entities wishing to do business in the UK set up an establishment or branch or incorporate a company as a subsidiary. Further details on each of these are set out below and a comparison of the two business structures can be found in the Appendix.

## UK establishment

An overseas company may choose to open a UK establishment (such as a branch or place of business where it trades). There is a requirement for an overseas company to register any establishment it has in the UK. This means that certain particulars of the overseas company and details of the UK establishment must be registered at Companies House (the official registry of companies in the UK), together with a fee. If any of the original information filed changes, an amended return must be filed.

The main point to note about operating a branch is that it is not a separate legal entity. This means that the overseas company is directly responsible for the operations, liabilities and obligations of the UK establishment.

It is important to note that UK establishments are subject to certain trading disclosures and will usually be required to file annual accounts with the Registrar of Companies. The UK establishment may also be subject to UK tax.



## Subsidiary company

A company is a separate legal entity, distinct from its shareholders and directors. This makes it an attractive proposition for an overseas company looking to establish a business in the UK. Separate legal entity status enables the company to enter into contracts directly and generally offers the parent company protection from the subsidiary's liabilities (although recent case law has set out certain exceptions to this).

On incorporation, all companies must be registered at Companies House as either private or public. Private companies can be limited by shares, limited by guarantee or be unlimited. This guide deals only with private companies limited by shares.

The main benefit of a company limited by shares is that the liability of the shareholders is limited to the amount, if any, unpaid on the shares held by them in the company. It follows that if the shares are fully paid, shareholders will not normally be liable to contribute further amounts in the event of the company becoming insolvent, although of course the initial investment would be lost.

Incorporating a private company limited by shares is a straight-forward process which can usually be completed within one business day. To do so, certain forms need to be completed and filed at Companies House along with a fee.



The details currently required to set up a company include:

- A suitable name for the company. There are some restrictions on the choice of name and a company cannot use a name that is already registered at Companies House. The name of a private company must end with the word 'Limited' or 'Ltd'
- Details of the proposed director(s) including full name, date of birth, nationality, address and occupation. A private company can have just one director (who is a 'natural person' over 16 years of age). A director does not have to be a UK national but must consent to act as a director. Currently, a company can have corporate directors (provided it also has a least one director who is a natural person), but the law on this is changing so that all company directors must be natural persons (although the date of this change has not yet been confirmed)
- The official address of the company, called a 'registered office'. If the company is set up in England, the registered office must also be in England. For companies registered in Wales, Scotland or Northern Ireland, the registered office address must be in Wales, Scotland or Northern Ireland (as appropriate). A company is required to always have a registered office. This simply acts as the address for the service of formal documents, but it does not need to be the place at which the company carries on business
- The names and addresses of the company's initial shareholders. Shareholders can be individuals or other legal entities, such as another limited company
- Details of any 'person with significant control' (PSCs). Most PSCs are those that hold more than 25% of the shares or voting rights in a company or have the right to appoint or remove the majority of the board of directors. However, there are other criteria that would apply in certain limited circumstances
- Articles of association (which govern the company's administration). A company can choose a simple set of articles of association (called 'Model Articles') or it can create its own articles of association. Many companies start off with the Model Articles and change them later on. The Model Articles will be automatically adopted by a company where it does not submit any other articles on incorporation.

A UK company must keep certain registers and records as well as being subject to stringent filing and reporting requirements. Whilst a private company is no longer required to have a 'company secretary', an overseas parent company may want to consider appointing one for a UK subsidiary company, as the company secretary can then ensure these registers are kept up to date and all statutory filing requirements are complied with.

The directors are responsible for the day-to-day management of the company's affairs and may be salaried executives or have non-executive status. The requirements for appointment of directors will usually be set out in the company's articles of association.

# Private company limited by shares – key features



# Private company limited by shares – key features



## Reporting requirements

Companies incorporated in the UK are obliged to file certain information with Companies House. A company's incorporation and constitutional documents have to be filed, along with particulars of directors and any company secretary, information regarding ownership of shares and PSCs, copies of security granted by the company and certain shareholder resolutions.

Every year a company must file a confirmation statement confirming various details including who the shareholders and directors are, as well as accounts. Accounts must be filed in respect of each financial year (audited, if applicable).

All information filed at **Companies House** is available to the public, with some limited exceptions.

The company must update Companies House whenever certain details change, for example if a new director is appointed or an existing director resigns or if new shares are issued.

Failure to file documents at Companies House on time can result in penalties on the company and the directors.

## Share capital

Private companies limited by shares generally have no minimum or maximum share capital requirements. It is possible for shareholders to have different classes of share which allows different shareholders to have different rights (for example, in respect of voting or dividend entitlement). This flexibility to create different classes of share is particularly important where a company intends to seek private investment.

The rights attaching to shares are usually set out in the company's articles of association. Subject to any restrictions in the articles of association, shares may be transferred by way of a simple 'stock transfer form'.

## Directors' liability

Directors are subject to certain duties under the Companies Act 2006. Although a company is treated as a distinct legal entity, UK law imposes personal liability on the directors of a company in a number of circumstances. Areas where such liability can arise include:

- Breaches of the rules outlawing trading whilst insolvent
- Breaches of statutory and fiduciary duties

But this is not an exhaustive list and liability can arise in other circumstances, for example, because of breaches of health and safety legislation. Individual directors are generally advised to take out insurance against liabilities, but legal advice should be taken on the extent of cover afforded by such policies.

Directors should also be aware that personal criminal liability can attach to them for a range of breaches and offences committed by the company.

## Role of auditors

Unless a company is exempt from audit (for example, if it meets the conditions of the small companies exemption), a company's auditor has to prepare a report to the shareholders of the company on the company's annual accounts including whether those accounts give a true and fair view of the state of affairs of the company as at the end of a financial year. This annual audit is designed to protect shareholders from financial misreporting.

## Board meetings

Directors must hold a board meeting (or alternatively pass a written resolution signed by all directors) to approve the company's annual accounts. The frequency of any other board meetings is a matter for commercial decision.

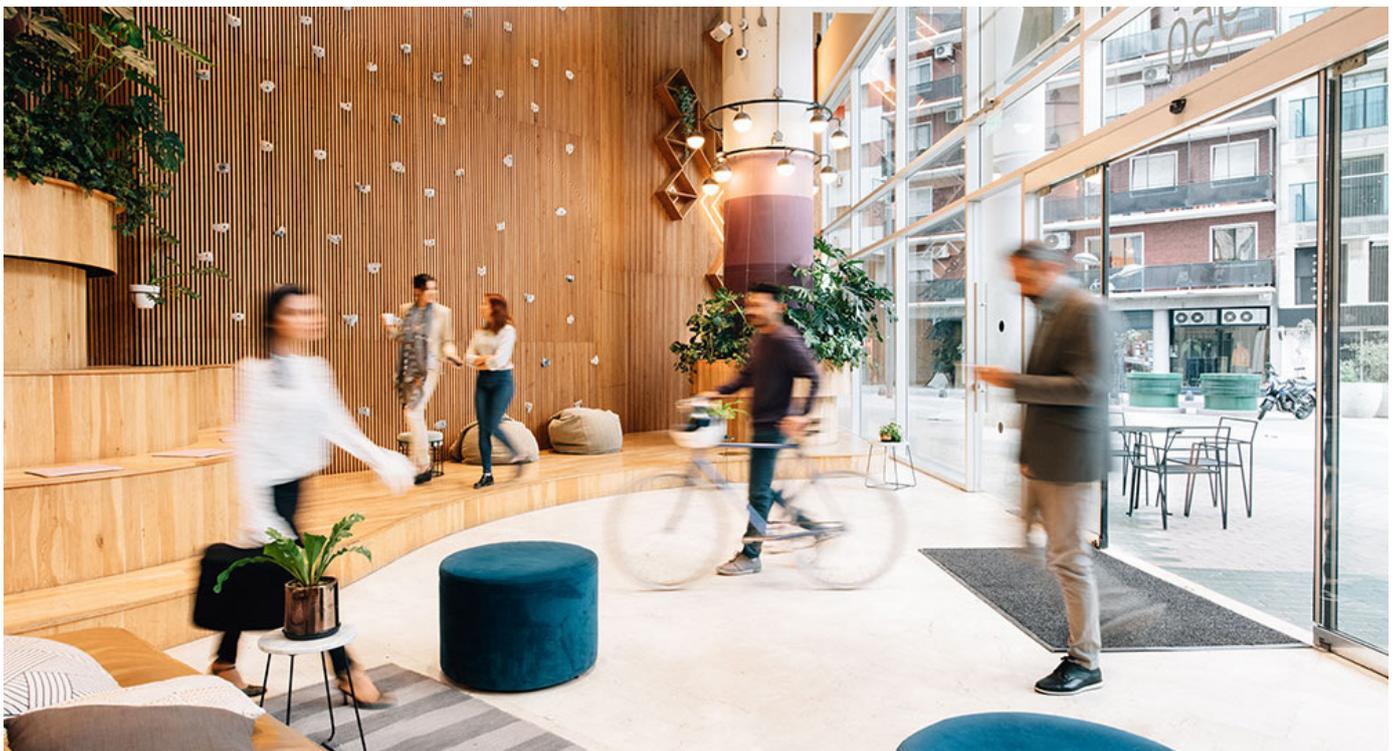
The company's articles of association usually allow for directors to pass board resolutions by way of a written resolution signed by all directors rather than having to hold a physical board meeting. The articles of association can also provide for board meetings to be held by telephone or video conference.

## Shareholder Resolutions

The two different types of shareholder resolution are

- An ordinary resolution, which is passed by more than 50% of votes cast by shareholders present and voting at a meeting of which the relevant notice has been given
- A special resolution, which is passed by at least 75% of votes cast by shareholders present and voting at a meeting of which the relevant notice has been given

It is possible for shareholder resolutions to be passed in writing, rather than a formal shareholder meeting having to take place.



Property issues



# Property issues

## Ownership

In England and Wales there are two types of property ownership:

- Freehold title (outright ownership)
- Leasehold title (ownership for a limited period of time, subject to the terms of the lease which is granted by the owner of the freehold title or the owner of a superior leasehold title).

There are two stages to the 'purchase' process: exchange and completion.

## Exchange

Property contracts are negotiated on a 'subject to contract' basis, enabling the parties to withdraw from the transaction up until the time of formal exchange. Prior to exchange the buyer carries out an investigation into the ownership and characteristics of the property. This investigation includes making enquiries of the seller and third-party agencies such as the local authority, investigating the seller's title to the property to establish what rights, covenants etc affect the title, and a site inspection/survey.

The seller/landlord will normally require the buyer/tenant to take the property as he finds it and will exclude all liability for its repair and condition. The buyer/tenant should therefore consider commissioning a full structural survey and a ground/environmental report prior to exchange.

Once the buyer/tenant is ready, the contract is formally exchanged, and a deposit is paid. Typically, the deposit is 10% of the purchase price, though this figure is negotiable. Once the contract is exchanged it is binding on both parties. The buyer is likely to be responsible for insuring the property from exchange.

## Completion

Completion is far more of a formality than the exchange process. On completion, the balance of the purchase price becomes payable. The period between exchange and completion is subject to negotiation and it is possible for completion to take place at the same time as exchange

## Requirements for surety

Often, if the tenant is a new UK limited company, the landlord will require a guarantee from a third party. Therefore, the foreign parent company may need to act as surety for its subsidiary's liabilities and obligations under the lease.

Alternatively, the landlord may be prepared to accept other forms of security. These may include a bank guarantee or the provision of a rent deposit. The deposit is usually refundable to the tenant either at the end of the lease or when the landlord is satisfied that the tenant has reached certain financial criteria, such as having made profits for three consecutive years equal to or in excess of three times the current rent.



## Planning law and environmental law

Local authorities have the responsibility for the development, maintenance and enforcement of planning law, subject to the direction of central government. Any negotiations to purchase or lease a property must include a full review of the planning permissions for the property. Environmental law provides for the remediation of contamination in respect of land, water and air.

A local authority has power in certain circumstances to serve a notice on an owner of contaminated land, specifying the steps it requires the owner to take to remedy the contamination. Therefore, any property purchased or leased must be surveyed to establish its history and to identify whether there could be any environmental concerns. In addition, any environmental licences or permits required for activities on the property must be transferred or obtained.

## Stamp Duty Land Tax (SDLT)

Subject to reliefs and exemptions, SDLT is payable on most land transactions in England. On the sale of commercial freehold land, it is payable by the buyer at rates of between 2% or 5% depending on the value of the consideration. On the grant of a lease SDLT is payable by the tenant at 1% or 2% of the 'net present value' of the total rent payable over the term of the lease. There is a nil rate band of £150,000 for freehold and leasehold commercial transactions.

## Overseas entities

It should be noted that, from August 2022, the Economic Crime (Transparency and Enforcement) Act 2022 requires 'overseas entities' (legal entities governed by the law of a country or territory outside the UK) which own or acquire certain land interests in the UK to register themselves and details of their beneficial ownership and managing offices in a new 'Register of Overseas Entities' at Companies House. The Act contains sanctions for non-compliance including restrictions on registering or disposing of interests in land and it introduces new criminal offences for failure to comply with the registration requirements.

## Scotland and Northern Ireland

There is a separate legal system of property ownership and transactions in Scotland, as well as a different property tax, known as Land and Buildings Transaction Tax (LBTT). Advice can be obtained from our real estate team in Scotland.

Although Wales shares the same legal system for property ownership and transaction as England, it has a different property tax known as Land Transactions Tax (LTT). Advice can be obtained from our real estate team operating in England and Wales.

Northern Irish property ownership and transactions are similar, but not identical, to those undertaken in England and Wales. SDLT is payable on Northern Irish property transactions. Advice can be obtained from our real estate team in Northern Ireland.



Human resource issues

5

# Human resource issues

**In the UK, employees' legal rights and protections are defined by a combination of their contract of employment and statutory rules and regulations.**

The law imposes certain minimum requirements; for example, the national minimum wage, which an employer must observe, although it is free to improve it. It is unlawful for an employer to attempt to provide less than the prescribed minimum. Where there is no legal minimum requirement, the parties are free to agree their own terms.

Not everyone who works for you will necessarily be an employee. The law recognises further categories of individuals: workers who have some but not all the legal protections applicable to employees; and the self-employed, who have very few employment rights.

## The contract

All employees and workers are entitled to receive a written statement of specific terms and conditions of employment/engagement from their employer on or before the date their employment or engagement commences. Most employers comply with this obligation by including the necessary terms in the employee's contract of employment or worker's engagement letter.

This statement must contain some key terms such as the name of the employer, the individual's job title, the rate of pay, and any details relating to sick pay, hours of work, probationary periods, details of disciplinary and grievance procedures, holiday entitlement, fixed term periods, notice periods, place of work, and any pension provision.

Any other terms and provisions regulating the relationship with the employee should also be contained in the employee's contract of employment or with the worker in their engagement letter. It is not a legal requirement to reduce these other terms and provisions to writing, but this is obviously advisable to avoid disputes later.

It is also advisable to have non-contractual policies, procedures and rules governing the relationship between the employer and employees. These are usually contained in a separate staff handbook or on the employer's intranet site and include procedures and policies on matters such as absence reporting, expenses, company car entitlements, equal opportunities, health and safety, and any other matters particularly relevant to the employer's business.

There are some other restrictions on the terms which can be included in an employee's contract of employment. For example, an employer may wish to limit the ability of an employee to work for a competitor in a specified place or for a specified period of time after termination of employment. Such a clause is known as a post-termination 'restrictive covenant'. There are public policy restrictions on such covenants in the UK and they will only be enforceable if the employer can show that they are reasonable and necessary to protect their legitimate business interests. In addition, should the employer breach the employee's contract of employment, such covenants will fall away and not be enforceable.

**Practical Tip:** If post-termination restrictive covenants are key for protecting your organisation, consider including a right to pay in lieu of notice in your employment contracts. This allows you to lawfully terminate the employment contract immediately, on making the payment, rather than having to wait for the employee to work out their notice period, but at the same time protects the enforceability of any covenants in the employment contract. Without such a right to pay in lieu of notice, any attempt to terminate the relationship early before the end of the notice period would be in breach of contract resulting in the covenants becoming unenforceable.



### Statutory rights

Employees have certain employment rights and protections, which are set out in legislation including amongst others:

- Limits on the number of hours worked per week
- Entitlement to a minimum amount of notice on termination
- Entitlement to a minimum number of paid holidays per year
- Entitlement to rest periods
- Entitlement to a minimum rate of hourly pay
- Entitlement to sick pay
- Entitlement to family leave and pay (including for maternity, paternity and adoption)
- Entitlement to parental leave and shared parental leave
- Time off for family emergencies
- Entitlement to request flexible working
- Protection from discrimination, harassment and victimisation on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- Protection from detriment and dismissal on grounds of making a protected disclosure (whistleblowing)
- Protection for part time employees and fixed term workers
- Protection from unfair dismissal
- Entitlement to a statutory redundancy payment
- Protection in the event of a transfer of a business or service provision change

Some, but not all, of these legal rights are subject to qualifying periods of employment, which can vary in different parts of the UK and other eligibility criteria. Some of these statutory rights are also available to workers.

### Termination of employment

On termination of employment by an employer, an employee may have a claim for wrongful dismissal if the employer has terminated the employee's employment in breach of the contract of employment, ie. by not giving (or paying in lieu) of the amount of notice provided for under the contract. An employee may also be entitled to claim unfair dismissal if they have not been dismissed for a fair reason or a fair procedure has not been followed. If the employee is dismissed because of redundancy, they may also be entitled to a statutory redundancy payment. Where 20 or more employees may be dismissed at one establishment within a 90-day period, the employer will also have obligations to inform and consult on a collective basis.

### Workforce data

The Data Protection Act 2018, together with the UK General Data Protection Regulation (UK GDPR), govern the way employers collect, store and process personal information concerning their workforce, including job applicants and those who have left the organisation. Issues around the processing of workforce data are increasingly in the media spotlight. The Information Commissioner can take action against organisations which fail to meet their data protection obligations, for example, if there is a breach of security regarding data and this can result in negative publicity as well as, ultimately, criminal and financial penalties.

Employers must comply with the data protection 'principles' set out in the UK GDPR when processing the personal data of their workforce and, in most cases, must pay a data protection fee unless they are exempt. All individuals have a right of access to information about them held by their employer which must be responded to within strict time limits. There are also obligations on employers to report data breaches to both the Information Commissioner and the individual whose data is breached, in certain circumstances, again within strict time limits.

## **Discrimination and equal pay**

Employees, workers, and self-employed contractors are protected against discrimination, harassment and victimisation on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Note that both older and younger people are protected against age discrimination. In Northern Ireland, special rules also expressly prohibit discrimination on the grounds of political opinion.

Discrimination can take place at any stage of the employment process – in advertising and recruiting, in the terms of employment or engagement offered, promotion, training, and discipline and dismissal. Where an individual successfully brings a claim for discrimination the employer can be ordered to pay unlimited compensation. The individual who carried out the act of discrimination may also be personally liable.

An employer may be vicariously liable for the discriminatory acts of its employees in the course of their employment. A well-publicised and properly implemented equal opportunities policy can help mitigate such liability.

In respect of disabled employees, an employer has a special duty to make reasonable adjustments for them to help them overcome the disadvantage caused by their disability in the workplace.

Women are entitled to be paid the same as men doing work of equal value (and vice versa). Employers should ensure that there is an equal, fair and transparent pay structure in place.

Organisations with 250 or more employees in Great Britain are required to publish prescribed information relating to their gender pay gap i.e. the difference in average pay between men and women in the organisation.

In Northern Ireland, employers with 11 or more full-time employees working 16 hours or more per week also need to comply with special registration, reporting and monitoring duties under fair employment legislation.

## **Business transfers**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (TUPE) protect employees where the business in which they work is transferred from one owner to another and place obligations on an employer to inform and consult on a collective basis.

Employees employed in a business immediately before a transfer automatically transfer to a purchaser of the business on the same terms and conditions upon which they were previously employed (and these cannot be changed after the transfer except in very limited circumstances).

It is not possible for parties to contract out of their obligations under TUPE. Purchasers of a business therefore need to be aware of TUPE, as they will have an effect on the financial attractiveness of a business acquisition.

TUPE also applies where there is a service provision change. Broadly, this occurs where services are outsourced to a contractor, bought back in-house or transferred from one contractor to another.

TUPE does not apply where the shares of a business are being sold, as the employees' employer remains the same.

## **Self-employed contractors**

UK law makes a distinction between employees who are employed under a contract of employment and subject to the control of an employer, and other individuals, such as consultants, who provide services to a company on a self-employed basis.

Whether a particular individual is employed or self-employed, for employment law purposes, can be a complex question and ultimately is a matter for the employment tribunal: the label applied by the parties to the relationship is often of little relevance.

It can be difficult to determine this distinction. There is the added complication that an individual's status for employment law purposes and for tax purposes may not be the same.

However, it is an important distinction due to differences in the tax treatment of these groups of people and their rights under employment legislation.

## Insurance

You should seek insurance advice in relation to employers' liability insurance, which is a legal requirement for employers in the UK. Employers in the UK are responsible for the health and safety of their employees while they are at work. The Employers' Liability (Compulsory Insurance) Act 1969 ensures that employers have at least a minimum level of insurance cover in place against certain claims that employees might seek to bring in connection with their employment.

## Pensions

All employers in the UK must automatically enrol their eligible workers in a pension scheme.

Eligible jobholders must be enrolled into a qualifying automatic enrolment scheme unless they are already active members of a qualifying scheme. Newly established employers must comply with their auto-enrolment duty from the date their jobholders become eligible.

To be eligible for auto-enrolment, a worker must qualify as a jobholder. Jobholders include permanent and temporary employees and agency workers. The worker must also be between age 22 and state pension age and earn at least £10,000 a year (in the 2020/21 tax year).

Eligible jobholders have the right to opt out, but if they do not then the employer will be obliged to pay minimum contributions of 3% of a jobholder's earnings that fall within the qualifying earnings band each year, with combined contributions due (from employers and jobholders) of 8% of band earnings. In most cases, therefore, jobholders will be expected to pay the balance of 5% contributions, though it is possible for the employer to pay the entire 8% if it chooses.

Every year, the Department for Work and Pensions (DWP) reviews the earnings thresholds for automatic enrolment. The earnings thresholds for the current tax year can be found on the Pensions Regulator's website: <https://www.thepensionsregulator.gov.uk/en/employers/new-employers/im-an-employer-who-has-to-provide-a-pension/declare-your-compliance/ongoing-duties-for-employers-/earnings-thresholds>

## Business Routes to the UK

On 31 December 2020, the UK saw the end of free movement with the European Union (EU). Whilst there was initially a grace period of six-months following the UK's exit from the EU, during which relevant aspects of EU free movement law were saved to allow eligible EU citizens and their family members to apply to the EU Settlement Scheme, this period ended on 30 June 2021.

EU citizens and their family members have since been required to have immigration status in the UK like any other foreign national and can no longer simply rely on an EEA passport or national identity card to prove their right to work.

This means that EU citizens who wish to come to the UK for business reasons will now be treated in line with overseas workers of all other nationalities and will need to consider the UK's specific business immigration routes to permit their entry and stay in the UK. Irish citizens can continue to freely enter, live and work in the UK under Common Travel Area (CTA) agreement.

This is a big change and something that UK businesses and overseas businesses who have UK counterparts or wish to expand into the UK market are having to adapt to. In doing so, businesses should understand the UK's wide offering of business immigration routes which look to ensure that the UK continues to attract talented overseas workers and facilitate new business into the UK market.



## Business visitors

The UK's immigration rules for visitors permit business visitors to enter the UK for up to 6 months to do a limited range of permitted business activities.

However, there is a strict prohibition on doing work in the UK whilst here as a visitor (even if here as a business visitor). The definition of 'work' includes taking employment or doing work for an organisation or business in the UK, establishing or running a business as a self-employed person, doing a work placement or internship, or direct selling or providing goods and services to the public.

The Immigration Rules do however include a list of permitted activities which allow for many business activities to be completed in the UK during a visit, such as:

- Attending meetings, conferences, seminars, interviews
- Giving a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser
- Negotiating and signing deals and contracts
- Attending trade fairs, for promotional work only, provided you will not be directly selling
- Carrying out site visits and inspections
- Gathering information for their employment overseas
- Being briefed on the requirements of a UK based customer, provided any work for the customer is done outside of the UK
- Delivering training or sharing knowledge on internal projects with UK employees of the company you work for overseas
- Installing, dismantling, repairing, servicing or advising on equipment, computer software and hardware, if your overseas company has a contract with a UK company or organisation
- Overseeing the delivery of goods and services provided by a UK company to your overseas company or organisation
- Work-related training if you're employed overseas and the training is not available in your home country

These rules apply to all persons visiting the UK however there is a different process depending on nationality. Visitors of some nationalities (those appearing on the visa nationals list at VN 1.1. of the Immigration Rules) will need to apply for a visit visa in advance of travelling to the UK.

Non-visa nationals, including EU nationals, can arrive to the UK as a visitor without pre-approved entry clearance, and will be granted permission to enter at the border so long as it is accepted that relevant requirements of the visitor rules can be satisfied. It is recommended that visitors in this category travel with a 'comfort letter' which details their planned activities in the UK for the business in case they experience questioning at the UK border. Non-visa nationals should also be aware of the upcoming rollout of the Electronic Travel Authorisation (ETA) scheme which will apply to non-visa nationals from certain countries from November 2024: **[Electronic Travel Authorisation \(ETA\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/electronic-travel-authorisation)**.

Depending on business needs, it may be possible for your staff to visit the UK and undertake permitted business activities during their stay. If you are unsure of whether the activities that you hope for a visitor to do fall into the permitted activities category, it is important to take advice on this as undertaking activities which are not permitted will be a breach of the conditions of their status.

If the scope of the business visit permitted activities won't meet your requirements for the type of work that you wish for your overseas staff to complete in the UK, then the UK has various other immigration routes for those wishing to come to the UK for business purposes under sponsored and non-sponsored categories.

## Sponsored business immigration routes

### Skilled worker route

The Skilled Worker route is the most used business migration route. This route allows UK businesses to recruit overseas workers to fill vacancies in the UK. The route requires sponsorship from a UK business and the proposed sponsorship must meet requirements regarding the skill-level of the job role and the salary they will be paid for that role.

A business will need to be approved by the Home Office before they can act as a sponsor. This involves applying for a sponsor licence and evidencing to the Home Office that your business is a genuine organisation operating lawfully in the UK which has not engaged in behaviour or actions that are not conducive to the public good.

A sponsor will also need to demonstrate that they are capable of carrying out their sponsor duties and ensuring compliance with wider immigration law. Sponsor duties will include requirements to report relevant changes to the organisation details or sponsored worker's circumstances within a specific timeframe and also to ensure that specific records are being kept for their sponsored workers. Key personnel within the business must be appointed to take responsibility for and manage the organisation's licence through the Sponsorship Management System (SMS). It is essential for organisations to ensure that their HR personnel are suitably trained to manage the licence including having sufficiently robust HR systems to enable staff to ensure this.

Once the UK business is approved as a sponsor, they will be able to assign Certificates of Sponsorship (known as CoS) to an individual who they wish to recruit. That individual can then apply for permission to enter or remain in the UK on the Skilled Worker category; this involves having to meet suitability requirements relating to their character and conduct, in addition to other requirements such as their English language ability and financial situation.

The Skilled Worker route is a popular route for overseas workers as it leads to settlement in the UK on completion of five years residence in this category. In contrast, other routes such as the Global Business Mobility routes do not lead to settlement and any individual whose goal is to settle in the UK would usually look to switch to the Skilled Worker route when possible to achieve this.

### Global business mobility routes

The Global Business Mobility routes allows overseas workers to come to the UK to undertake temporary work assignments in the UK. There are a number of different routes within this category; Senior or Specialist Worker, Graduate Trainee, UK Expansion Worker, Service Supplier, Secondment Worker.

Global Business Mobility routes do not lead to settlement in the UK and there is a cap on the maximum length of time that an individual can spend in the UK under these routes, generally no more than five years in any six-year period.



### **Senior or specialist worker, UK expansion worker, graduate trainee**

These routes enable an overseas business to transfer an employee to a UK counterpart for a temporary work assignment.

For the Senior or Specialist Worker and UK Expansion Worker route, this will be a senior employee such as a senior manager/specialist. It is generally expected that the worker will have been employed by the overseas business for at least 12 months before applying under these routes, although there is an exception to this requirement for individuals who are high-earners (earning above £73,900 per annum) and are applying under the Senior or Specialist Worker route.

On the Graduate Trainee route, the business can transfer a junior employee who is on a graduate training course leading to a senior management or specialist position and is required to do a work placement in the UK as part of this.

These routes are sponsored, meaning that the UK organisation will need to hold a licence to sponsor the employee for their temporary assignment, similar to the Skilled Worker category detailed above. However, the process for applying for that licence is slightly different for these routes as the UK organisation must provide evidence that they are linked to the overseas company which will transfer workers by way of common ownership or control.

The UK Expansion Worker route differs in that this route can be used where the overseas business does not yet have a trading UK presence; the route enables a senior employee from the overseas organisation to travel to the UK with the intention of expanding the business into the UK market.

This route does require still require the individual to be sponsored by the UK organisation which is being established. The company will therefore still need to apply for a sponsor licence from outside the UK as the first step and in doing so will need to provide evidence that the organisation has established a 'UK footprint', such as registration with Companies House or evidence that the organisation has bought or leased premises in the UK.

The intention of the UK Expansion Worker route is simply to enable an overseas business to establish a trading presence in the UK. The length of time that a senior employee can remain in the UK is therefore limited to one year, extendable to a maximum of two years. Following this, the intention would be that the UK presence is fully established and can begin then act as a sponsor for overseas workers under the more traditional routes, such as Skilled Worker or Senior or Specialist Worker.

### **Service supplier/secondment worker**

The Service Supplier route is for overseas workers who are either a contractual service supplier employed by an overseas service provider or a self-employed independent professional based overseas. These individuals can travel to the UK to provide services covered by one of the UK's international trade agreements.

The Secondment Worker route is for overseas workers who are being seconded to the UK for a temporary assignment as part of a high value contract or investment.

Both routes require sponsorship by the UK organisation where the overseas worker will be providing their services. The UK business will therefore need to hold a sponsor licence, the process for which is detailed above, and the contract on which the individual will be working on will need to be approved by the Home Office through the Sponsorship Management System (SMS) before the business can sponsor an individual to enter the UK.

Service Suppliers will be granted permission to stay in the UK for a period of six or 12 months, depending on their specific circumstances. Secondment Workers can be granted permission to stay in the UK for one year, extendable to a maximum of two years.

## **Non-sponsored business immigration routes**

### **Government authorised exchange**

The Government Authorised Exchange route is designed for individuals to come to the UK to share knowledge and experience within supernumerary roles, as opposed to filling vacancies in skilled roles in the UK market. The route is designed to permit work experience, internships and research and training programmes, which as we noted above fall outside the remit of the permitted activities for visitors.

This route does require sponsorship, however not from the employing UK organisation as in the prior sponsored routes. Instead, individuals on this route require sponsorship from an overarching sponsor, typically a government agency or umbrella body for their profession. The list of schemes can be found within the Immigration Rules at [Appendix Government Authorised Exchange schemes](#).

The route enables an individual to come to the UK for a period of 12 or 24 months, depending on the specific sponsorship scheme. This route can therefore be a useful and cheap option to bring emerging talent to the UK for a temporary period.

### **Innovator founder**

The Innovator Founder route is for a person who wishes to establish a business in the UK. The business must be new (you cannot join a business that is already trading) and based on an innovative, viable and scalable business idea which they have generated, or to which they have significantly contributed.

The Innovator Founder category does not require sponsorship from a UK business however it does require the individual to receive endorsement from a Home Office approved endorsing body. This endorsement will be considered against the same three criteria; assessing whether the business idea is innovative (different from anything else on the market), viable (has potential to make profit and grow) and scalable (has potential to create jobs and grow into national and international markets).

Applicants on this route will be granted permission to live in the UK for up to three years, following which they will be eligible to settle in the UK provided they can meet additional requirements relating to the viability of the business. During their time in the UK, they must be involved in the day-to-day management and development of their business and are not permitted to undertake any other type of work in the UK.

### **Global talent**

The Global Talent visa route enables individuals to work in the UK if they are considered to be a leader or potential leader in one of the following fields; academia or research, arts and culture, digital technology.

The Global Talent category does not require sponsorship from a UK organisation however it does require the individual to receive endorsement from a Home Office approved endorsing body relevant to their area of expertise. Individuals will generally be required to submit a portfolio of evidence together with a statement detailing their qualifications and experience, which the endorsing body will assess against their own guidance regarding how they consider applications for endorsement. The process and specific threshold for achieving endorsement varies widely across different fields.

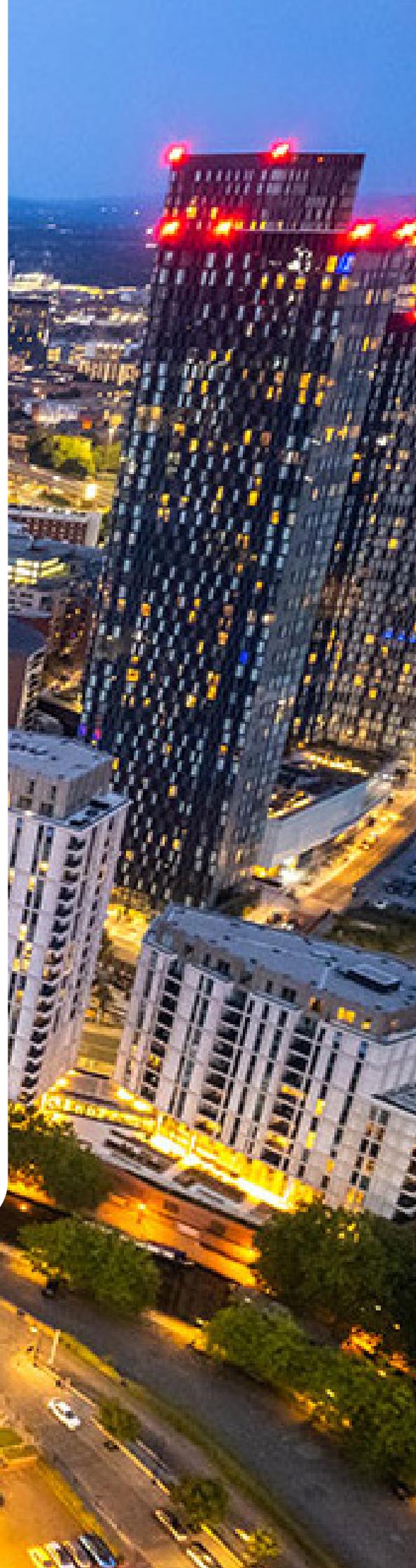
Once endorsement is approved, the individual can then apply for permission to live and work in the UK. Individuals granted permission to live in the UK under this category will be eligible to settle in the UK following 3 or 5 years, depending on the field of expertise they were endorsed under. During their time in the UK, these individuals will have the right to work and will not be tied to any specific organisation or job role, but they will need to demonstrate that they have earned money in the UK during their period of permission in their field of expertise.

## Right to work in the UK

Finally, when doing business in the UK, it's important to be aware of the UK's strict legislation regarding illegal working. This requires UK employers to carry out right to work checks on all staff before they commence employment with your business. This applies to employers who employ staff under a contract of employment, service, or apprenticeship, whether express or implied and whether oral or in writing. Ensuring that checks have been carried out in accordance with legislation and current Home Office guidance in force at the time that employment commences will mean that your business will establish a statutory excuse against liability for any liability in the event that a member of staff was found to be working illegally.

Penalties for employing workers who are in the UK illegally are substantial – up to £20,000 per worker – and it is a criminal offence to employ someone knowing that they do not have the legal right to work in the UK. An employer can provide itself with a defence against a civil penalty if it carries out checks on certain documents before employing the worker and keeps copies of these on file for specified periods of time. It is advisable for employers to build such checks into a recruitment procedure which is applied to all applicants, not just foreign workers, to avoid acting in a discriminatory manner. Where a worker has only time-limited permission to remain in the UK, the employer is responsible for ongoing checks on their immigration status.

Since 6 April 2022, the Home Office have also required certain individuals to complete right to work checks via their online right to work check service. This online service applies to those who have been issued with status digitally (and therefore have no physical document to show their status), but also to those who hold a Biometric Residence Permit (BRP), Biometric Residence Card (BRC), or Frontier Worker Permit (FWP). It is important that employers ensure that right to work checks for these specific individuals who started employment from 6 April 2022 have been done in accordance with the correct procedure, otherwise they will not have a defence. The changes from 6 April 2022 do not apply retrospectively, so any checks completed prior to this date which were done in accordance with guidance in place at the time do not need to be repeated.



Intellectual  
property rights



# Intellectual property rights

The UK has detailed rules dealing with the full range of intellectual property rights. The main types of intellectual property rights in the UK are summarised below:



## Copyright

Copyright is perhaps the most diverse intellectual property right, protecting works from books to computer software and from symphonies to broadcast transmissions. It protects original works against copying, sharing copies, selling copies, renting copies, lending copies, performing, showing in public and making adaptations of the work.

Copyright in the UK arises automatically, there is no need to register to benefit from this right and it usually lasts 70 years from the death of the author.

Through its membership of the Berne Convention (and other international arrangements of reciprocity) the UK Courts will enforce the vast majority of foreign copyrights, provided that they meet the criteria for protection in the jurisdiction in which they were created. A foreign national may approach the UK Courts and assert their copyright, which subsists as a result of their own foreign law, and seek to assert rights associated with their copyright in the UK.

## Trademarks

Trademarks, logos, brands, trading names – call them what you will, but most businesses will have one or more of them. They are how we distinguish one person's goods or services from another and depending on how well we do that, it can result in that trademark being worth millions. Trademarks can protect words, names, images, sounds, slogans and logos.

Trademarks can be registered in the UK. Once registered a trademark can be renewed indefinitely (subject to renewal fees). We provide a fixed-fee service to apply to register your trademark and deal with the process through to acceptance.

Unregistered trademarks also subsist in any trade or product name or logo, and rights automatically accrue through use in relation to a business or its goods or services. Unregistered trademarks are protected under the law of passing off. Passing off is a 'common law' right, that arises automatically to protect the whole 'get up' of an item. To claim 'passing off', there must be: goodwill; misrepresentation leading to confusion; and damage (usually lost profits or reputation). The right to pursue another for passing off lasts indefinitely.

## Designs

Designs are often overlooked in terms of intellectual property rights but can be a valuable right of protection where the main characteristic of a product is its shape or decoration.

Designs can be registered in the UK quickly and cost effectively, and once registered, protection can last for up to 25 years (subject to renewal fees). We provide a fixed-fee service to apply to register your design and deal with the process through to acceptance.

Unregistered designs may also subsist in a product, and rights apply automatically. In the UK, there are currently two types of unregistered design. The first protects the shape and configuration of a 3D product, and lasts for up to 15 years from first creation of the design. The second protects the appearance of a product (including decoration) and lasts for up to three years from the date the design is first made public.

## Patents

Patents protect novel inventions and apply to products or processes that can be made or used in industry. Compared to other intellectual property rights patents are expensive to obtain and can take a long time to be granted but are still very valuable rights. There is a fast-track procedure in relation to certain 'green' technologies. There will usually be an initial discussion about whether your idea is patentable or not. If not, it may still be protected as a trade secret. However, if it is patentable the first thing to do is ensure the idea has not got out into the public domain. The reason being that if the idea is already known to the public it is not novel and therefore cannot be patented.

Patents must be registered and can last up to 20 years (subject to payment of renewal fees). There may be an extension to the 20-year period in relation to pharmaceutical patents through supplementary protection certificates (SPCs).

We recommend that you have in place a process to capture any new ideas, inventions, products or processes and to investigate and apply the most appropriate form of protection at the earliest opportunity. Certain types of protection, including patents, registered designs rely on secrecy before an application is filed (although in the case of registered designs there is a short grace period following publication in which an application for protection can be filed). Trade secrets also depend absolutely on secrecy, so we recommend that you also apply a robust policy to ensure new ideas, inventions, products or processes are kept confidential.



### Protection of database rights

Rights in databases are not widely known but are incredibly valuable. Companies with customer lists, tables of historic information or marketing mailing lists have databases which can be protected through copyright (see our earlier section on Copyright).

Databases are not just lists of names and addresses. They can include spreadsheet data, technical specifications, research and databanks. You will want to keep some of your databases secret (e.g. your own customer lists). However, there are an increasing number of situations where you may wish to make some of your databases available to third parties through web sites or in published directories either for free or under a 'paid for' subscription.

If any information within your database constitutes personal data, you must take care to comply with data protection laws in respect of the storage, use, access and or publication of that personal data.

If any database was created in the UK prior to Brexit, ie 1st January 2021, it may still qualify for greater protection under the EU database right, for up to 15 years from the end of the year in which the database was created. Where a third party fails to abide by your restrictions for the use of your database and starts using it for its own commercial advantage, we can advise you how to enforce your intellectual property rights in your database.

### Confidential information and trade secrets

It can be possible to protect information that is disclosed in circumstances in which an obligation of confidence arises. Such information is known as confidential information. To be protected, the information must satisfy the following conditions:

1. it must be confidential in nature, for example it cannot apply to information already in the public domain
2. it must have been disclosed in circumstances in which an obligation of confidence arises. This can be implied or expressly stated in a contract
3. its unauthorised use would be to the detriment of the person disclosing it.

Trade secrets are a type of confidential information which have a commercial value because of being kept secret. Recipes, chemical formulae, processes, know how are all valuable trade secrets which many businesses rely on. To qualify for protection as a trade secret, a business must have taken reasonable steps to keep the trade secret confidential.

If you are concerned that a third party has or may have access to your confidential information or is using your trade secrets, we can advise you how to enforce your rights and potentially prevent further use or disclosure of your trade secrets.

We recommend that you have a standard form confidentiality agreement, which you can ask your customers, suppliers and business partners to sign if you intend to enter talks with them about a business opportunity which would involve the sharing of your confidential information.

# Trading contracts and compliance issues



# Trading contracts and compliance issues

## Trading contracts

Any UK operation will need to put in place trading contracts with its customers, suppliers and other third parties that it works with.

Companies dealing with other businesses in the UK are broadly free to agree the terms of their trading contracts (for example, relating to the purchase and supply of goods and services) as they think fit. However consumers are afforded certain protections by law and it is important to ensure any trading contracts/terms with consumers comply with the legal requirements. The requirements extend to all advertising and marketing and sales promotions as well as rights and remedies for defective goods and services. Much of the law to do with consumers is derived from EU legislation (a significant proportion of which has now been, or will in due course be, incorporated into the laws of the UK).

Typical protections include:

## Regulated and licensable activities

In the UK some industry sectors are more heavily regulated than others, including:

- Banking and financial services
- Professional advisory services
- Life sciences and pharmaceuticals
- Gambling
- Energy and utilities
- Media, broadcasting and telecommunications
- Defence
- Waste disposal and
- Food and drink production.

Some trading activities require a licence, consent or registration, such as the sale of alcohol, provision of late night refreshment, gambling activities and environmental discharges. Requirements for licences, consents or registrations can differ substantially between each regulator. Businesses operating without an appropriate licence or consent can face large fines. Consequently, before operating a business in the UK it is important to check that the business has all the requisite regulatory permissions in place.

The Ministry of Justice has produced guidance about procedures which commercial organisations can put in place to prevent persons associated with them from bribing. The guidance lists six principles and applies to both small and large multi-national enterprises and relates to both domestic bribery and those associated with foreign markets. All commercial organisations should review the guidance and consider if they are following the principles prescribed by the government. If they are not, they should consider if it is necessary on consideration of their business model. If it is found that a person associated with the business has bribed another, it is a defence for the commercial organisation if it has adequate procedures in place.





### **Controls over trading activity**

There are a number of general controls over trading activity in the UK which also require consideration. These include:

### **Sales and marketing agreements**

Certain types of agency agreements are regulated by the Commercial Agents (Council Directive) Regulations 1993. These protect commercial agents by providing, among other things, minimum notice periods for terminating indefinite term agency contracts; rules on the validity of post-termination restrictions; and either indemnity or compensation for agents on termination. In the short term it is unlikely that the 1993 Regulations will be amended or repealed as a result of the UK leaving the EU. There is no equivalent protection for distributors and franchisers to that afforded to commercial agents.

### **Data protection**

The collection and use of personal data is strictly governed in the UK, principally under UK GDPR (based on EU GDPR) and the Data Protection Act 2018. These laws put significant obligations on any person or company collecting or processing personal data. They are designed to address, among other concerns, security of personal data, the purposes for which it is used and international data transfers. Sanctions for breach of data protection law includes considerable financial penalties (of up to £17.5 million or 4% of total annual worldwide turnover in the preceding financial year, whichever is the higher). In due course, it is likely that EU GDPR and UK GDPR will diverge. Wider privacy laws regulate cookie use and network security.

### **Advertising**

As well as the consumer protection laws mentioned above, there are advertising codes that UK businesses are required to follow that are enforced by the Advertising Standards Authority. These codes set out general advertising rules, including a requirement that all adverts are legal, decent, honest and truthful. There are more detailed rules relating to advertising in particular industries, as well as different type of media.

### **Online trading**

There are a number of compliance requirements which apply to business conducted online and advertising and selling goods online. These obligations include, amongst others, an obligation to provide pre-contractual information to consumers when entering into contracts online and a cooling-off period during which, in most cases, the consumer can cancel their order and receive a refund.

## Health, safety, and environmental compliance

Health, safety, and environmental protection is a fundamental cornerstone of UK law. Any overseas investor considering either investing in property or establishing a UK business should evaluate carefully the health, safety and environmental record of the property or business concerned and comply with health, safety and environmental laws when operating in the UK. Regulators have significant powers to control activities and impose significant financial penalties (unlimited in most cases) on those in breach of legal requirements. Importantly, in some instances, directors or employees can face personal prosecution for breach of health, safety and environmental legislation.

## Merger control

The UK operates a voluntary merger control notification regime under which corporate transactions can be subject to review on competition grounds.

Acquisitions and other relevant corporate transactions can be notified to the UK competition authority (the Competition and Markets Authority (CMA)) for approval. There is no obligation to notify transactions, but the CMA retains broad discretion to review of its own initiative transactions that have not been notified to it. However, it is common practice not to notify transactions that clearly do not give rise to competition concerns.

We encourage parties to consider the UK merger control regime in all transactions involving target businesses with UK activities. In most cases, it is likely to be possible to get comfortable not notifying transactions for clearance; but in other cases, seeking clearance (or informal approval) may offer the purchaser appropriate protection against the possibility of the CMA subsequently reviewing the transaction on competition grounds.

## Antitrust

In common with many jurisdictions around the world, the UK antitrust rules contain prohibitions on anti-competitive agreements and the abuse of a dominant market position.

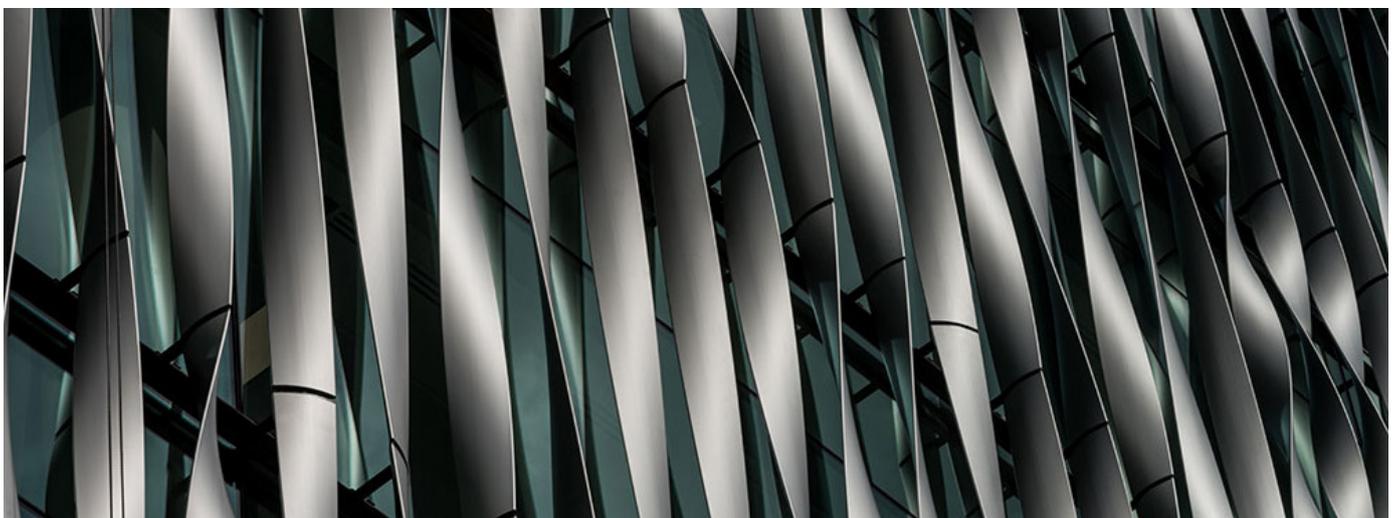
How the rules apply in practice has been developed through a significant amount of published guidance and decisional practice by the competition authorities, as well as through judgments of the courts. The rules are actively enforced by the CMA, plus there is an increasing prevalence of antitrust litigation before the UK courts.

Antitrust in the UK remains very closely aligned with the equivalent rules under European Union law.

## Bribery

UK has anti-corruption legislation in force. There are four criminal offences, including the 'Corporate Offence' of failure to prevent bribery by those working on behalf of a relevant commercial organisation. A commercial organisation will be liable for prosecution if a person associated with it bribes another person intending to obtain or retain business or obtain an advantage in the conduct of business. This legislation has cross-jurisdictional reach and includes any person associated with a commercial organisation doing business abroad.

The business will have a defence if it can show that despite the bribery it had adequate procedures in place to prevent associated persons from bribing – or that it had taken steps to assess why no such procedures would be necessary for the business model. Adequate procedures could include taking steps such as implementing proportionate policies and procedures and providing staff with training on preventative measures. If there are no adequate procedures in place then the offence can attract an unlimited fine.



## Practical considerations

There will be any number of practical matters which have to be addressed when doing business in the UK but a few key ones are specifically worth mentioning:

### Insurance

You should seek insurance advice. It is compulsory to have certain insurance protections before doing business in the UK, including employers' liability insurance and third-party motor insurance.

It would also be prudent to consider additional insurance cover in areas where it is regarded as common and best practice to have insurance cover in place to help protect your business. This includes policies relating to areas like public liability, product liability, professional indemnity, buildings and other property-related cover, business interruption, credit risks, directors' and officers' liability. In an ever evolving world of technology it is high desirable to look at cyber and data insurance cover to mitigate against severe financial loss.

It is important to note that the UK insurance market is still going through change post Brexit so it is important to understand that, when looking at your insurance arrangements in the UK and indeed EU jurisdictions.

### Bank accounts

If a UK bank account or other bank finance is required, the bank will have to comply with the UK's strict anti-money laundering legislation before the account can be opened. You will be asked to produce certain documents to verify the UK entity's existence, such as the company's certificate of incorporation and articles of association, as well as personal identity documentation for the directors, for example their passports and documents to verify their address (a similar procedure has to be followed when instructing third party professional advisers, such as lawyers and accountants). The bank will also have to comply with FATCA regulations in relation to disclosure of information if there is a connection to US persons. For a company account, the board of directors will need to approve the bank mandate and designate authorised signatories on the account. There are no exchange control restrictions in the UK but there might be issues with getting cash from the country of origin of the group into the UK (some countries do have exchange control restrictions in place). However UK financial sanctions apply to all UK nationals and legal entities established under UK law, including their subsidiaries irrespective of where their activities take place.

## Stationery and website

Whether operating as a limited company or a branch, there are statutory requirements in relation to trading disclosures. The name of the business, together with other prescribed information (known as 'trading disclosures') have to be disclosed on business correspondence (including letterhead, business cards, order forms, invoices, delivery notes and email footers), websites and at business locations.

## Money laundering

There are three principal money laundering offences contained within the Proceeds of Crime Act 2002. Also regulated organisations such as those in the financial sector must adhere to the Money Laundering Regulations. If there is a suspicion of money laundering and the organisation is regulated it is under an obligation to submit a suspicious activity report (SAR) to the National Crime Agency. A Money Laundering Reporting Officer (MLRO) can face up to two years imprisonment if they fail in their requirements / obligations as MLRO. If an organisation fails to submit a SAR the organisation can be fined or its Directors liable to a custodial sentence of up to 5 years. Both individuals and commercial organisations can also be guilty of one of the principal money laundering offences. This attracts a fine or a prison sentence of up to 14 years. If convicted in a criminal court there are substantial, penalties for money laundering, including a fine or imprisonment.



# Taxation



# Taxation

The following is a broad overview of the tax issues relevant to establishing business operations in the UK.



## UK corporation tax

Broadly, UK companies are liable to corporation tax on their worldwide profits although certain exemptions may apply whereby profits arising outside the UK are subject to tax in that other country.

A non-UK resident company is liable to UK corporation tax on the profits of a trade carried on by it through a permanent establishment in the UK, and on capital gains realised on the disposal of capital assets used or held by it for the purposes of that UK permanent establishment.

Profits that are attributable to the permanent establishment are those that it would have made if it were a distinct and separate UK enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the rest of the non-resident company of which it is a part. In applying the legislation, the permanent establishment is to be treated as having equity and loan capital in the proportions relevant for an independent company operating in the UK.

A non-UK resident company which carries on a trade in the UK other than through a permanent establishment may be liable to UK income tax rather than corporation tax on the profits attributable to that trade. Non-UK resident companies in receipt of income from UK property are subject to UK corporation tax on that income, rather than UK income tax.

## Rates of tax

A company usually pays corporation tax by reference to taxable profits arising in an accounting period (that is, broadly the period for which it makes up accounts). The current rate of corporation tax is 19% for small companies with profits of less than £50,000 and the main rate of corporation tax is 25% for companies with profits of more than £250,000 (as of 1 April 2023). For companies with profits of between £50,000 and £250,000, the main rate will apply, reduced by a marginal relief.

Corporation tax is generally payable by a company nine months and one day following the end of an accounting period. However, for larger companies (ie companies with profits of at least £1.5m), corporation tax is due in quarterly instalments.

## Exemptions and reliefs

There are a number of tax incentives to doing business in the UK. Most notably, where certain criteria are satisfied, substantial shareholding relief provides a corporation tax exemption on the sale of an interest of 10% or more in a trading company. There are also significant reliefs available for qualifying spending on research and development, for investment in unquoted trading companies and for capital expenditure on new buildings and plant and machinery.

## Inter-company trading/transfer pricing

It is generally not possible to reduce the amount of UK taxable profits by means of adopting artificial pricing methods. Under both UK tax law and the UK's double tax treaties, the UK Tax Authority is able to ignore actual prices and charge tax as if arm's length prices had been paid. This would catch, for example, excessively high interest and management charges, and royalties that are paid to the non-resident parent of a UK subsidiary with a view to reducing the profits subject to UK tax.

Payments of interest, royalties etc by a UK permanent establishment to its overseas head office are not deductible for UK tax purposes.

## Stamp duty

Stamp duty is a tax on documents and is charged on the transfer of stock and marketable securities at a rate of 0.5% of the chargeable consideration. Transfers with consideration of £1,000 or less and which do not form part of a larger transaction or series of transactions are exempt from stamp duty. There are also various other exemptions including intra-group transfers, transfers on divorce or death and transfers from share incentive plans.





### Value added tax (VAT)

Value Added Tax (VAT) is a form of consumption or indirect tax. It is charged on the supply of goods and services made in the UK where the taxable supply is made by a taxable person during business.

A UK-established person must register for VAT where its taxable supplies for the preceding year exceed the threshold for compulsory registration (currently £85,000 per year) or it is likely that its taxable supplies in the next month alone will exceed that threshold. A non-UK established person may be required to register for VAT if it makes any level of taxable supplies in the UK. A person may voluntarily register if it makes taxable supplies and/ or carries on a business and intends to make taxable supplies (even if its taxable turnover is below the threshold for compulsory registration). Two or more bodies corporate can be registered as a single taxable person for VAT purposes (i.e. a VAT group).

The general rule is that all supplies of goods and services are subject to VAT at the standard rate unless they are exempt or subject to VAT at a lower rate. There are three rates of VAT: the standard rate (applies to most goods and services – currently 20%); the reduced rate (applies to some goods and services such as home energy and children’s car seats – currently 5%); and the zero rate (applies to most foods and children’s clothing – 0%).

There are some goods and services on which VAT is not charged – known as exempt supplies. These include (among others) certain financial products (including banking and insurance), supplies of education and healthcare and supplies of land and buildings (where no option to tax has been made).

In light of the above, where a person sells assets to another person, VAT will usually be payable on the purchase price. However, where the assets of a business are transferred as a going concern and certain conditions are met, this will be treated as neither a supply of goods nor a supply of services for VAT purposes.

### Taxation with freeports

There are generous customs and taxation benefits within Freeport sites as designated by the UK Government. Some of these benefits are time limited. The incentives include:

#### Freeports customs sites

- Duty suspension from a port of entry to a separate Freeport customs site so that there are no tariffs, import VAT or excise until the goods leave the Freeport
- Duty inversion so that where a company manufactures products within the Freeport and the finished product attracts lower UK import duties than its components, only the lower import duties will be payable
- Duty exemption where goods are imported for manufacture within the Freeport and re-exported
- Simplified customs procedures.

#### Freeports tax sites

- Business rates relief
- Enhanced 100% capital allowances for new plant and machinery
- Enhanced structures and buildings allowances of 10% over 10 years
- Relief from stamp duty land tax
- Relief from employer national insurance contributions.

# About Shoosmiths



# A reputation for excellence

## Key facts

- Law Firm of the Year at the Legal Business Awards 2022
- Winners of UK Law Firm of the Year at the Law.com British Legal Awards 2023
- Legal/Professional Team of the Year at the Property Week Awards
- Winner of four awards at the Managing Partners' Forum Awards 2022 highlighting client excellence
- Legal Team of the Year at the Estates Gazette Awards
- Featured in The Lawyer's UK Litigation 50
- A signatory to the Social Mobility Pledge and 38th in the Social Mobility Foundation's Employability Index
- Signatory to and participant in the United Nations Global Compact
- 210 partners and 1500+ lawyers and business support employees

## Clients

We hire great people who create fantastic relationships with our clients to help them get the results that they deserve.

We do all we can to help our clients achieve their goals. We take the time to understand their needs so we can be proactive in looking for solutions and will deliver the highest quality legal advice.

Our focus is on providing an exceptional client experience which incorporates open communication, cost transparency and a consistent service as well as ensuring the people you are working with make everything that little bit easier for you.

## International

Shoosmiths works with individuals and corporates investing in the UK, as well as with UK-based clients operating in global markets (where appropriate, via our membership of World Services Group). In addition, our Brussels office advises clients on EU competition, regulatory and trade law.

**“They have impeccable knowledge and provide excellent service.”**

CLIENT IN  
CHAMBERS UK



✉ Legal e-briefings: [www.shoosmiths.com/register](http://www.shoosmiths.com/register)

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🌐 [linkedin.com/company/shoosmiths](https://www.linkedin.com/company/shoosmiths)

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# Appendix – Comparison of a UK branch and subsidiary

	UK establishment (or branch)	Subsidiary company
<b>Status</b>	A branch is not a separate legal entity. A branch usually has some form of physical presence in the UK, such as business premises.	A subsidiary company is a separate legal entity. A subsidiary can be established by incorporating a new company or acquiring an existing company.
<b>Formation</b>	Relatively easy and inexpensive to establish, although the application form is fairly long and detailed. Particulars of the overseas company have to be registered with the Registrar of Companies in the UK, together with information about the UK establishment.	There is a standard process to incorporate a private company, which can usually be completed within one business day. Certain forms have to be completed and registered with the Registrar of Companies in the UK and a fee is payable.
<b>Legal considerations</b>	It gives no protection to the overseas company from the UK operation's trading losses/ other liabilities. The overseas company will make decisions and enter into contracts on behalf of the UK operation.	A subsidiary company will have limited liability, offering the overseas parent company some protection against trading losses/ other liabilities of the UK entity. As it is a separate legal entity the subsidiary can enter into contracts/ transactions directly.
<b>Commercial considerations</b>	In some sectors it is more attractive to customers/ clients to deal with a UK company rather than an overseas branch office. It may be harder to secure finance without the stability of a separate UK entity.	Companies often prefer to do business with a UK company. Operating a UK company may be administratively more convenient. If claims are made against a UK owned subsidiary, any liability is usually restricted to the assets of the subsidiary. It may be easier to secure grants and loans/ other finance.
<b>Accounts</b>	A branch (with a permanent establishment in the UK) has to deliver to the Registrar of Companies copies of all the accounting documents that the overseas company is required to disclose by its local law (and, if no such requirement, in a form that complies with UK company law or International Accounting Standards). These accounts will be available for public inspection.	A UK company has to prepare and file annual accounts. The accounts filed with Companies House are available for public inspection, but will relate only to the UK subsidiary, not the overseas parent company.
<b>Transparency</b>	Branches do not currently have to comply with transparency rules.	UK companies have to comply with transparency rules by keeping and publishing a register of 'people with significant control' which shows who controls the company (and not just the shareholders).



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