

An aerial photograph of the London skyline at sunset. The Shard is the most prominent building on the left, its glass facade reflecting the golden light. The River Thames flows through the center of the image, with several bridges visible. The city is densely packed with buildings, and the sky is filled with soft, golden clouds. The overall mood is warm and professional.

Doing BUSINESS IN THE UK

Sable International

SABLE
a professional edge



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1. Introduction

About this guide

This guide provides a general overview of how businesses operate in the United Kingdom. In particular, it provides information on matters for any non-UK entities that want to do business in the UK.

Whether trading in the UK for the first time, expanding an existing UK business or seeking a trading relationship with an existing UK business, Sable International can advise and assist.

About Sable

Sable is a business services firm with a global reach and a reputation for dealing with dual nationality clients. We have more than 150 staff and consulting professionals in four offices worldwide. We work for a wide variety of businesses and individual clients, including small and medium-sized privately held companies, partnerships and emerging companies. We pride ourselves on our proactive and solution-oriented work, advising our clients at each step of their business cycle.

The United Kingdom – an overview

The United Kingdom consists of England, Wales, Scotland and Northern Ireland. There are three separate legal jurisdictions: (i) England and Wales, (ii) Scotland and (iii) Northern Ireland. The information in this guide is based entirely on the law applicable to England and Wales.

The UK government actively encourages foreign investment and there are no exchange controls. Central and local governments offer a number of incentives to foreign investors in certain geographical areas and industries.

The currency of the UK is the Pound Sterling (£).

The UK is governed by a parliamentary system with central government based in London.

The English parliament consists of the House of Commons, made up of elected Members of Parliament, and the appointed House of Lords. Legislation must be approved by both Houses before it is passed into law. After each election, the Government is formed by the party that holds an overall majority in the House of Commons. It is possible for more than one political party to hold this majority.

England has a common law system. The legal system is defined by unwritten law created by the courts as well as written statute. As England is a European Union (EU) Member State, certain EU legislation will also apply.

The European Union

In 1958, the Treaty of Rome brought about economic integration between the European Economic Community. Now, the Treaty on European Union (TEU) sets out the objectives and principles of the EU and provides for the Common Foreign and Security Policy.

The EU is now a union of 28 independent countries, each a "Member State".

The European Economic Area (EEA) was established on 1 January 1994. Inclusion in the EEA allows Member States to participate in the European single market, enabling the free movement of goods and services between the 28 Member States, Iceland, Lichtenstein and Norway.

The Euro (€) is currently the currency of 17 of the 28 Member States of the European Union.

The UK government actively encourages foreign investment and there are no exchange controls. Central and local governments offer a number of incentives to foreign investors in certain geographical areas and industries.

2. Business organisations

Any overseas company planning on doing business in the UK will need to consider the manner in which it will conduct its business in the UK.

A foreign entity may establish a separate legal entity in the UK. Where this is not the case, it may still be subject to certain requirements under English law.

Overseas entities selling goods or providing services to customers in the UK (or contemplating such activity) must consider whether their activities establish a “presence” in the UK. This presence will give rise to a UK tax liability and/or to an obligation to make public filings.

The profits attributable to any branch operation or to any subsidiary or other legal entity carrying on business in the UK will generally be subject to taxation in the UK.

UK establishment of an overseas entity

The Companies Act of 2006 (the Companies Act) governs company law in England and Wales.

The fact that an overseas entity is carrying on business in the UK does not mean that it must effect any formal registration. Such registration is only required where there is some degree of physical presence in the UK (such as a place of business or a branch).

Where an organisation establishes a fixed or permanent base from which to conduct business in the UK, this will constitute a taxable presence or “permanent establishment”. Engaging an agent with the authority to conclude contacts on the business’s behalf would constitute such a presence. Where the founding of such a permanent establishment comes into question, each case

will be determined on its own facts.

If an overseas entity has a permanent establishment despite not having set up a legal entity in the UK, it will be required to comply with certain registration requirements under the 2006 act. It may also be subject to UK tax in connection with the profits of such a permanent establishment.

Overseas entities selling goods or providing services to customers in the UK (or contemplating such activity) must consider whether their activities establish a “presence” in the UK. This presence will give rise to a UK tax liability and/or to an obligation to make public filings.

A foreign company must register as an establishment with Companies House within one month of commencing business in the UK. The OS IN01 registration form requires detailed particulars about the overseas company, its officers as well as details of the establishment together with a copy of the overseas company’s constitution.

Once registered, an overseas entity with a permanent establishment in the UK will be required to file certain documents

at the UK Companies House. General information about the company, including its constituting documents, as well as any accounts are filed in accordance with the laws of the country in which it is incorporated. Any such documents filed will be a matter of public record.

If the country in which an overseas entity is incorporated does not require accounts to be filed, the status of the country in which it is incorporated will determine the necessary actions. If it is incorporated in an EEA State, it will not have to file accounts in the UK. If it is not incorporated in an EEA State, it will have to file accounts based on the 2006 Act, the laws of the country in which it is incorporated or International Accounting Standards.

Establishing a company

There are four types of companies that can be created in the UK:

- Private company limited by shares – the members’ liability is limited to the equity they have invested or agreed to invest.
- Private company limited by guarantee – the company does not have a share capital. The members’ liability is limited to the amount that they have agreed to; this type of company is used principally for charitable organisations and clubs.
- Private unlimited company – there is no limit to the members’ liability in the event that the company is wound up.
- Public limited company (PLC) – the members’ liability is limited to the equity they have invested or agreed to invest. The shares of a PLC can be offered for sale to the general public and be quoted on the stock exchange.

2. Business organisations

Of these four types of companies, the most common company type used by overseas entities to establish trading entities are wholly owned private companies limited by shares (limited company). However, in certain circumstances it may be appropriate for the overseas entity to establish a PLC. Alternatively, an overseas entity may seek to acquire all or part of the shares in an existing limited or PLC.

The incorporators of both limited companies and PLCs must create a Memorandum of Association which sets out the subscriber's intention to form a company. The Articles of Association contain the rules that govern the arrangements between the shareholders and the management of the company by its directors. An application form sets out certain information that must be filed with UK Companies House. Formation of a new company typically takes three to five days, but a premium same-day service is available.

Both limited companies and PLCs have a separate legal personality; the shareholders and directors are generally not liable for any acts or omissions of the company.

There are no residency or nationality requirements for directors of UK companies.

Certain actions of the company are subject to shareholder approval. This is either by ordinary resolution (more than 50% of those entitled to vote) or special resolution (requiring a vote in favour of no less than 75% of those entitled to vote). Written resolutions signed by the requisite number of shareholders can be used to avoid convening a meeting, but certain requirements regarding notice and timing must be met.

Key differences between a limited company and a PLC are as follows:

It is currently possible for a limited company, but not a PLC, to receive flow-through treatment for US tax purposes, by election under the so-called "check the box" rule.

	Limited company	PLC
Minimum share capital	£1	£50,000 A PLC must have at least a quarter of the nominal value of each share paid up before it can start trading.
Share currency restrictions	No A Limited company may have different classes of shares denominated in different currencies.	No A PLC must have a minimum of £50,000 issued share capital. It may also have other classes of shares denominated in other currencies.
Minimum number of shareholders	1	1
Minimum number of directors	1 (at least one must be a natural person)	2 (at least one must be a natural person)
Company secretary	No	Yes
What information must be disclosed?	An Annual Return (giving details of directors and shareholders) must be filed with Companies House. Subject to exemptions for companies with lower turnovers, audited annual accounts must be filed with UK Companies House.	In addition to the filing requirements for a Limited company, if a PLC is listed on a securities exchange, price sensitive information must be promptly disclosed.
Dividends / Distributions	A limited company can only make distributions from distributable reserves.	A PLC can also only make distributions out of distributable reserves. In addition to this, it can only pay a dividend if its net assets do not fall below an amount calculated by reference to its share capital and reserves.
Requirement to hold annual meetings	No, unless required under its documents of incorporation.	Yes

2. Business organisations

Establishing a partnership

Another trading entity to consider is a partnership. There are three types of partnership available under English law:

- General partnerships (GP) – these are unincorporated partnerships in which the partners have unlimited liability for the debts of the partnership.
- Limited liability partnerships (LLP) – these are incorporated partnerships in which each partner's liability is limited to their individual contribution.
- Limited partnerships (LP) – these are unincorporated partnerships in which certain partners have limited liability ('limited partners') and at least one 'general partner' has unlimited liability. The general partner may be a limited liability company.

As there are generally no restrictions on who may become a partner, both natural and legal persons may establish a partnership. There are, however, certain professions whose governing bodies may impose their own requirements.

Although no written contract is required, it is highly advisable that parties make use of a written partnership agreement to govern the relationship. If such a document does not exist, provisions of the Companies Act will apply; these are often unsatisfactory.

UK partnerships are treated as transparent for taxation purposes in the UK. Accordingly, each partner will be taxed on their income and gains directly. Overseas partnerships will usually be treated as transparent for tax purposes, but this must be considered in light of the particular contractual or constitutional arrangements by which the partnership is constituted and operates.

There is no minimum capital requirement for English partnerships.

Although no written contract is required, it is highly advisable that parties make use of a written partnership agreement to govern the relationship. If such a document does not exist, provisions of the Companies Act will apply; these are often unsatisfactory.

Certain key differences between GPs, LLPs and LPs are as follows:

	GP	LLP	LP
Requirements for establishment	No formal requirements – a partnership is formed whenever more than one person carries on business with a view to profit.	Detailed information must be registered with UK Companies House.	Less detailed information must be registered with UK Companies House.
Separate legal personality	No	Yes. The partnership itself can own property and employ individuals.	No
What information must be disclosed?	None	The details of the partnership must be kept updated and accounts must be filed each year.	Only basic details.
Can the partnership be bound by the partners?	Yes	Yes	General partners may bind the partnership but limited partners may not.



*“We pride ourselves on our proactive
solution-oriented work,
advising our clients at
each step of their business cycle.”*

3. Investment and security

UK businesses can obtain working capital in a number of ways.

Foreign investment

The UK maintains a liberal investment policy, making it one of the largest recipients of inbound foreign investment in the world. There is no legal framework designed to monitor direct foreign investments, but the government has the authority to block specific transactions considered to be against national interests.

Equity investment

Investment in a UK company can be affected by the allotment of shares in return for capital invested. Shares cannot be allotted for less than their par value and are commonly allotted at a premium. There are restrictions on the company's ability to effect distributions to its shareholders as well as to repay capital invested in equity. In the event of the insolvency of the company, any return to the shareholders will rank after all creditors and the payment of all liabilities.

Loans and granting of security

Generally, under English law, loans are advanced on the terms agreed to by the lender and the borrower.

Loans may be made on a secured or an unsecured basis. As with any secured lending, the lender has a higher likelihood of recovering its money. This method of lending is particularly useful for protecting a lender in the event of a company's insolvency. The loan may be secured over all or part of the assets of the borrower.

Security interests may take a number of forms, depending on

the transaction, the assets over which security is proposed and the company's credit rating, amongst other factors. There are three basic types of security that can be granted under English law: a possessory pledge, a charge and a legal or equitable mortgage. Mortgages of choses in action provide the lender with the right to recover the money owed to him. A lien is a fourth type of security, arising by operation of law.

The charge is commonly used for assets other than real property. Under English law, charges will fall into two categories:

- Fixed charges
- Floating charges

The key characteristic differentiating a floating charge from a fixed charge is the freedom enjoyed by the chargee. A fixed charge attaches to particular assets and the chargee is required to have the consent of the chargor before dealing with the asset. A fixed charge cannot relate to future assets.

In contrast, a floating charge generally relates to assets which are identified by class, where the class comprises of both present and

future assets which are ordinarily changing from time to time. The chargee is free to deal with the charged assets in the ordinary course of business, without the consent of the charger, until the floating charge crystallizes into a fixed charge.

Courts take a substance over form approach when determining whether a charge is fixed or floating.

Fixed charges are a more robust form of security. They rank ahead of floating charges and subsequent fixed charges as well as any unsecured creditors. They provide the lender with the right to step in and take control of the charged assets. An uncrystallised floating charge can be vulnerable to a later fixed charge, which is granted prior to crystallisation. A floating charge will rank after the expenses incurred by both the liquidator and administrator as well as the claims of preferential creditors. In addition, the proceeds of the floating charge assets can be used to pay expenses of the liquidation.

Registration is a key factor when determining the validity of many charges. Under English law, a company is required to register charges created by it with the UK Registrar of Companies within 21 days of its creation (or date of deemed receipt in the UK, if the charge is created outside the UK).

The UK maintains a liberal investment policy, making it one of the largest recipients of inbound foreign investment in the world. There is no legal framework designed to monitor direct foreign investments, but the government has the authority to block specific transactions considered to be against national interests.

4. Taxation

Where a company sets up operations in the UK and establishes a presence there, various tax implications arise.

Corporation Tax

Companies resident in the UK and foreign companies with permanent establishments will be liable to pay Corporation Tax on the profits of their business. Capital gains are computed separately from income, but are included within the total profits on which Corporation Tax is charged. A UK subsidiary of an overseas company will pay Corporation Tax on its worldwide profits, subject to double tax relief for foreign taxes.

The basic rule is that all companies that are incorporated in the UK as well as all companies whose central management and control is exercised in the UK are resident in the UK for tax purposes.

Taxation of dividends

Dividends declared and paid by a UK resident company are not subject to withholding tax. Withholding tax is a tax on a payment that is collected by a payer and that represents the payee's tax liability on that payment.

Where profits are repatriated by a UK subsidiary, by way of dividend to a company or an individual resident outside the UK, the tax laws applicable in the jurisdiction where the recipient is located will determine the manner of taxation on receipt of the dividend.

A foreign parent company may benefit from a participation exemption. This will exempt dividends received from the UK subsidiary from tax in the foreign jurisdiction. Under the terms of most double tax agreements, where dividends are taxable, the

underlying corporation tax will normally be allowed as a foreign tax credit.

The dividend will carry a tax credit of an amount equal to one ninth of the amount of the dividend. It is possible, depending on the provisions of the relevant double tax agreement, that the recipient may be able to reclaim a very small proportion of the tax credit. If there is no double tax agreement, no tax credit will be available to a non-resident shareholder. To the extent that the rate of tax payable in the foreign jurisdiction exceeds the tax credit, a further amount of tax will be payable.

The basic rule is that all companies that are incorporated in the UK as well as all companies whose central management and control is exercised in the UK are resident in the UK for tax purposes.

Dividends received by a UK resident company from both resident and non UK resident subsidiaries should generally be exempt from Corporation Tax.

Tax on interest

Any company resident in the UK that makes yearly payments of interest to a non-UK resident must withhold tax on interest at a rate of 20%. Where interest is paid to a company resident

in a country that has a double tax agreement with the UK, such interest payments may be exempt from withholding tax or the tax may be reduced.

Buying a company: Tax considerations

Stamp duty is a transfer tax levied on documents. The purchaser of shares in a company incorporated in the UK will pay stamp duty on the value of the shares transferred at 0.5%.

Where shares are acquired, the purchaser is not able to select particular assets which he may require for the business; he will also assume the historic liabilities of the business. Typically, a purchaser will require protection for such liabilities and any tax warranties. Usually, the vendor will provide a tax indemnity in favour of the purchaser. The warranties are designed to flush out information about the target company.

The tax indemnity apportions tax liabilities between the purchaser and the vendor. This will ensure that the purchaser will be responsible for post-completion tax liabilities and the vendor will be responsible for pre-completion tax liabilities.

Tax implications when selling a business

Any gain made by a UK company on the disposal of a business will be subject to Corporation Tax. Where the selling company is resident outside of the UK, the tax treatment of the sale will be governed by the rules of the country in which the selling company is resident.

Capital Gains Tax (CGT) on asset disposals is payable by individuals who are UK residents in the year of disposal of the

4. Taxation

relevant asset. Where the tax payer is taxed at the higher and additional income tax rates, CGT is 28%; all other tax payers are taxed at 18% of the taxable gain value.

Disposals of substantial shareholdings

A company's net realised chargeable gains are subject to Corporation Tax. There is an exemption from the tax on the disposal by a company, subject to UK Corporation Tax of a "substantial shareholding" (i.e a 10% holding of the ordinary shares) in a trading company or a holding company of a trading group. To qualify for the relief, the disposing company must have held the shares in the target company for at least one year and must continue to be a trading company, or the holding company of a trading group, immediately after the disposal.

Entrepreneurs' Relief

Disposals of a limited category of asset may qualify for Entrepreneurs' Relief. This may reduce the CGT rate to an effective 10% on £10 million of qualifying gains for the lifetime of the company. This relief applies to various qualifying disposals provided that certain other criteria are satisfied.

Individuals

Individuals who are resident in the UK are generally liable to UK taxation on their worldwide income and gains. Residence is a question of fact. There is detailed guidance published by HMRC describing the basis on which they will regard an individual as being resident in the UK for a tax year or for a part of a tax year.

Special rules apply to individuals who are UK residents but are not domiciled there.

There are generally two ways in which non-resident individuals will incur UK taxation on income and gains. Such income and gains will be taxable where trade is carried on in the UK, or, in the case of income from employment, to the extent such income is attributable to duties of the employment performed in the UK. With regard to income from investments, tax will normally only be charged to the extent that tax is collected via deductions or withholdings made from payments of such income.

Income tax is charged on bands of income. The basic rate is 20%, increasing to 40% at the higher rate. The additional rate, charged on income after allowances exceeding £150,000, is payable at 45%.

Employees and employers also pay social security charges, known as National Insurance contributions. The employee's contributions are deducted from his salary along with the income tax due. The employer's contributions are currently charged at 13.8% on the employee's gross pay.

For individuals who are not domiciled in the UK, the country offers an attractive tax regime. Non-UK domiciled individuals are, generally, only liable for income tax and capital gains tax on income from overseas investments and assets, to the extent that such income or gains are remitted the UK. Individuals who are not domiciled in the UK but who have resided in the UK for seven of the last nine tax years only have access to this remitted taxation if they choose to pay an additional tax charge.

From 6 April 2017, long-term residents who remain foreign

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domiciled under general law will be deemed to be domiciled for tax purposes after having spent 15 of the last 20 tax years. This means that they will be subject to tax on their worldwide personal income and gains. Their domicile for tax purposes will subsist for five years following their exit from the UK.

Partnerships

Partnerships are generally treated as transparent for UK tax purposes. Accordingly, where the member of a partnership is a company or an individual, he will be taxed on his share of the profits as though they accrued to him directly. In the event that a non-resident company is a member in a partnership carrying on a trade in the UK, that company will be considered to have

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a permanent establishment in the UK. This will result in that member's profits being subject to UK Corporation Tax, unless an alternative arrangement has been made with HMRC.

Double tax agreements

It is important to consider the impact of any applicable double tax agreement. Where a legal person is resident in both the UK and his home country, and there is a double tax agreement between the two countries, that agreement will normally have a residence "tie-breaker" provision. Such provisions determine the individual's residence for the purposes of determining which country will effect taxation.

In certain circumstances, individuals who live and work in the UK on a temporary basis may be able to avoid UK income tax on any part of their earnings which are attributable employment duties performed outside the UK.

Some specific matters

Employment income

In certain circumstances, individuals who live and work in the UK on a temporary basis may be able to avoid UK income tax on any part of their earnings which are attributable employment duties performed outside the UK. Such individuals may also avoid being registered on the UK's social security system.

Value Added Tax

The sale of goods or supply of services by a business, for a consideration, may be subject to a consumption tax or Value Added Tax (VAT). In certain industries, including financial services, insurance, gaming and healthcare, such sales or supplies are normally exempt from VAT. Some goods and services - including certain categories of foods, books and clothing - are zero-rated.

The current standard rate of VAT is 20%. The vendor or person supplying the services is accountable to the tax authority for VAT that arises on a transaction. A vendor or supplier must ensure his sale price reflects this or is expressed to be exclusive of VAT.

A business is obliged to register for VAT and charge VAT on its sales if the value of its taxable turnover in the last 12 months exceeds the registration threshold. Alternatively, it must register if

the expected value of its VAT taxable turnover in the subsequent 30 days will exceed the threshold. Businesses may register for VAT on a voluntary basis, if their turnover is below the threshold, and it may often be advantageous to do so.

VAT is imposed with the view that the taxation should be borne by the ultimate consumer receiving the goods or services. A business that is trading in the UK will account to HMRC for the VAT that it charges on supplies, less an amount in respect of the VAT on supplies charged to it. However, in those industries where sales to customers are exempt from VAT, the right to recover VAT incurred on purchases is restricted or prohibited.

Cross-border effects of UK VAT

VAT is charged on most goods imported into the UK. This tax, along with duties or tariffs due to Customs or Excise are generally paid at the point of import into the EU.

Where UK businesses employ certain services from other entities, either within or outside of the EU, VAT is charged. This taxation must be accounted for by the UK business under a reverse charge rule. Goods exported as well as services rendered to businesses in the EU are normally zero rated. Customers in destinations which are outside of the EU also benefit from this zero rating.

5. Employment

The main employment law considerations for a company entering the UK market are set out below.

Written contracts of employment

It is market practice in the UK to provide all employees with a written contract of employment or, alternatively, a written statement of particulars of employment.

There is no legal requirement to provide an employee with a written contract of employment. However, where an employee's employment contract will last more than one month, the employer is obliged to provide him with a "written statement of particulars of employment". This must be done within two months of the employee's start date. The statement must include certain information, such as terms regarding notice, pay, pension provision, sick pay and holidays. Such a statement is not a contract of employment but, in the absence of any other documentation, it will be taken as reflecting the contractual terms and conditions.

An employer must also provide the employee with a written statement of any change in the particulars within one month of that change.

If a statement of particulars of employment or a statement of change is not provided, the employee may apply to an Employment Tribunal for an order requiring the employer to produce one. If such an order is made, the Employment Tribunal will also award a sum equal to a maximum of four weeks of pay to the employee.

Dismissing an employee

UK employment law does not allow the employer to terminate an employee's contract of employment without restriction. Usually, an

employee must be provided with advance notice of termination or a payment in lieu thereof. Where an employer wrongly terminates an employee, it may be liable for the following claims:

- Unfair dismissal
- Failure to make a statutory redundancy payment
- Wrongful dismissal, for breach of the employee's contract of employment

Unfair dismissal

An employee with two years' service has the right not to be unfairly dismissed. A dismissal will be unfair unless the employer can show:

- That the dismissal was for one of the five fair reasons, including reasons relating to conduct, capability and redundancy.
- That the employer acted reasonably in dismissing the employee for that reason in the circumstances, having regard to the size and administrative resources of the employer's business.

Unfair dismissal claims are heard by an Employment Tribunal and panels are chaired by employment judges.

In evaluating the fairness of a dismissal, an Employment Tribunal will have regard to the written guidance published by the Advisory, Conciliation and Arbitration Service (ACAS), a quasi-governmental body. Where an employer does not comply with the provisions of an ACAS code, the Employment Tribunal is more likely to find that a dismissal is unfair.

There is no legal requirement to provide an employee with a written contract of employment. However, where an employee's employment contract will last more than one month, the employer is obliged to provide him with a "written statement of particulars of employment". This must be done within two months of the employee's start date.

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Remedies for unfair dismissal

If an employee is successful in a claim for unfair dismissal, the Employment Tribunal may order reinstatement or reengagement of the employee, although this is rarely done in practice. The Employment Tribunal usually awards financial compensation. Such compensation is usually in the form of:

- A basic award, calculated based on the employee's age, length of service and weekly pay. This amount is capped.
- A compensatory award, designed to compensate the employee for losses flowing from the dismissal. This amount is also capped.

In practice, most employees receive a compensatory award of around six months' total compensation.

Redundancy

As noted above, redundancy is a potentially fair reason for

dismissal. Redundancy occurs where an employer ceases carrying on a business activity or reduces the number of employees performing an activity.

Minimum notice periods

Employment legislation sets out the minimum notice requirements to which an employee is entitled. An employee who has been employed for less than two years is entitled to one week's notice. An employee who has been employed for two years or more is entitled to one week's notice for each year of continuous service, to a maximum of 12 weeks.

Although all employment contracts are subject to the statutory minimum period, the agreement may offer more generous notice provisions. It is common to find UK employees with contractual notice periods of one to three months (for low-level/middle management) and six to 12 months (for executives).

The employer is normally required to provide advance notice of a termination or a payment in lieu of notice in all cases except

for gross misconduct. Gross misconduct involves the gross dereliction of duty, such as criminal activity, gross negligence or gross insubordination.

Discrimination

Employees are protected from discrimination on the basis of the following characteristics: age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, sexual orientation, religion or belief and race. This protection includes discrimination on the basis of perception of an employee's protected characteristics or association with people who have a protected characteristic.

It is also unlawful to harass individuals on the basis of any of these protected characteristics.

Business sales and outsourcing

As a result of EU directives, commercial transactions involving outsourcing or asset sales are subject to significant employment

Employees are protected from discrimination on the basis of the following characteristics: age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, sexual orientation, religion or belief and race. This protection includes discrimination on the basis of perception of an employee's protected characteristics or association with people who have a protected characteristic.



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5. Employment

protection for any employees involved.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) operate to protect employees where there is an acquisition of a business, an outsourcing of an economic activity or a change in the provider of outsourced services. In the event that one of these situations arises, TUPE provides that the employees assigned to that business or economic activity are transferred, along with the terms and conditions of their employment. As a result, the buyer of a business or third party contractor becomes liable for the employees working in that business.

Any dismissal in connection with the transfer or outsourcing is automatically deemed unfair, unless it is for an economic,

Any dismissal in connection with the transfer or outsourcing is automatically deemed unfair, unless it is for an economic, technical or organisational reason.

technical or organisational reason.

There is a further duty on the seller or outsourcing entity to inform and consult with the elected representatives of all affected employees about the transfer and the effect it would have on the employees before such time as it comes into effect. Failure to inform and consult in the manner prescribed in TUPE can result in a joint order against both employers to pay up to 13 weeks' pay to each affected employee.

Buyers of a business should protect themselves by carrying out the appropriate due diligence and including indemnities in the contract of sale. The seller of any business will need to consider what indemnification is necessary, as TUPE can create ongoing liabilities for the transferor of the business or outsourced activity.

It should be noted that TUPE has broad application. The regulations can apply to outsourcings overseas as well as to business transfers occurring within subsidiaries of the same holding company.

Restrictive covenants

English employment contracts often contain provisions that

restrict the employee's activities after employment. Such clauses typically take the form of one or more of the following restrictions:

- Non-poaching or non-solicitation clauses, which prevent the employee from enticing clients, suppliers or employees to abandon the employer following termination
- Non-dealing clauses, which prevent the employee from doing business with the employer's customers
- Non-competition clauses, which prevent the employee from engaging in business which competes with the employer's business

Although restrictive covenants are often contained in UK employment contracts, the courts are frequently reluctant to enforce them.

Restraint of trade is only permitted where there is a legitimate interest which the employer is seeking to protect and where the clause goes no further than what is deemed necessary to protect that interest. Where a clause is void, courts in England will not rewrite it in order to retain it and make it enforceable.

6. Business immigration

The UK government constantly revises its immigration policies and procedures; in particular, those relating to economic migration. It is not unusual for UK immigration rules to change several times during the course of one year.

Up-to-date advice should be sought from Sable Nationality before making any application or decision relating to business immigration. However, the following is a general overview of how the system works.

Citizens of most EEA countries and Switzerland and their spouses/partners, children and dependent family members may live and work in the UK.

It is illegal for foreign nationals to work in the UK unless authorisation to do so has been obtained from the UK Visas and Immigration. Working as, or employing, a foreign national who does not have authorisation to work is a criminal offence.

There are various classes of migrants that may enter the UK under the various Tier 1 visas. One very limited class of migrants, known as Tier 1 high-value migrants, may come to the UK to seek employment freely.

In order to qualify for the Tier 1 (Entrepreneur) visa, a candidate must prove that he or she has access to £200,000, held in a regulated financial institution, and that those funds are disposable in the UK. The Tier 1 (Investor) visa requires that applicants, their spouses or partners have at least £2 million in investment funds. This money must be held in one or more regulated financial institutions and be disposable in the UK.

Tier 2 visas empower an employer to become registered as a sponsor and obtain a certificate for the employment of a foreign national for a particular amount of time. An employer must prove that it has carried out a search within the UK labour market before a certificate of sponsorship can be obtained. There is no need to carry out any search, however, if the post is on a government list of shortage occupations or, in certain circumstances, works for an overseas branch of the same employer. An employer that is registered as a sponsor must have strict monitoring systems in place, which may create a significant administrative burden.

Senior employees who relocate to the UK to assist with the set-up of a wholly owned subsidiary, or to register a UK establishment for an overseas parent company, may apply for the Sole representative of an overseas company visa. It is generally required that the company must have no UK establishment, subsidiary or other representative in the UK before the visa application is made.

For application purposes, the senior employee must have previous experience in a senior role, full authority to make operational decisions on behalf of the overseas parent company and should work full time as a representative of the overseas parent company. The individual must be competent in English language to a basic user standard and cannot be a majority shareholder of the overseas parent company. In addition, the UK establishment which the senior employee will establish must be concerned with the same type of business activity as the overseas parent company.

It is illegal for foreign nationals to work in the UK unless authorisation to do so has been obtained from the UK Visas and Immigration. Working as, or employing, a foreign national who does not have authorisation to work is a criminal offence.

Separate immigration categories exist in respect of low-skilled workers, students and youths as well as temporary workers; these are known as Tiers 3, 4 and 5 respectively.

For short-term, temporary business visits, it may be best to obtain a business visitor visa. A person may enter the UK as a business visitor if they have come to the UK to transact business while permanently living and working outside the UK. In this case, business will include attending meetings and briefings, fact finding or negotiating, or making contracts with UK businesses to buy or sell goods or services. A person seeking leave to enter the UK as a business visitor may be admitted for a period of up to six months, subject to a condition prohibiting employment. Our partner company, Philip Gamble & Partners can provide more information on these and other migration issues.

7. Pensions and employee benefits

Although PHI is an employee benefit, it can be regarded as a type of insurance to cover an employer. The PHI provides assistance to employers who have lost an employee due to illness, but are still contracted to pay that employee during their absence.

The general availability and extent of employee benefits provided by UK companies will vary according to the industry sector and the seniority or role of the employees concerned. Therefore, it should not be assumed that each of the following benefits are generally available to all employees in the UK. Further advice regarding employee benefits can be obtained from Sable Wealth.

Life insurance

In general, life cover is provided to employees of UK companies. This cover will usually be calculated as a multiple of the salary or wage payable in the event of death. The level of cover for senior employees is often higher than for junior employees: typical multiples range between two to four times pensionable salary.

Most companies will pay an annual premium to insure the benefits. Occasionally, larger companies will self-fund cover.

The terms and cost of providing life cover can vary between insurers. Companies may wish to employ a consultancy or broker to negotiate policy terms and premiums. The total benefit amount is often subject to HM Revenue & Customs (HMRC) limits.

Permanent health insurance (PHI)

PHI is provided by companies to cover employees who are absent from work for long periods due to illness. An insurer will provide the employee with a percentage of their earnings for a predetermined period. Typically, the level of cover is 100% of pay during the first 12 weeks of absence, after which it is reduced to 75%, when state benefits may become available. Lower rates of

cover can be provided for junior employees.

Although PHI is an employee benefit, it can be regarded as a type of insurance to cover an employer. The PHI provides assistance to employers who have lost an employee due to illness, but are still contracted to pay that employee during their absence.

As with life cover, consultants will often arrange to broker terms and premium levels for companies seeking to provide PHI.

Private medical insurance (PMI)

Foreign companies entering the UK market are often initially concerned with the potential cost of medical cover for employees. However, the provision of medical cover by UK companies is very different to other countries. This is primarily because of the UK's National Health Service (NHS), which provides medical cover funded, in part, by compulsory employer and employee National Insurance Contributions (NICs).

Given that NHS cover is available, UK companies do not generally provide all of their employees with PMI. In some industry sectors, companies may provide senior staff and employees with this benefit.

On payment of premiums, various recognised insurers will provide medical cover that will allow relevant employees to undergo private medical treatment. As such, they will not be required to rely on the NHS. The perceived advantage is that treatment, including access to specialist medical advice, will be more readily available at a time convenient to the employer/employee. The extent of cover provided varies widely and normally excludes pre-existing medical conditions or long-term treatments.

7. Pensions and employee benefits

As with life cover and PHI, consultants will often negotiate the premium costs and level of benefits.

Pension plans

Since 1 October 2012, UK employers have been required to automatically enrol their employees into a workplace pension scheme and contribute a percentage of their employee's earnings into this scheme (auto enrolment). This scheme will continue beyond 2018, by which time all employers must have a qualifying workplace pension scheme in place for their employees. Each employer is required to meet the obligations set out by the regulator at a date determined by the Pensions Regulator, known as the staging date.

After the staging date, employers must contribute to their chosen pension scheme on behalf of their employees. Legislation sets out minimum contribution levels depending on which definition of earnings is used. These contributions can start from a minimum of 2% of an employee's qualifying earnings and may rise to 8% in late 2018. This contribution amount can be shared between employer and employee.

Employers are required to manage the pension scheme on behalf of their employees during the full duration of their employment. Such management includes, amongst others,

administration of contributions and detailed communication correspondence tailored to existing and new employees. This can lead to capacity concerns within the business and therefore should be prioritized as such. Auto enrolment is not just a once-off requirement. It is an ongoing process that demands regular review in order to ensure that compliance is maintained.

Employee share schemes

There are several forms of employee share schemes which operate in the UK. Schemes vary from those where the employee pays the full value for the shares to others where shares are free.

In general, however, share schemes can be divided into two categories: (i) appropriate for senior executives, or (ii) for all employees. Schemes designed for the first category of employees are usually not HMRC approved and therefore do not provide tax incentives. Those designed to cover all employees involve limited share values, but include tax advantages.

In certain circumstances, senior employee share arrangements include Enterprise Management Incentives (EMIs). These schemes are designed to give tax incentives to executives where the company has a maximum asset value of £30 million. Senior officials may be granted share options worth up to £250,000 without paying Income Tax or National Insurance.

More recently, it has become compulsory for companies to enrol eligible employees into the National Employment Savings Trust (NEST) scheme, depending on the number of employees. This scheme requires both employees and employers to contribute a proportion of an eligible employee's qualifying earnings into a workplace pension scheme.

8. Intellectual property

In the EU, protection is granted for registered and unregistered intellectual property (IP) rights, including patents, trade marks and copyright. In Europe, patents may be prosecuted through the European Patent Office (EPO) in Munich, Germany. Community trademarks and registered community designs in the EU are administered by the Office for Harmonisation of the Internal Market (OHIM) in Alicante, Spain.

In the UK, intellectual property matters are dealt with by the UK Intellectual Property Office (UK IPO), including trade marks, registered designs and patents.

Patents

Patents are granted by the EPO under the European Patent Convention (EPC). There is no pan-European patent; patents are granted in respect of each jurisdiction and enforced under the relevant law of that jurisdiction. UK law (contained primarily in the Patents Act 1977) generally follows the requirements of the EPC; it is therefore similar to the law in other EPC signatory countries.

Patents are granted for a period of 20 years from the date of the filing of the application. A patent in connection with agro-chemical and pharmaceutical products may be extended beyond this period.

Trade marks

EU Member States are required to have national laws in place that approximate national legislation relating to trade marks. Thus, the law relating to trade marks is essentially similar across the EU. However, trade marks are obtained in each national jurisdiction and governed by the national law. In the UK, the law is contained in the Trade marks Act 1994.

Trade marks are registered for an initial term of ten years, but may be renewed for subsequent terms of the same length, with no limit on the number of renewals.

In the UK, the common law of "passing off" provides protection for rights in an unregistered trade mark, trade name or logo. In order to have such a claim, the owner of the mark must prove that a third party is taking advantage of the goodwill generated by the mark and misrepresenting connection between the mark and the claimant.

EU Member States are required to have national laws in place which approximate national legislation relating to trade marks. Thus, the law relating to trade marks is essentially similar across the EU. However, trade marks are obtained in each national jurisdiction and governed by the national law.

Designs

The UK Registered Designs Act 1949 permits the registration of a design that is new and has individual character. A design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation.

Registration is obtained at the UK IPO. EU Council Regulation 6/2002 provides for the registration of a Community Design at the OHIM. Such registration provides protection for a registered design across all EU Member States.

Registration in the UK and at the OHIM subsists for five years and may be renewed for successive five year periods, up to a total of 25 years. Unregistered designs hold a "design right" which provides the design with protection for up to 15 years after its creation.



*“The UK government actively encourages foreign investment
and there are no exchange controls.
Central and local governments offer a number of incentives
to foreign investors in certain geographical areas and industries.”*

8. Intellectual property

Copyright exists in original literary, dramatic, musical or artistic works, sound recordings, films and broadcasts and the typographical arrangement of published editions. The length of protection for these works varies from 25 years to 70 years after the death of the author of the work.

Copyright

The EU has, through a number of directives, sought to harmonise the national law of Member States concerning copyright. Thus, on material issues, for example the nature of protection and duration of copyrights, national law in each Member State is similar. In the UK, provisions relating to copyright are contained primarily in the Copyright, Designs and Patents Act 1988.

Copyright exists in original literary, dramatic, musical or artistic works, sound recordings, films and broadcasts and the typographical arrangement of published editions. The length of protection for these works varies from 25 years to 70 years after the death of the author of the work.

UK law recognises an unregistered design right in an original design, being any aspect of the shape or configuration article. This protection subsists for a maximum period of 15 years.

In implementing an EU Directive, the Copyright and Rights in Databases Regulation 1997 created and recognised a separate intellectual property right. Such right exists in circumstances where there has been a substantial investment in obtaining, verifying or presenting the contents of a database. Database rights subsist for a period of 15 years from the end of the calendar year in which the database was completed.

Ownership and evidence of intellectual property rights

Generally, under UK law, where a work produced by an employee

in the course of his employment, the IP rights attaching to that work automatically belong to the employer. There is no need for any express term in his contract of employment or any assignment document. An employee has limited rights to claim compensation where he is the inventor of a patented invention of outstanding benefit to the employer. These rights are rarely used as many companies will have internal policies in place to compensate employee inventors.

It is not necessary to use any symbol ® in connection with a registered trade mark in order to protect the rights in that trade mark. Infringement will occur whether or not the infringer is aware of the registration of the mark.

Confidential information

In the UK, it is possible to protect confidential information. This protection is afforded to information that the company did not intend to have made public, where such information has been disclosed in circumstances where the recipient is aware of its confidential nature and has used it for his own benefit, to the detriment of the owner. It is usual for a non-disclosure or confidentiality agreement to be entered into, in order to assist in showing the elements necessary to bring a claim to protect any such confidential information. Such an agreement will provide a plaintiff with a breach of contract claim as an alternate to the more complex breach of confidentiality claim.

9. Data protection

The EU Data Protection Directive (95/46/EC) required Member States of the EU to promulgate national legislation providing protection individual's personal data. The UK Data Protection Act 1998 (DPA) imposes obligations and potential criminal liabilities on companies that do not comply with its provisions.

The DPA applies to data about a living individual (data subject) from which that individual can be identified. Information that is processed by automatic means or that forms a part of a non-automated system organised by reference to individuals or to some criteria that relates to individuals, falls within the definition of data to which the DPA applies.

A data controller is a person who determines the purpose for which and the manner in which any personal data is, or is to be, processed. Compliance is primarily the responsibility of a data controller. A data processor is a person who processes data on behalf of a data controller and generally has no obligations under

the DPA, but has obligations towards the data controller.

Each data controller is required to notify the UK Information Commissioner of the processing of personal data.

Any entity processing personal data within the UK (or elsewhere in the EU) is required to comply with relevant national laws giving force to the Data Protection Directive. In particular, a data controller needs to consider carefully and, if appropriate, put in place contractual arrangements to ensure the protection of such data. Such contractual arrangements are required in circumstances in which a data controller intends to transfer any personal data outside of the EEA to any country that has not been recognised by the European Commission as having adequate arrangements for the protection of personal data in place. Note that the US is not currently recognised by the European Commission as having an adequate level of data protection.

Any entity processing personal data within the UK (or elsewhere in the EU) is required to comply with relevant national laws giving force to the Data Protection Directive. In particular, a data controller needs to consider carefully and, if appropriate, put in place contractual arrangements to ensure the protection of such data.

10. Imports, export controls and sanctions

Imports

The EU is a single trading area where all goods circulate freely, subject to limited restrictions. As such, there is a unified customs law and internal customs duties, fees and barriers are removed within the EU. However, Member State customs authorities retain the right to check goods at the border. There is a common external customs tariff for products imported from outside the EU. That tariff is levied on an *ad valorem* basis and is intended to be applied and interpreted uniformly by all the Member States.

The EU has adopted a Community Customs Code (CC), which sets out the general rules and customs procedures applicable to goods traded between the EU and non-EU countries. In addition, the EU has adopted a more detailed implementing regulation. Both the CC and the Customs Regulation are directly applicable in the Member States and are administered and enforced by Member State customs authorities. In the UK, the national customs authority is HM Revenue & Customs (HMRC). The UK also has its own legislation that deals with certain aspects of importing and which imposes penalties for violations of EU and national law.

In some cases, imports may require a national license or an EU license. These can include Common Agricultural Policy licenses for certain foodstuffs, licenses for the importation of certain other foodstuffs, livestock, blood, plant life and other items subject to health and safety controls.

Export controls and sanctions

Exports of dual-use goods, technology and software from the EU, as well as certain intra-EU transfers of such items, are controlled under an EU regulation. This regulation is directly applicable to EU Member States. Some Member States have implemented

legislation to exercise options under the EU regulation and to establish administrative procedures and penalties with respect to violations. The details of such national laws may vary from state to state. In general, the competent authority of the Member State in which the exporter is established is the relevant licensing and enforcement authority. In addition, Member States are permitted to establish national licensing requirements for reasons of public security or human rights considerations for dual-use items not controlled under the regulation.

The EU regulation imposes licensing requirements for exports of items listed on the EU Dual-Use List to destinations outside of the EU.

It should be noted that exports may be subject to controls administered by different agencies under other legislation. For example, in the UK, there are separate controls relating to precursor chemicals and reagents used in drug manufacture. In addition, certain chemicals (mainly pesticides) may require consent before exportation and prescription drugs and medicines may be subject to separate controls.

Enforcement of export controls is handled by HMRC.

The EU and its Member States also participate in various economic sanctions and arms embargo regimes pursuant to UN, EU and OSCE (Organisation for Security and Cooperation in Europe) initiatives.

In some cases, imports may require a national license or an EU license. These can include Common Agricultural Policy licenses for certain foodstuffs, licenses for the importation of certain other foodstuffs, livestock, blood, plant life and other items subject to health and safety controls.

11. Real estate

An entity expanding its business into the UK, will most likely require premises from which to conduct its operations. Depending on the operational needs and level of commitment, the business will either acquire a freehold or long leasehold interest in the property. Alternatively, the entity may take a new lease or the transfer of an existing lease of suitable premises.

Freehold

This is a perpetual title that will be registered at the Land Registry and thus guaranteed by the UK Government. There is no need for insurance of the title. The title may be subject to restrictions on use or rights in favour of other property owners and may carry with it rights over other land. Freehold property that is free of mortgage (security) can be disposed of without any third party consent.

Long leasehold

It is not uncommon for freehold owners in the UK to create leases of 99 years or more in return for capital payments. These leases change hands in a similar manner to freeholds and can usually be transferred without the landlord's consent. The title to the lease will be registered at the Land Registry and therefore guaranteed. However, such a lease will be subject to rights and restrictions contained in the agreement or affecting the freehold title. The rent will normally be very low.

Short leasehold

Most office and retail operations are run from premises in which the person conducting business has a short lease. These agreements usually subsist for a period of five to 25 years. Such leases may or may not be registered at the Land Registry but title insurance is

usually unnecessary, even if there is not a registered title.

If the tenant is to be a newly formed UK subsidiary, it is common for the landlord to require a parent corporation guarantee to be given or a rent security deposit to be provided.

Full market rent is payable in advance at quarterly intervals. If the lease runs for more than five years, it is standard practice for the rent to be subject to "review" to current open market level at five year intervals, if this level is higher than the existing level.

Unless the landlord and tenant have agreed otherwise, tenants of commercial premises have the right at the end of the lease term to apply to the Court for an order requiring the landlord to give them a new lease on similar terms at a market rent, to be settled by the Court if there is no agreement.

As with the long leasehold, the lease is usually capable of transfer. However, the lessee will require the landlord's prior written consent for such transfer to be valid.

The landlord's consent is usually required for any works carried out by the tenant. Although such consent cannot be unreasonably withheld, it tends to be conditional upon an obligation by the tenant to reinstate the premises at the end of the lease, if required. It is, however, standard practice for all repair liabilities to be passed on to the tenant. It would be prudent for the tenant to ensure that

the premises are in satisfactory condition before signing the lease. An exception to this rule exists where the premises forms part of a building or mall. The landlord will be responsible for structural maintenance and the provision of services, the cost of which will be recovered proportionately from the tenant by way of service charge.

It is usual for the landlord to insure the property against fire and other risks and to recover the premium cost from the tenant.

Unless the landlord and tenant have agreed otherwise, tenants of commercial premises have the right at the end of the lease term to apply to the court for an order requiring the landlord to give them a new lease on similar terms at a market rent, to be settled by the court if there is no agreement. Most renewals are achieved by negotiation rather than court action. If the premises form part of a larger building, it is usual for the renewal right to be excluded. Note, the right of renewal does not apply in Scotland.

Costs

In addition to legal and surveying costs, transferees of property can incur additional charges. The most significant of these charges is Stamp Duty Land Tax (SDLT), which is payable for freehold and leasehold on both residential and commercial properties.

The following incidental charges can also be incurred when transferring property:

- Land registry fees: When a registered property is transferred, the ownership register must be updated to reflect the change in ownership.
- Local searches and enquiries: When investigating title to the property, searches will be carried out with the local authority to ascertain if there are any issues which may affect the property.



12. Contact us

We welcome the opportunity to discuss any of the issues raised in this guide or any other questions you might have. If you would like to know more, please get in touch with us.

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Thinking about international expansion?

Working out what's important to your business plan

In any international expansion there are factors you need to address; make sure you have dealt with all local formalities and are operating in a fully compliant manner. Use this chart to consider the questions you need to answer when thinking about expansion.

1. What type of business will you establish?

- PLC
- Limited company
- Partnership

2. Where will this business fit into your existing structure?

- Branch
- Subsidiary
- Separate entity

3. How do you establish an entity?

- Incorporators
- Registration
- Founding documents
- Trading name

4. How will the entity be funded?

- Foreign investment
- Equity investment
- Loans and securities

5. What do you need to do to start activities?

- Bank account
- Business insurance
- Property
- Work permits

6. Which tax structures apply?

- Corporation Tax
- Tax on dividends
- Customs and import duty
- VAT

7. Will you have employees?

- Contracts
- Benefits
- Dismissal

8. Which legal system applies?

- Employment
- Intellectual property
- Land ownership

9. Which organisational matters should you consider?

- Cash management
- Preparation of annual accounts and annual reporting
- Payroll
- Auditing

10. How can Sable help you?

- Relocation
- Company set up
- Manage business operations