

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 serene and professional.

Establishing an ENTITY

Sable International

SABLE
a professional edge



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1. Legal requirements

1.1 Registration requirements

If you wish to establish a private limited company, various documents must be filed with Companies House. A signed Memorandum of Association and Articles of Association as well as the OS IN01 - detailing various matters, including the company's management and share structure - form must be filed before incorporation may take place. In addition to this, a registration fee must be paid to Companies House.

The Registrar of Companies will issue a certificate of incorporation once satisfied that all formalities have been adhered to. This certificate serves as conclusive evidence that the company is duly incorporated and established, so the company may commence trading immediately.

1.2 Additional requirements

Every company is required to have at least one director who is a natural person; a register of the directors and the company secretary must be kept by the company. In addition to this, it must create a register of all shareholders - including their names, the number and class of the shares they hold and the rights attaching thereto. A further register of the company's secured interests must be kept.

All entities must appoint auditors unless their turnover and balance sheet total fall below specific thresholds.

In addition to this, an annual return, on form AR01, must be delivered to the Registrar of Companies along with statutory accounts for each financial year. These accounts must be delivered within nine months from the end of the accounting reference period.

A company which fails to meet these obligations may incur penalties, including financial penalties for failing to file the

statutory accounts by the due date. Continued non-compliance can lead to the compulsory dissolution of the company by the Registrar of Companies with potential liability for the directors.

1.3 Company names

A private limited company may not take a name that has already been registered on the UK Companies Register. Generally, it is not possible to form a company with a name that is similar to another registered company, unless the companies are part of the same group. Where incorporators wish to use a similar name, approval is required from the Registrar of Companies.

A company name may not include such words as 'International', 'British', 'Holdings' or 'Group' without the prior approval of the Registrar of Companies. Certain other words, such as 'Pharmaceutical', require third party consent.

If you choose a company or trading name that is identical to or similar to that of another company, you may be in danger of infringing a trade mark. As a result of this, the company may become the target of a 'passing off' action by that other company. However, these issues are usually limited to situations in which the two businesses are in a similar trade. However, it can occur even where the businesses are not in a similar trade.

In order to avoid these problems, a company's incorporators should conduct a series of searches, including searches at Companies House and the UK Intellectual Property Office, for businesses using the relevant name.

{ A company name may not include such words as 'International', 'British', 'Holdings' or 'Group' without the prior approval of the Registrar of Companies. Certain other words, such as 'Pharmaceutical', require third party consent. }

2. Directors' duties

Directors are responsible for the day-to-day management of the company. These individuals are also subject to various statutory duties, as set out in the Companies Act 2006 (the act), in the course of their employment. If these statutory duties are breached, the directors may be held personally liable for any damage suffered by the company or third parties.

Directors are required to act in accordance with the company's constitution, only exercising their powers for the purpose for which they were conferred. When exercising these powers, a director must not act in a manner that would be harmful to the company or its members.

When acting on behalf of the company, a director must have regard for the likely long-term consequences of any decision as well as the maintenance of a reputation for high standards of business conduct and the need to foster business relationships, the interests of the company's employees and the community and environment. In addition to this, a director must consider the

need to act fairly between members of the company.

While discharging these duties, directors are expected to exercise reasonable skill, care and diligence as well as independent judgement. Additionally, directors are under an obligation to avoid a situation in which you have, or may have, a direct or indirect personal interest that conflicts with the interests of the company. If such a conflict does arise during the course of a director's employment, they must disclose the existence of any interest in any proposed or existing contract with the company. Along with this, directors may not accept any gifts from third parties if they may give rise to a conflict of interest.

The directors' duties towards the company subsist during actual or prospective insolvency. However, they are still under an obligation to act in the best interests of the creditors, over the shareholders. In certain situations, directors may be held personally liable if it can be demonstrated that they permitted an insolvent company to continue trading.

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3. Employees

UK law grants employees a range of protections that create obligations and potential risks for employers, although these are generally less stringent than in other European countries.

An employer has a general duty to provide a safe place of work, safe access and safe work systems. This duty is supported by related obligations which include, among other things, to take out employer's liability insurance, consult with employees or their representatives over health and safety issues and provide staff with certain health and safety information. Employees may not be permitted to work beyond 48 hours per week without express consent and must receive at least 5.6 weeks' paid holiday per year.

National minimum wage is the base requirement for employees' earnings. The minimum wage is paid as a fixed hourly rate and is increased annually. In addition to this, an employer must provide various benefits in connection with giving birth, adoption and other family situations. These benefits include maternity absence for up to 12 months, part of which is paid, as well as a right to time off to deal with domestic emergencies.

Employers may not discriminate against employees, including job applicants, on a range of grounds, including race, colour, nationality, ethnic origin, age, gender, pregnancy and maternity, marital or civil partnership status, religion or religious belief, sexual orientation, gender reassignment, disability, or part-time or fixed-term status.

A written statement of terms and conditions of employment must be supplied to employees within two months of commencing their employment. A contract of employment can satisfy this obligation, but it is not mandatory. Although it is not required by

law, establishing a comprehensive contract of employment to be issued to employees is beneficial for an employer. This contract can include all of the terms and conditions of employment, including employee rights. Employers frequently supplement this contract with a formal staff handbook which set out company policies.

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The contract of employment is an important tool in setting out the terms of any benefits provided, most notably bonuses. Precise language in the contract can clarify the employee's rights and may save the employer unexpected costs on termination of employment.

In the event of termination of employment, employees hold various rights which serve to protect them. These rights include a minimum notice entitlement and a right to a statutory payment

on being made redundant where they have provided more than two years' service. Where service exceeds one year (two years for those whose employment began on or after 6 April 2012), a dismissed employee may claim compensation for unfair dismissal. This claim will be successful unless the employer can show a permitted reason for termination as well as adherence to a fair and legal process.

An employer is under an obligation to make a pension arrangement available to its staff if it employs five or more people and all employees are automatically enrolled in a qualifying pension scheme.

3.1 Employee benefits

A contract of employment usually includes terms relating to:

- Salary
- Potential bonuses
- Benefits provided by the employer to employees

In the UK it is also common to find some sort of equity incentive arrangement as part of a senior executive's reward package though this is usually made available outside of the contract of employment. Providing benefits rather than paying a higher salary can have tax advantages for both the employer and the employee. The employer is responsible for reporting any taxable benefits provided to an employee in an annual return by submitting form P11D.

As previously mentioned, every employer must offer a pension arrangement. All UK employers must automatically enrol all

3. Employees (cont.)

workers into a pension scheme and ensure minimum contributions are paid. The contribution ranges between 2% and 8% of the employee's total earnings. This is called auto enrolment.

The use of equity for long-term reward is not confined to listed companies nor is it limited to the share option structure. Legislation potentially enables equity to be delivered to employees at a lower net of tax cost, for both employee and employer, than a cash based alternative. This is possible through careful planning or by recourse to certain government approved structures. An award of shares can offer significant savings for the employee; specifically in situations where the arrangements are able to be taxed under capital gains rather than income.

The Enterprise Management Incentive (EMI) plan allows shares worth up to £250,000 to be awarded to employees. However, this is limited to groups with gross assets worth less than £30 million and fewer than 250 employees. There are other approved share plans which can apply to companies which exceed these limits.

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Plans may be implemented on an all-employee or discretionary basis, allowing the company to design arrangements to suit its circumstances. Performance conditions and vesting periods are commonly used to ensure that the arrangements retain and motivate employees.

3.2 Immigration

In 2008, the UK government introduced a new immigration system known as the points-based system (PBS). The PBS is a five-tier system, with Tiers 1 and 2 being the most relevant for those looking to invest in the UK. When establishing a business in the UK, there are a number of options under both the PBS and other immigration categories.

The first employee of a business may come to the UK as either a representative of an overseas business on the Tier 1 (Investor) or Tier 1 (Entrepreneur) visa. Subsequent employees may be sponsored by the company to come to the UK as Tier 2 migrants. Under the PBS, companies sponsoring migrants are required to maintain up to date, accurate and comprehensive personal information about each migrant worker it employs. If any of the migrant's circumstances change during their employment, the company is obliged to inform UK Visas and Immigration.

In addition to this, employers must ensure that annual checks on individuals with temporary permission to remain in the UK are carried out. Although these checks are required, companies are still obliged to maintain robust HR policies that will ensure compliance with data protection and privacy principles.

In order to ensure effective management of the sponsorship system, a sponsor must allow UK Visas and Immigration access to any of its premises when required and adhere to any action plan set out by the body. Sponsors have a duty to minimise the risk of immigration abuse by complying with any good practice guidance notes that UK Visas and Immigration may introduce.

Companies that fail to discharge the duties described above may face several penalties, such as removal from the Sponsorship Register, which prevents the issue of further certificates of sponsorship under Tier 2.

3.2.1. Tier 1

The Tier 1 visas are aimed at encouraging foreign participation in the UK business sector through investment, entrepreneurship and allowing individuals to enter the country.

3.2.1.1 Tier 1 (Entrepreneur) visa

The Tier 1 (Entrepreneur) visa encourages migrants to either set up, take over or actively run businesses in the UK.

Non-EU residents are graded on a points-based system in which points are awarded for access to investment funds, the ability to pass an approved English language test and the ability to maintain a reasonable standard of living. An applicant must score a minimum of 95 points to qualify for this visa.

All business proposals for the UK need to be submitted to the Home Office. The department will consider whether relevant market research has been conducted, the viability of the business

3. Employees (cont.)

plan and the applicant's background. Applicants are required to show evidence of available funds of around £200,000.

Applicants may stay in the UK for a maximum of three years and four months under this visa. Families of all the team members under this scheme are permitted to stay in the UK.

All applicants under this scheme must create employment for local workers in the UK and, unlike other visa classes, absences of up to six months per year are permitted without affecting the applicants' ability to acquire ILR.

3.2.1.2 Tier 1 (Investor) visa

This visa has been designed for high-net-worth migrants who wish to live and invest a substantial sum of their wealth in the UK. In order to qualify for this visa, an applicant must have access to a minimum of £2 million. Investments must be held in one or more regulated financial institutions, such as Government Bonds or in the trading stock of active UK-based companies.

This visa allows you to stay in the UK for up to three years and four months with the ability to extend the visa for another two years.

3.2.1.3 Business Visitor visa

Individuals who require access to the UK for business-related matters may apply for a Business Visitor visa. The visa is suitable for a wide range of purposes: academic visits, attending business meetings, allowing film crews on location, etc. It is mainly used by people working for multinational companies outside the UK who

wish to come to the UK for short-term training.

If you enter the UK on a Business Visitor visa, you can stay for up to six months, extending to one year if you are an academic.

3.2.2 Tier 2 visas

3.2.2.1 Tier 2 (General) visa

The Tier 2 (General) visa category is for migrants who have been offered a job by a UK-based company that holds a relevant Home Office licence and is willing to sponsor the migrant. This category of visas is an option for migrants wishing to fill graduate level jobs in instances where a UK employer has not been able to source a local worker.

3.2.2.2 Tier 2 (Intra-company Transfer) visa

This visa category allows an employee of an international company to be transferred to its UK-based entity as a sponsored worker, allowing them to live and work in the country. This scheme is usually only available if you wish to take up a graduate-level role within the UK branch of the company and will require a specific licence from the Home Office.

3.3 Representative of an Overseas Business visa

The Representative of an Overseas Business visa is designed for employees who are relocated to the UK to assist with the set up of a branch or subsidiary of the overseas parent company. It is generally required that the parent company must have no UK

establishment, subsidiary or other representative in the UK before the visa application is made.

The applicant must have previous experience in a senior role, full authority to make operational decisions on behalf of the parent company and should work full time as a representative thereof. 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.

3.4 Illegal employment

Under UK immigration legislation, it is illegal to employ an individual who does not have the appropriate permission to work in the UK. If a company employs an individual illegally, it may be liable to a civil penalty of up to £20,000 per illegal worker. A company can establish a statutory excuse if they undertake the appropriate 'right to work' checks for each worker before they commence employment. Where a worker has limited permission to work in the UK, the employer should perform the 'right to work' checks every 12 months.

Immigration and tax authorities, the police and customs agencies are all linked in the UK. This enables government authorities to monitor the movements of foreign nationals in the UK easily. Therefore, UK businesses must ensure consistency and compliance when employing foreign staff.

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4. 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