

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.

Regulatory matters TO CONSIDER

Sable International

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a professional edge



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1. The regulatory environment

While various EU rules impact on trade in general, the UK attaches great importance to free competition. As a result, there are no exchange controls, while price controls and restrictions on foreign ownership or investment are generally not imposed.

However, businesses in the UK can be impacted by numerous regulations including but not limited to:

- Health and safety
- Certain technical standards
- Product liability
- Anticorruption
- Advertising and the environment

Amongst other industry sectors, financial services and certain utilities are subject to additional regulations.

To ensure that free competition works effectively for consumers, legislation prohibits certain anticompetitive practices and imposes requirements to treat customers fairly. EU and UK competition law places restrictions on certain agreements, particularly those between competitors, for example price-fixing or market-sharing cartels. It also prohibits a firm exploiting its dominant position in a market.

2. Accounting and audit requirements

2.1 Accounting records

The Companies Act 2006 (2006 act) requires that a company keeps adequate accounting records. There is no requirement as to the form of these records, but they must show and explain the company's transactions, disclose its financial position at any point in time and enable the directors to ensure that the company's annual accounts comply with the requirements of the act.

These records must show the details of money received and expended as well as the reason(s) therefore in addition to the assets and liabilities held by the company. If the company's business involves dealing in goods, records of all stock held (inventory) at the date to which the accounts have been drawn up as well as the stocktaking records from which these statements have been prepared are required. In addition to this, all goods sold and purchased as well as the identity of the buyers and sellers must be kept – unless these goods are sold in ordinary retail trade.

The accounting records must be kept at the company's registered office or at such other place as the directors think fit. The records may be kept outside the UK, but, if they are, certain accounts and returns must be sent to and retained in the UK. Private companies must retain their accounting records for three years; public companies for six years.

2.1.1 Accounting reference period

The accounting reference period (reference period) determines a company's financial year. Each financial year ends on the last day of the accounting reference period and accounts can be made up to that date.

On incorporation, a company may choose an accounting reference date (reference date). If it fails to do this, then it is assigned a reference date. This will fall on the last day of the month in which it is incorporated.

The company's first reference period begins on the date of incorporation and ends on the reference date. This date must fall on a day which is no less than six months and no more than 18 months after the date of incorporation. Subsequent accounting reference periods run for successive periods of 12 months, unless the company elects to alter its accounting reference date. The alteration of an accounting reference date is subject to certain limitations; the reference period may not exceed 18 months.

2.2 Accounts and reports

Accounts must be prepared for each financial year under either UK Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS), as adopted by the European Union. Once a company elects to prepare its

{ The accounting reference period (reference period) determines a company's financial year. Each financial year ends on the last day of the accounting reference period and accounts can be made up to that date. }

2. Accounting and audit requirements (cont.)

accounts under IFRS, it cannot revert to adopting UK GAAP, except in some limited circumstances. Both of these accounting frameworks require the presentation of comparative accounting information.

A company adopting UK GAAP must prepare individual accounts for each financial year, comprising of:

- A balance sheet as at the last day of the financial year
- A profit and loss account for the period of the financial year
- A statement of total recognised gains and losses
- A note of historical cost profits and losses (if materially different from the reported profits and losses)
- A reconciliation of movements in shareholders' funds
- Notes to the accounts
- A company adopting IFRS must prepare individual accounts for each financial year, comprising of:
 - A statement of financial position as at the end of the period
 - A statement of comprehensive income for the period
 - A statement of changes in equity for the period
 - A statement of cash flows for the period
- Notes to the accounts

Certain small companies are entitled to prepare 'shorter-form' accounts for shareholders in place of full accounts. The required content for shorter-form accounts is set out in law. This option is not available to IFRS reporters or companies that are public or are members of a group that includes a public company.

Parent companies must prepare group accounts consolidating their subsidiaries. In cases where a parent company is listed, its

group accounts must be prepared under IFRS. Certain companies are not required prepare group accounts, for example, companies included in the group accounts of a holding company. A UK parent company that prepares group accounts must ensure that its UK subsidiaries adopt the same accounting framework when preparing their individual financial records.

The accounts must be accompanied by an auditors' report, in cases where a company is required to be audited, and a directors' report.

Once a company elects to prepare its accounts under IFRS, it cannot revert to adopting UK GAAP, except in some limited circumstances. Both of these accounting frameworks require the presentation of comparative accounting information.

2.3 Audited accounts for UK companies

All UK businesses incorporated under the 2006 act are statutorily required to be audited, unless they qualify for an audit exemption. Audit exemptions are available to certain dormant and small companies.

2.3.1 Auditors

Where a company is required to have its accounts audited, it must appoint an auditor.

An auditor must be appointed for each financial year. For any financial year other than the first, the auditor will generally be appointed within 28 days of the circulation of a company's accounts to its shareholders or, if the company is required to hold an annual general meeting ('AGM'), from the conclusion of the AGM at which their appointment is approved.

An auditor's term of office will usually run from the end of the 28 day period following the circulation of the accounts until the end of the corresponding period in the following financial year. Where an auditor is appointed at an AGM, their term will begin at the conclusion of the AGM and end when the next AGM is held. If an auditor has not been appointed by the end of the next period for appointing auditors, the current auditors will usually be deemed to be re-appointed.

2.4 Foreign registered entities

Overseas companies with a presence in the UK are required to register with the Registrar of Companies. The type of accounts required when registering an overseas entity will differ depending on whether those accounts must be prepared, audited and publicly disclosed in the country of its incorporation.

Where companies are required to publicly file accounts in their home territory, a copy of those accounts, together with any directors' report and auditor's report, must be filed with the UK Registrar. Overseas companies incorporated within the EEA that are not required to disclose accounting documents under their own national law do not have to file any accounting documents with the UK Registrar.

A company incorporated outside of the EEA that is not required

2. Accounting and audit requirements (cont.)

to disclose accounts publicly under the law in the country of its incorporation must prepare accounts under one of the following accounting frameworks:

- Section 396 of the Companies Act 2006
- The law of the country of incorporation
- IFRS

There is no requirement that the accounts be audited, but the records must contain a statement declaring that an audit has been performed. If the accounts have been audited in accordance with generally accepted auditing standards, the accounts must state the name of the body that issued those standards.

If the holding company in a group is an overseas entity, the directors must prepare group accounts for the year instead of individual accounts, subject to certain exemptions.

2.5 Frequency of reporting

All companies and UK establishments must report in each accounting reference period. Typically, this will be for a period of 12 months but may extend to 18 months if the company has changed its accounting reference date. Listed companies are required to prepare half-yearly reports and interim management statements if they do not publish quarterly reports.

2.6 Accounts signatories

A company's annual report and accounts must be approved by the board of directors and signed on its behalf. The financial records must be signed on the balance sheet by at least one director and the directors' report must be signed by either a director or the company secretary. The date of approval of must be stated on the records.

2.7 Public availability of accounts

Private limited companies must file their accounts and reports at Companies House within nine months of the accounting reference date. Public companies must do so within six months. Accounts and reports are available for public inspection at Companies House, on payment of a small fee.

Public companies must file a complete set of accounts and reports as well as publish these records on a website maintained by the company, or on its behalf. These records must remain freely available on the website until the following year's accounts and reports are published.

Private companies must file a complete set of accounts and reports. If an entity is classified as a medium-sized or small company, it may file shorter-form accounts, which are less extensive than full accounts. A small company may file further shortened accounts, which are issued to its shareholders. Medium-sized

Public companies must file a complete set of accounts and reports as well as publish these records on a website maintained by the company, or on its behalf. These records must remain freely available on the website until the following year's accounts and reports are published.

2. Accounting and audit requirements (cont.)

Where a dormant company meets the criteria for a small company but does not fall within the definition of a small company, it must file full accounts. However, these companies are exempt from the requirement to prepare a directors' report.

companies are not permitted to prepare shorter-form accounts for shareholders. However, they may file abbreviated accounts, which give fewer disclosure exemptions than the equivalent accounts required for small companies.

The following exemptions from preparing or filing accounts are allowed:

Public company – No exemptions exist

Private limited company – Small and medium-sized companies may file abbreviated accounts.

A company is classified as small where, for both the current and preceding financial year, two or more of the following conditions are satisfied:

- Annual turnover is less than £6.5 million
- Balance sheet total does not exceed £3.26 million
- The average number of persons employed by the company in the year does not exceed 50

A company qualifies as medium-sized if, for both the current and preceding the financial year, two or more of the following conditions are satisfied:

- Annual turnover does not exceed £25.9 million
- The balance sheet total is less than £12.9 million
- The average number of persons employed by the company in the year does not exceed 250

If a company satisfies these requirements but is a public company, a company carries on business in the insurance market or a

member of an ineligible group, it will not be deemed to be a small or medium-sized company.

In addition to this, authorised insurers, banks, e-money issuers, Markets in Financial Instruments Directive (MiFID) investment firms or Undertakings for the Collective Investments in Transferrable Securities (UCITS) management companies cannot be classified as small companies. Any company carrying on regulated activities in line with Part 4 of the Financial Services and Markets Act (FSMA) will not be deemed to be a medium-sized company.

Neither small nor medium-sized companies are required to state whether their accounts have been prepared in accordance with applicable accounting standards. A small company need not file a profit and loss account or directors' report and is permitted to file an abbreviated balance sheet.

Where a dormant company meets the criteria for a small company but does not fall within the definition of a small company, it must file full accounts. However, these companies are exempt from the requirement to prepare a directors' report.

A medium-sized company may file an abbreviated profit and loss account. It is not necessary for a company to disclose details relating to turnover and profits or losses which are attributable to the different classes of business carried on by the company. Apart from these exemptions, a medium-sized company must file full accounts.

Where the directors take advantage of the filing exemptions for small and medium-sized companies, the balance sheet must contain a statement declaring this fact. The accounts must be accompanied by a special report of the auditor stating that the company is entitled to the exemptions claimed and that the accounts have been properly prepared.

3. Consumer credit

The Consumer Credit Act 1974 (CCA) regulates lending and other credit-related activities in the UK. This act is supplemented by the European Union Directive on Consumer Credit (the directive).

The scope of the directive is more limited than the CCA. However, when these regulations are applied together, the scope is broadened. For example, the CCA applies to dealings with both individuals and business partnerships of two or three individuals, while the Directive applies to individuals acting in their personal capacity. When applied together, the regulations cover individuals in both their personal and business capacities as well as partnerships.

You will need a consumer credit licence if your proposed business involves any of the following:

- Providing credit or otherwise being a creditor to an individual consumer or a small partnership
- Hiring goods to an individual consumer or a small partnership
- Carrying on activities relating to credit and hire agreements

4. Money Laundering Regulations 2007

The Money Laundering Regulations of 2007 require certain businesses to register with their relevant supervisory authority. In addition to this, these entities must have systems in place to prevent money laundering as well as report suspicious transactions.

The categories of business within the scope of the regulations are:

- Credit institutions
- Financial institutions
- Auditors, insolvency practitioners, external accountants and tax advisors
- Trust or company service providers
- Estate agents
- High-value dealers
- Casinos

As a result, it is important to establish whether your new business will be subject to these regulations as well as whether it must be registered with a relevant supervisory authority.

5. Data protection

Businesses must comply with the Data Protection Act 1998 (DPA) in relation to the collection and use of individual's information, for example customer or employee records.

6. Bribery Act 2010

The Bribery Act 2010 came into effect on 1 July 2011. A commercial organisation which does not comply with the obligation set forth in the Act will become liable if its employees, contractors or agents pay a bribe to win or retain business for the organisation.

New guidance has been issued which does not change the wording of the Act but does give clarity as to the UK Government's intentions with regard to key areas.

Most organisations will now undertake a review of the bribery rules to ensure that they have "adequate" anti-bribery procedures.

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7. EU and UK competition rules

Business must comply with European Commission and UK competition law which affects:

7.1 Agreements

Certain agreements which restrict or distort competition within the EU are prohibited. For example, price-fixing or market-sharing agreements between competitors that limit competition are almost entirely prohibited.

An agreement, or clause therein, that is anti-competitive and does not fall within obvious exemptions will be void and unenforceable. In such circumstances, a party to the agreement or third parties may have a claim for damages. Finally, fines or other remedies could be imposed by national competition authorities or the European Commission.

The competition authorities no longer provide processes for clearing agreements; companies must rely on their own assessment.

The above rules also apply to actions by associations of

businesses or concerted practices – that is, all behaviours involving several parties, not just written agreements.

7.2 Abuse of dominance

The competition rules prohibit a company with a dominant market position abusing that position and, in doing so, distorting competition and affecting trade between EU states. The authorities can impose significant fines and other remedies on a firm found to be abusing its dominance.

7.3 Merger control

There are controls on some mergers and joint ventures.

7.4 State aid

There are restrictions on the ability of Member States to subsidise companies with state funds. These limitations are intended to maintain a level playing field for companies across Europe. The European Commission assesses State aid matters.

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8. Financial services

The UK financial services industry is regulated by the Financial Services and Markets Act 2000 (FSMA) and its subsidiary legislation. Under the FSMA, any person who carries on a regulated activity in the UK must be authorised by the Financial Conduct Authority (FCA). A business that is in breach of this requirement may be committing a criminal offence. Resultantly, it will be unable to enforce its agreements and may have to return money or pay compensation to its customers.

Based on this, it is important to establish whether the nature of your business requires you to apply for authorisation to carry on regulated activities. If your entity requires authorisation for its activities, individuals related to it and all of the directors, will also need to be approved by the FCA.

Before authorisation is granted, the FCA must be satisfied that your business meets certain conditions. Once authorised, your business will need to comply with relevant FCA rules and requirements, including the applicable regulatory capital requirements.

Examples of the types of business that are likely to require authorisation include:

- Banks
- Investment firms
- Insurance companies and insurance intermediaries
- Mortgage lenders and intermediaries

8.1 Financial services regulatory requirements

The FCA regulations applicable to companies are set out in the FCA Handbook.

The globalisation of business means that regulators operate on an international basis. However, different regulators take different approaches to managing relationships and supervisory techniques. It is vital, therefore, to understand the FCA's approach and techniques and build strong relationships with your supervisors.

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9. 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