

MACFARLANES

CORPORATE AND M&A

BRIEFING

ESTABLISHING A BUSINESS IN THE UNITED KINGDOM A guide for overseas companies

INTRODUCTION

There are two principal methods of carrying on business directly in the UK: by incorporating a UK subsidiary or by operating in the UK through an establishment. There are, of course, also indirect methods of trading in the UK, for example through an agency arrangement. This guide, however, explores the implications for an overseas company operating either through a UK subsidiary or a UK establishment.

When an overseas company chooses to incorporate a subsidiary in the UK, it sets up a separate legal entity, so that, save in exceptional circumstances, the debts of the subsidiary company cannot be claimed from the funds of the overseas company and vice versa.

To be considered as a UK establishment, the place from which the overseas company conducts business should have at least the appearance of permanence and additionally be an organised part of the overseas company (i.e. with its own management and physically equipped to negotiate business with third parties directly). As described below, the concept of establishment is an umbrella concept which includes both branches and places of business.

The concept of a UK establishment implies a physical location in the UK, so that registration is not required where no physical location can be found. For example, an independent agent who conducts business on behalf of an overseas company is not a place of business of that company; neither is an occasional location such as a hotel where a director may conduct business during periodic visits to the UK. Setting up a warehouse, however, would be.

For the purposes of UK law and this guide an “overseas company” is any company incorporated outside the UK. The term United Kingdom (“UK”) refers to England, Wales, Scotland and Northern Ireland. It does not include the Isle of Man or the Channel Islands. Since Northern Ireland companies were brought within the provisions of the Companies Act 2006, those that carry on business in England, Wales and Scotland no longer need to register as overseas companies.

This guide does not contemplate the formation of a partnership in the UK or the creation of a limited partnership or a limited liability partnership (an “LLP”), on which a separate note is available. This guide also does not discuss the special rules or regulatory requirements which apply to certain special types of company or to companies carrying on particular businesses: for example, unlimited companies, companies limited by guarantee, investment companies, insurance companies and banking companies. Nor does it deal with the regulations applying to listed companies whose shares are traded on the London Stock Exchange or other recognised investment exchanges or which conduct regulated activities in the UK. Please let us know if you require separate advice on any of these areas.

This guide reflects the legal position as at 1 July 2011. It refers frequently to requirements for documents, including accounts, to be filed with the registrar of companies (also often simply referred to as Companies House). All documents which are filed are available for public inspection.

CONTENTS

| | |
|---|----|
| INTRODUCTION | 1 |
| ESTABLISHING A SUBSIDIARY | 2 |
| SETTING UP A UK ESTABLISHMENT | 4 |
| OPERATING A SUBSIDIARY | 5 |
| OPERATING A UK ESTABLISHMENT | 11 |
| TAXATION | 13 |
| PERSONNEL | 17 |
| OVERSEAS NATIONALS - IMMIGRATION ISSUES | 19 |
| REAL PROPERTY | 23 |
| GRANTS AND OTHER FINANCIAL INCENTIVES | 23 |

ESTABLISHING A SUBSIDIARY

Public and private companies

Every subsidiary incorporated in the UK will either be a public limited company (a "PLC") or a private company. A company which does not meet the requirements for a PLC is treated as a private company. A number of rules apply only to PLCs and not to private companies, the key ones being:

Share capital

- ◆ Authorised minimum share capital - PLCs must have either a minimum of £50,000 of allotted share capital denominated in sterling or a minimum of €57,100 of allotted share capital denominated in euros (but not partly in one and partly in the other). A public company cannot do business until it has a trading certificate issued by the registrar of companies confirming the minimum share capital requirements have been met. A private company, however, has no minimum share capital requirements. Both PLCs and private companies may denominate their share capital in different fixed amounts of non-sterling currencies, and may denominate different classes of shares in different currencies - subject only, in the case of PLCs, to the initial minimum capital requirements being satisfied.
- ◆ Payment up of the shares at the time of allotment - In a private company, shares do not have to be fully paid up at the time of allotment (i.e. payment can be deferred). Shares allotted in a public company must be paid-up to at least a quarter of their nominal value and the whole of any premium.
- ◆ Financial assistance - There are restrictions on public companies and their subsidiaries providing financial assistance for the purposes acquisition of the shares in the public company. These restrictions do not apply to private companies.

Officers

A PLC is obliged to have at least two directors and a secretary whereas a private company can have just one director (who may also be the only shareholder) and no secretary. There is no restriction on the nationality or residence of directors and secretaries. Directors and secretaries can be individuals or corporations, although a UK company must have at least one natural person as a director.

Further requirements in relation to share capital and officers are considered below.

In practice it is more common to incorporate a wholly-owned subsidiary company as a private company instead of as a PLC. This is because of the more restrictive rules which apply to PLCs. However, there are some reasons why it might be appropriate to choose a PLC. The PLC status permits the company to offer its shares or debentures to the public, to obtain a listing on the Official List and to have its shares traded on the London Stock Exchange or otherwise publicly traded. A private company cannot do this. In addition, some privately-held companies are registered as PLCs in the expectation that lenders, customers and suppliers will consider them more substantial than a private company.

Requirements for incorporation

A UK subsidiary does not exist as a company and cannot operate before its certificate of incorporation is issued by the registrar of companies. Notaries play no part in the incorporation of companies in the UK and have no responsibility for keeping or authenticating documents.

In order to incorporate a subsidiary its memorandum and articles of association, together with a completed form IN01 and the correct fee, must be filed with the registrar of companies.

Memorandum of association

The memorandum of association is a very simple document in prescribed form. It states simply that the subscriber or subscribers wish to form the company and, in the case of a company that is to be limited by shares, that the subscribers wish to take at least one share each in the company. The limited purpose of the memorandum is to provide evidence of the intention of each subscriber to form a company and become a member of that company.

Articles of association

These are rules regulating the internal management affairs and running of the company. They normally deal with issue and transfers of shares, alteration of share capital, regulation of general meetings of members, appointment and removal of directors, directors' powers and duties, directors' meetings and procedures for declaring dividends. Articles of association, numbered in paragraphs, must be contained in a single document.

The Companies Act 2006 provides model sets of articles of association for private and public companies (previously known as "Table A") and for private companies limited by guarantee. These model articles are deemed to have been adopted by a company which is formed and registered after 1 October 2009, if no other articles are specifically adopted. It is usual for a subsidiary company to adopt articles which incorporate most of the provisions of the model articles, with certain modifications.

A completed form IN01

This form contains details regarding:

- ◆ The proposed company's name - there are a number of restrictions on the names which can be chosen and these are described further below.
- ◆ The company's type - i.e. whether or not the liability of the members is to be limited and if so by shares or guarantee and whether the company is to be private ("Limited" or "Ltd") or public ("PLC" or "plc").
- ◆ The proposed registered office - i.e. whether the proposed registered office is to be in England and Wales, Wales, Scotland or Northern Ireland. The intended location of the registered office of a UK company determines to which registrar – registrar for England and Wales, registrar for Scotland or registrar for Northern Ireland - the registration documents must be delivered. The full postal address of the proposed registered office also needs to be specified.
- ◆ Whether the company wishes to adopt the model articles – as described above, model articles are available for private companies limited by shares, for private companies limited by guarantee and for public companies.
- ◆ The proposed director(s) - an individual director will need to include a number of personal details including a service address (which is public, but may be stated as the company's registered office) and his/her residential address (which will be held confidentially unless it becomes impossible to communicate with the director via his service address).
- ◆ The company secretary (if any) - an individual secretary will need to include a number of personal details, although he/she can also give a service address which may be stated as the company's registered office.
- ◆ Information regarding the capital and initial shareholdings (or regarding the guarantee if the company is to be limited by guarantee).

Cost and timing of incorporation

For a fee of £100, the company can be incorporated on the same day that the incorporation documents are filed. If a lower fee of £40 is paid the process usually takes between eight and ten working days. It is also possible to arrange for electronic registration. Where consent is needed for the proposed company name, this may affect the timetable for incorporation.

Incorporated subsidiary's name

A company incorporated in UK must register its corporate name, but may trade using a business name different from its corporate name.

Corporate name

A single set of rules applies for all companies incorporated in the UK whether the company to be incorporated is a subsidiary of an overseas company or not. The rules are detailed and the requirements should be checked in each case, although the following are the main restrictions:

- ◆ A proposed name will not be registered if its use would constitute an offence or it is offensive or if the name suggests a connection with Her Majesty's Government, a devolved administration, a local authority or certain specified public authorities.
- ◆ A proposed name will also be refused if it includes a sensitive word or expression unless certain tests are satisfied and a statement of support by the appropriate government department or other official body is provided with form IN01.
- ◆ The name must not be the same as or similar to another name on the register (although there are some exemptions for companies within the same group).
- ◆ The maximum permitted length of a name is 160 characters and only certain characters, signs, symbols or punctuation in a name, or the placing of number in it, is permitted.

The registration of a corporate name, of course, does not mean the name or part of a name might not infringe other laws, for example trade mark law. Consequently it is advisable to conduct appropriate searches, including of the trade mark register of the UK Intellectual Property Office.

Business name

A company may trade using a business name different to its company name and separate rules and requirements apply to business names as apply to corporate names.

Domain names

The UK has a liberal domain naming regime. Any individual or company may seek a domain name under the commercial suffix ".co.uk". There is no requirement that they be resident in the UK or have a UK trade mark for the domain requested. It is possible to register in the ".org.uk" and ".net.uk" domains, but these are (in theory) limited to non-commercial entities and Internet Service Providers respectively.

There are also less commonly used commercial domains using the form "xxx.ltd.uk" and "xxx.plc.uk". These require that the registering entity is a company incorporated as a private limited liability company (ltd) or a public limited liability company (plc)

respectively. The “xxx” element of the domain name must be the name of the company as registered with the registrar of companies. To date this restricted class has not proved popular.

The UK domain naming authority also permits further top level domain names, the most relevant one for businesses being “.biz uk”.

SETTING UP A UK ESTABLISHMENT

The umbrella concept of a UK establishment: branch and place of business

Instead of incorporating a subsidiary, an overseas company may create a presence in the UK as a UK establishment. A UK *establishment* may either be a branch or a place of business. Whilst English law does not make entirely clear the difference between the two:

- ◆ A “place of business” means some more or less permanent location from which a company regularly conducts business. Doing business in the UK through an agent that has its own premises, or passively investing in property, is not establishing a place of business, but setting up a warehouse, for example, would be.
- ◆ A “branch” implies a place of business which has the appearance of permanence and which is an organised part of the overseas company, has its own management and is physically equipped to negotiate business with third parties directly.

The concept of a UK establishment was new under the Companies Act 2006 and treats both ‘branches’ and ‘places of business’ in the same way for the purposes of registration and filing requirements. The difference between the two concepts is, accordingly, now not as important as it once was.

Filing requirements

Initial registration

The regime requires registration of all UK establishments. New ‘places of business’ and those established before 1 October 2009 need to adopt all the registration requirements previously needed for a ‘branch’.

Within one month of the establishment opening in the UK, the overseas company must file with the registrar of companies a completed form OS IN01, together with the correct fee. The information required is detailed and includes particulars about both the overseas company itself, about its officers and about the UK establishment to be set up. This will include the names and service addresses of any persons resident in the UK authorised to accept service of documents and details of

every person authorised to represent the overseas company in respect of the UK establishment.

If particulars of the overseas company have not previously been delivered to the registrar in respect of another UK establishment, a certified copy of the overseas company’s constitutional documents and a copy of the overseas company’s latest set of accounts will also be required. Constitutional documents and accounting documents delivered to Companies House may be in a language other than English but must be accompanied by a certified translation into English.

Alteration in registered particulars

If there is a change in any of the particulars (whether of the overseas’ company’s details and/or particulars of the UK establishment), a return must be delivered to the registrar of companies within 21 days.

Overseas company names

As with companies incorporated in the UK, there are a number of restrictions on the names which can be registered by overseas companies in relation to the setting up of a UK establishment. An overseas company setting up a UK establishment needs to register a name and that may either be its corporate name (i.e. its name under the law of the country or territory in which it is incorporated) or an alternative name under which it proposes to operate its UK establishment.

Corporate name

If the overseas company is an EEA company it may always register its corporate name, unless it is over 160 characters or it includes certain prohibited characters, signs, symbols or punctuation. For non EEA companies, the rules are more restrictive – in addition to the restrictions on characters which apply to EEA companies, the other restrictions on names described above in relation to UK subsidiaries will also apply. This would include, for example, the restrictions on names the same as or similar to another name already on the register.

Name of UK establishment

An overseas company may register a different name to its corporate name for its UK establishment. A number of restrictions apply to the names of UK establishments. Once again the requirements are different depending on whether the overseas company is registered in the EEA or not.

Change of name

There are filing requirements and certain controls and restrictions if an overseas company wishes to change its corporate name or its business name/name of the UK establishment.

OPERATING A SUBSIDIARY

Officers

Directors

Directors have the power to manage a company's affairs by virtue of the company's articles of association. They take business decisions and make contracts on the company's behalf.

It is up to the members to appoint the people they believe will run the company well on their behalf. A director is not required to reside in the UK and a director will not become resident in the UK for tax purposes only by reason of that position. There is no legal requirement that there be any form of employee participation in the management of a company. If the company's articles of association permit, a director can even appoint an "alternate" to act on his or her behalf at board meetings.

However, there are some restrictions regarding appointment of directors:

- ◆ A private company must have at least one director whereas a PLC must have at least two directors.
- ◆ All companies should have one director which is a natural person.
- ◆ The minimum age for appointment of a natural person as director is 16 years old. A person under 16 years may be appointed provided the appointment will not take effect until the person is 16.
- ◆ Directors must not have been disqualified from acting as a company director and they must not be an un-discharged bankrupt (unless they have been given permission by the court to act for a particular company).
- ◆ Certain people who are not British or of other EEA nationality are restricted as to what work they may undertake while in this country.

As part of the registration process, a company is required to deliver to the registrar a statement in the prescribed form naming the company's first director(s), as described above. Subsequently, directors may be appointed either by an ordinary resolution of the members in general meeting, or by a resolution of the board. Whichever method is adopted, the procedural requirements will be laid down by the articles of the company.

In acting for the subsidiary, its directors must act in accordance with certain general duties. Seven general duties are specifically listed in Part X of the Companies Act 2006: the duties to act within powers; to promote the success of the company; to

exercise independent judgment; to exercise reasonable care, skill and diligence; to avoid conflicts of interest; not to accept benefits from third parties; and to declare an interest in a proposed transaction or arrangement. A further note discussing these duties in more detail can be provided on request.

Directors are usually able to delegate their powers to one or more managing or executive directors, but remain collectively responsible for the supervision of delegated powers and for the conduct of the company's affairs. Directors may be personally liable if they fail to meet the requisite standards. For example, if a company goes into insolvent liquidation, the court may require a director to contribute personally to the company's assets if it considers that the director allowed the company to carry on trading when he or she knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation and subsequently failed to take steps necessary to minimise the loss to creditors.

The company must keep a **register of its directors** which has to be available for public inspection. The register will contain details of the directors' service address (which may be the company's registered office) but every company must also keep a separate **register of the usual residential addresses** of directors who are individuals. This register is not to be open to public inspection.

The appointment of a director or a director's ceasing to hold office, and any change in an existing director's particulars must be notified to the registrar of companies on the prescribed form within 14 days from the occurrence of the event.

An ordinary resolution is sufficient to remove a director but the Companies Act 2006 requires that it be at a meeting (and not by written resolution) so as to ensure the director's right to be heard. Special notice for the removal of a director must be given to the company at least 28 days before the meeting at which the director is to be removed.

Secretary

The secretary of the company is an administrative officer whose main function is to ensure that the company complies with the various statutory requirements to which it is subject. The secretary has no right to participate in the company's management, but can enter into contracts and carry out other acts on the company's behalf for the purpose of carrying on the administration of the company.

A private company is not obliged to have a secretary, unless one is expressly required under its articles of association. Contrast

a PLC, which must have a company secretary, who must have one of the qualifications specified by the Companies Act 2006. The secretary may be one of the directors of the company. If a private company considers that it no longer requires a company secretary, it must notify the registrar of companies. In certain circumstances the articles of association will also need to be amended and further filings should be made with the registrar of companies.

The company must keep a **register of secretaries** which has to be kept available for public inspection.

The appointment of a company secretary or a company secretary's ceasing to hold office, and any change in an existing company secretary's particulars must be notified to the registrar on the prescribed form within 14 days from the occurrence of the event.

Share capital

Allotting and issuing new shares

Shares may be issued as ordinary shares or with preferred, deferred or other special rights as regards dividends, voting and return of capital. Shares with limited voting rights or no voting rights are possible.

Shares may be issued at a premium above their par value, in which event the premium must be credited to a share premium account in the company's books and, like the share capital, may not be returned to shareholders except in limited circumstances.

Shares may not be issued for less than their nominal value, but if the articles of association so allow, they may be issued partly paid. This means that part of the par value of the shares is paid to the company, with the shareholder being liable to pay the balance either on demand from the company, or on an agreed date or dates in the future. As mentioned above, the issued shares of a PLC must have not less than one quarter of their par value and the whole of any premium paid up.

The directors of a private company with one class of share are always authorised to allot new shares, provided that the company's articles do not expressly forbid them to do so. For PLCs and companies with more than one class of shares, the directors must not allot shares unless they are authorised to do so by the company's articles or by an ordinary resolution of the company. The 'authority to allot' must be expressly limited as to duration (with a maximum of five years). The authority must always specify the maximum number of shares which the directors may allot.

The company must deliver a copy of any resolution giving, varying, revoking or renewing an authority to allot shares to Companies House within 15 days of passing it. Within one month of the allotment of shares, the company must also deliver a return of allotment to Companies House. No fee is payable.

Any new shares to be issued for cash must first be offered to the existing shareholders in proportion to their shareholdings. However, this "pre-emption" requirement may be disapplied by the company's articles of association or by a resolution of the shareholders of the company.

Redemption and repurchase of shares

Unless restricted by its articles of association, any public or private company may purchase its own shares and issue shares which may be redeemed at the option of the company or the shareholder, provided that not all the issued shares of the company are redeemable. Shares which are redeemed or are purchased by the company are cancelled, in exchange for a payment by the company to the shareholder.

The terms of redemption of redeemable shares are generally set out in the company's articles of association. In contrast, the purchase of a company's own shares is normally made under a contract between the company and the shareholder concerned.

The contract has to be authorised by a special resolution (requiring a 75 per cent majority - see below) of the members of the company. The selling shareholder may not vote in respect of the shares to be purchased.

The purchase or redemption of shares may be paid for either out of distributable profits, or out of the proceeds of a fresh issue of shares made for the purpose. A private company may also purchase or redeem shares by a payment out of capital, the extent that the available distributable profits of the company and the proceeds of any fresh issue of shares made for the purpose are insufficient.

Where a private company wishes to redeem or purchase its own shares out of capital, additional conditions must be met. The directors must make a statement as to the actual and anticipated solvency of the company at the time of the declaration and for the following twelve months, and this must be supported by an auditors' report. The statement must specify also the amount of the permissible capital payment for the shares. Notice must be given to creditors or an advertisement placed in a national newspaper. A dissenting shareholder or creditor can apply to the court to cancel the redemption or purchase resolution.

Transfers of shares

A company usually issues registered (as opposed to bearer) shares. Registered shares are transferable by the execution of a written instrument of transfer (a stock transfer form is the usual instrument used) but legal, as opposed to beneficial, ownership does not pass until the name of the transferee is entered in the company's register of members. Subject to any restrictions on transfer imposed by a company's articles of association, a transferee is entitled to have this entry made on producing to the company the transferor's share certificate together with the duly executed stock transfer form stamped with duty at the rate of ½ per cent of the consideration paid rounded up to the nearest £5.00.

The company then issues a share certificate to the transferee. This is not a document of title, but merely evidence that the person named in it is entered in the register of members of the company as the holder of the shares to which the share certificate relates. Its surrender to the company when the shares are transferred is a measure of protection against fraudulent transfers.

A company may not normally hold its own shares or those of its parent company.

Financial assistance

A public company is prohibited from giving any financial assistance to a person for the purpose of acquiring shares in the company. Many types of transaction are, at least in theory, capable of falling within the prohibition. For example, if one company borrows money to buy the share capital of a public company, it is unlawful for the public company to give security over its assets in respect of those borrowings, or to lend money to the first company for the purpose of repaying the money borrowed. This prohibition does not apply to private companies.

There are a number of exceptions to the general prohibition, for example, payment of a lawful dividend, but their scope is comparatively narrow.

Although the restriction on financial assistance does not apply where a private company agrees to provide assistance for the acquisition of its shares, regard will need to be had to the exercise of general directors' duties and also capital maintenance issues. Lending banks may also require comfort as to solvency in relation to leveraged acquisitions which are to be secured on the assets of the target.

Shareholders' meetings

Rules regarding resolutions and meetings are an important part of shareholder decision making.

Quorum

A company with one shareholder may hold a properly constituted meeting. Apart from that circumstance and unless the articles requires another number, two shareholders (or corporate representatives or proxies) present at a meeting are a quorum. This means that, even if an individual present represents two or more shareholders, the meeting is not a properly constituted meeting and no business can be conducted.

Annual general meeting

A public company must hold an Annual General Meeting ("AGM") within six months of the end of its financial year and if the company fails to do so a criminal offence is committed by every director and the company secretary. If the company changes its accounting reference date by shortening a previous or current accounting period, then the obligation is to hold an AGM within three months of serving the notice to the registrar of that change.

For PLCs, at least 21 days notice of an AGM must be given to all shareholders and directors, unless all shareholders entitled to attend and vote agree to shorter notice.

Private companies are not required to hold an AGM, unless they are "traded companies". In this case, an AGM should be held within nine months of the end of its financial year. Notice of at least 21 days must be given. A "traded company" is a company any shares of which carry rights to vote at general meetings and are admitted to trading on a regulated market in an EEA state by or with the consent of the company.

The Companies Act 2006 does not specify what business must be transacted at an AGM, nor are there any restrictions on business. Usually the meeting is used for matters which must be dealt with each financial year and the following business is usually transacted at an AGM:

- ◆ consideration of the company's report and accounts;
- ◆ declaration of a dividend;
- ◆ election or re-election of some or all of the directors, unless (as is usually the case with a wholly-owned subsidiary company) the requirement for directors to retire by rotation is excluded from the company's articles of association;

- ◆ appointment or re-appointment of the auditors for the period up to the end of the next AGM; and
- ◆ authorisation to the directors to fix the remuneration of the auditors.

General meetings

Meetings of the shareholders other than an AGM are known as general meetings of the shareholders. General meetings can be called by the board, by the members, by the court or, in certain limited circumstances, by the auditors. The vast majority of general meetings will be called by the board.

All shareholders and directors are entitled to receive notice of every general meeting. The default minimum notice period for traded companies' general meetings (whether public or private) is 21 clear days, although this can be reduced to 14 clear days if the shareholders so resolve. For non traded companies (whether public or private) the minimum notice is 14 clear days.

Types of resolution

There are three main types of shareholders' resolutions:

- ◆ **Special resolutions** - most important changes to a company's constitution and structure require a special resolution. A majority of three-quarters of the shareholders who, being entitled to do so, vote in person or by proxy at the meeting is necessary to pass a special resolution.
- ◆ **Ordinary resolutions** - if approval by the shareholders of a business matter is needed, or if certain changes to the company's structure are required, an ordinary resolution must be passed. A simple majority of the shareholders who, being entitled to do so, vote in person or by proxy at a meeting is necessary to pass an ordinary resolution.
- ◆ **Written resolutions** – A written resolution is now the normal mode of decision-making for private company shareholders. Under the Companies Act 2006 a private company can pass:
 - a written ordinary resolution by the holders of a simple majority in nominal value of the voting rights of eligible members; and
 - a written special resolution by the holders of 75 per cent in nominal value of the voting rights of eligible members.

There are two exceptions to this general rule - written resolutions cannot be used to pass a resolution removing either a director or an auditor before the expiration of his period of office. The written resolution procedure is also not available to public companies.

On a vote on a written resolution, subject to any provisions of the company's articles of association, every member has one vote in respect of each share held (although if the company does not have a share capital, every member has one vote). A copy of the written resolution must be sent to every eligible member – defined as the members who would have been entitled to vote on the resolution on the circulation date of the resolution.

Practical details regarding the notice of meeting

The period of notice excludes the day of the general meeting and the date on which the notice is given.

Notices are usually given to shareholders individually by mail to their addresses appearing in the register of members of the company. Articles of association, however, currently often provide that a company is not obliged to give notice of a meeting to a shareholder who does not provide the company with an address in the UK to which notices may be sent.

The legislation also enables companies to communicate electronically with their shareholders. A notice of meeting could, for example, be sent by e-mail to an address given by the shareholder or the notice could be posted on the company's website and the shareholder informed of this by e-mail or otherwise.

If a company has only one member, that member must provide the company with a written record of the decisions made in each AGM or general meeting.

Given the availability of the written resolution procedure for private companies most business does not need to be conducted by convening and holding a meeting. This is especially the case for wholly-owned subsidiaries or single member companies.

Accounting requirements

A company must keep accounting records in sufficient details to show and explain its transactions, to disclose at any time with reasonable accuracy its financial position and to enable the directors to ensure that its accounts comply with statutory requirements.

The directors of companies must prepare annual accounts and reports and send them to the shareholders and the registrar for each financial year.

The time normally allowed for delivering accounts to Companies House is:

- ◆ 9 months from the accounting reference date for a private company; or
- ◆ 6 months from the accounting reference date for a public company.

These accounts must give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for the financial year.

The annual accounts and reports to be prepared are:

- ◆ A profit and loss account and a balance sheet, prepared in accordance with detailed requirements as to their format and contents and the information to be included in notes to the accounts.
- ◆ A directors' report, which must be approved by the board of directors and signed on behalf of the board by a director or secretary. The report must include the following particulars:
 - the names of the persons who, at any time during financial year, were directors of the company;
 - the principal activities of the company in the course of the year (for example: a review of the development of the business of the company and its subsidiaries (if any) during the financial year and of their position at the end of it; any significant changes in the fixed assets of the company or any of its subsidiaries during the period; in relation to the company and its subsidiaries, particulars of any important events which have occurred since the end of the financial year, an indication of likely future developments in the business, and of any research and development activities; certain details of the interests of directors and their immediate families in shares or debentures of the company or its group companies);
 - the amount (if any) that the directors recommend should be paid by way of dividend. Dividends may only be paid out of profits available for distribution. Accumulated, realised losses (which include provisions made in the company's accounts) must be deducted from accumulated, realised profits to establish whether there are profits available for distribution. Unrealised profits, for example those arising on the revaluation of an asset, cannot be taken into account.

- ◆ A business review report (unless the company is subject to small companies' exemption, as explained below). The purpose of the business review is to inform members and help them assess how the directors have performed their statutory duty to promote the success of the company. In other words, the business review is a fair review of the company's business and the principal risks and uncertainties facing it. It must contain an analysis of the development and performance of the company's business during the financial year and the position of the business at the end of it, using key performance indicators in that analysis. Quoted companies are subject to additional requirements, including a requirement for forward looking information.

- ◆ A directors' remuneration report (for quoted companies only) containing detailed information regarding remuneration and remuneration policy.

- ◆ An auditors' report (unless the company is exempt from audit). The report must state whether, in the auditors' opinion, the accounts have been properly prepared in accordance with statutory requirements and in particular whether a true and fair view is given of the state of affairs of the company at the end of the financial year and of its profit or loss for the financial year. It is an offence, with liability to a fine of up to £5,000 to cause an auditors' report to include any misleading, false or deceptive material.

Public companies are required to lay accounts and reports before a general meeting and quoted companies must additionally make them available on their website. In certain circumstances a summary financial statement can be sent to shareholders and published on a company's website in substitution for its full accounts and reports.

The information to be provided is less detailed regarding small and medium sized companies as they are submitted to a less onerous accounting and reporting requirements.

Exemptions

Small and medium-sized companies

Companies which qualify as "small" or "medium-sized" may elect to comply with modified versions of the requirements for filing accounts and reports to limit public disclosure.

A "small" company may prepare annual accounts omitting certain information from its directors' report, accounts and notes to the accounts. A small company need not file its profit and loss account or directors' report with the registrar of companies and is required to file only an abbreviated balance sheet, with

limited notes. Companies are small companies if they meet at least two of the following three conditions:

- ◆ annual turnover of not more than £6.5 million;
- ◆ balance sheet total of not more than £3.26 million;
- ◆ employees not exceeding, on a weekly average, 50.

A medium-sized company is required to deliver a full balance sheet and directors' report but may file a modified profit and loss account. Companies are medium-sized companies if they meet at least two of the following three conditions:

- ◆ annual turnover of not more than £25.9 million;
- ◆ balance sheet total of not more than £12.9 million;
- ◆ number of employees not exceeding, on a weekly average, 250.

Where advantage is taken of these exemptions, the company's balance sheet must contain a statement to that effect, with a statement of the grounds on which, in the directors' opinion, the company is entitled to the exemptions. In addition, the auditors are required to provide a report stating whether in their opinion the company is entitled to the exemptions and whether the documents to be filed in reliance on the exemptions are properly prepared. This special report must also be filed with the registrar of companies.

The exemptions are not available if the company is a parent company, unless the group of which it is a parent is a small or medium-sized group (i.e. the group, when considered as a single entity, meets the small company threshold or the medium-sized company threshold).

The exemptions are also not available to any company which is a PLC, a banking or insurance company, a person authorised to carry on regulated activity under Financial Services and Markets Act 2000 or a member of an "ineligible group". An "ineligible group" means a corporate group in which any of the members is a banking institution or insurance company of a specified type, an FSA authorised person, a PLC, or a foreign corporation which "has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power".

There appears to be no authority as to how this last provision should be interpreted in the case of corporations formed in jurisdictions (such as the United States) which do not distinguish legally or constitutionally between "public" and "private" companies, but as a practical matter it should be sufficient if no member of the group has issued shares to the public or has an

affirmative authorisation to do so in its constitution, although to put the point beyond doubt one could include a restriction in the constitution of any relevant group company. (A "group" means, basically, a holding company and the corporations in which it holds, directly or indirectly, a majority interest.)

Exemption from audit

There is an exemption from the requirement to appoint auditors and to prepare and file audited accounts for certain small companies. Companies fall within this exemption if they:

- ◆ qualify as small companies (see above);
- ◆ have an annual turnover of not more than £6.5m; and
- ◆ have a balance sheet total of not more than £3.26m.

These exemptions are not available to a list of types of entity, including a company which is a registered insurance broker, a public limited company (unless dormant) and a special registered body or employee's association under Trade Union and Labour Relations (Consolidation) Act 1992. In addition an audit will be required for any year if the holders of at least 10 per cent of the company's issued shares of any class so require.

Statutory books

In addition to its accounting records, the company must keep the following:

- ◆ minute books of shareholders' and directors' meetings;
- ◆ a register of members;
- ◆ a register of directors;
- ◆ a register of secretaries (if any);
- ◆ a register of director's residential addresses;
- ◆ a register of charges over the company's property;
- ◆ (public companies only) a register of interests disclosed to it in the context of a company investigation;
- ◆ a register of debenture holders;
- ◆ copies of directors' service contracts with the company and/or any subsidiary of the company (or memoranda of their terms if they are unwritten). This obligation applies regardless of the length of any service contract and whether or not it is terminable within 12 months.

For smaller companies, combined registers are generally kept. The minutes of directors' and general meetings, the register of charges and the registers of directors and secretaries must be kept at the company's registered office. The other registers may

be kept elsewhere in the UK if the work of compiling them is done there, but in that case the registrar of companies must be notified of the place at which they are kept.

All these statutory books must be available for inspection by the company's members and, except for minute books and directors' service contracts, by any person, during business hours. In most cases, copies must be supplied on request on payment of a small fee.

Annual return

Every company must deliver an annual return to the registrar of companies at least once every 12 months. The company's director(s) and the secretary (if any), are responsible for ensuring that they deliver the annual return within 28 days after the anniversary of incorporation of a company or of the anniversary of the made-up date of the last annual return.

The information required includes the registered office address, details of main business activities, details of the directors and company secretary (if any, in the case of a private company), details of the issued share capital and the names of members (past and present).

If the company has share capital, the annual return must also contain a marker to indicate whether the company was a 'Traded company' at any time during the return period, a statement of capital and details of the shareholders.

Generally, the details on the annual return should confirm the company information already held on the public record at the made-up date. However the annual return must include details of any transfers of shares which have taken place during the year. This information is filed at Companies House and can be viewed by anyone who makes a company search.

It is a criminal offence not to deliver the company's annual return within 28 days of the made-up date, for which Companies House may prosecute the company and its officers.

Notification of changes to the registrar

Certain matters must be notified from time to time to the registrar of companies, usually where information already filed is altered. Some examples of situations requiring notification are:

- ♦ any change of directors or secretary or in the addresses or other directorships of the existing directors or secretary;
- ♦ any change in the address of the registered office;
- ♦ any allotment of shares;

- ♦ creation of most types of mortgage or charge over property of the company;
- ♦ every resolution or agreement affecting a company's constitution must be forwarded to the registrar of companies within 15 days after it is passed. Where a special resolution has altered the company's articles of association, a copy of the articles as altered must also be filed.

OPERATING A UK ESTABLISHMENT

Accounting requirements

The accounting documents an overseas company must deliver after registration depend on whether or not the company is required to prepare and disclose accounting documents under its parent law (i.e. the law of the country in which the company is incorporated). The following obligations apply to every overseas company that has an establishment in the UK and is not a credit or a financial institution (as to which different rules apply) or a company whose constitution does not limit the liability of its members.

Companies required to prepare and disclose accounts under parent law

Any overseas company that is required by its parent law to prepare, audit and disclose accounting documents or an overseas company incorporated in the EEA that is required by its parent law to prepare and disclose accounts (but is not required by its parent law to have its accounts audited or delivered) must deliver copies of accounting documents to the registrar of companies within three months from the date on which the document is required to be disclosed in accordance with its parent law. It must be accompanied by a certified translation if in a language other than English.

'Accounting documents' is a wide concept including the accounts of the company (consolidated if the company forms a group with one or more subsidiaries) for the financial period, but also any annual report of the directors for the period and any report of the auditors on the accounts.

Where the company's parent law permits the overseas company to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, the directors may discharge their obligation by delivering a copy of documents modified as permitted by that law.

The directors required to deliver copies of accounting documents must deliver them in respect of each UK establishment that the company has at the end of the financial period to which the documents relate.

The accounting documents delivered to the registrar must be accompanied by a statement containing the following particulars:

- ◆ the legislation under which the accounts have been prepared and, if applicable, audited;
- ◆ whether the accounts have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the organisation which issued the principles;
- ◆ whether the accounts have been audited and if so whether they were audited in accordance with Generally Accepted Auditing Standards and the organisation that issued them; and
- ◆ if there has been no audit, whether the company is required to have its accounts audited.

A failure to deliver the accounting documents and accompanying statement to Companies House by the due date is a criminal offence committed by every person who was a director before the end of the 3 month delivery period.

Companies not required to prepare and disclose accounts under parent law

Whilst an overseas company may not be required to prepare and disclose accounting documents under its parent law, it has still the duty to prepare, sign and deliver accounts to the UK registrar of companies. In this respect, the overseas company will need to comply with the requirements for UK companies under the Companies Act 2006, as modified in relation to overseas companies. In effect, the duty is to prepare accounts for the overseas company as a whole for the relevant financial year and not just accounts for the relevant UK establishment. If the overseas company is a parent company it may also need to prepare group accounts. The relevant regulations set out which accounting framework the company may use and other detailed requirements.

Winding up and other insolvency procedures

If an overseas company has a UK establishment and is being wound up under laws outside the UK or if a liquidator has been appointed or the company otherwise becomes subject to insolvency proceedings, it is required to notify the registrar of companies on the prescribed form within the relevant time period. Depending on the nature of the winding up or other insolvency proceedings there are further notification requirements to Companies House.

An overseas company can be wound up under the provisions of UK law, but such circumstances are outside the scope of this guide.

On the termination of a winding up or when a company ceases to be subject to insolvency proceedings, it must file a further notice in the prescribed form with the registrar of companies.

Closing of a UK establishment

If an overseas company closes a UK establishment that is registered at Companies House, it must file a notice in the prescribed form. Once this document has been registered by the registrar of companies, the company is no longer obliged to deliver documents in respect of that UK establishment.

Charges

All overseas companies that have registered a UK establishment at Companies House must register specified charges created by the company over property situated in the UK. Specified charges requiring registration include:

- ◆ a charge on land or any interest in land;
- ◆ a charge created or evidenced by and instrument that would require registration as a bill of sale;
- ◆ a charge for the purposes of securing any issue of debentures;
- ◆ a charge on uncalled share capital of a company; a charge on calls made but not paid;
- ◆ a charge on book debts of a company;
- ◆ a floating charge on the company's property or undertaking;
- ◆ a charge on a ship or aircraft, or any share in a ship;
- ◆ a charge on goodwill or on any intellectual property.

Either the overseas company or the person taking the charge should send particulars in the prescribed form to Companies House, together with a certified copy of the instrument (if any) and the requisite fee within 21 days of the charge being created. In practice it is usually the person taking the charge who registers it, given that its security will be void against a liquidator, an administrator and any creditor of the overseas company, if the charge is not registered or not registered within the 21 day time period.

It is proposed to repeal this requirement for overseas companies to register security with effect from 1 October 2011.

Trading disclosures

Information to be displayed at business premises

There are a number of requirements in relation to the trading disclosures which an overseas company that carries on business in the UK needs to make. Each such company must display

a sign with its company name (i.e. the name registered at Companies House) and the country in which it is incorporated at:

- ◆ every location in the UK at which it carries on business (unless it is primarily used for living accommodation or if every director or permanent representative has the benefit of higher protection from the disclosure of their residential addresses);
- ◆ the service address of every person resident in the UK authorised to accept service of documents on behalf of the company.

The company must display the sign with its company name and country of incorporation in such a way that visitors may easily see it. The sign must be seen continuously (i.e. not only during business hours). However, if the location is shared by six or more companies, each such company is only required to display its registered name for at least fifteen continuous seconds at least once in every three minutes.

Details to be included in business communications and website

Every overseas company must include the company's name in all forms of business correspondence and documentation used for carrying on business activities in the UK, whether in hard copy or electronic, including:

- ◆ business letters and e-mails,
- ◆ notices and other official publications;
- ◆ bills of exchange, promissory notes, endorsements and order forms;
- ◆ cheques purporting to be signed by or on behalf of the company;
- ◆ orders for money, goods or services purporting to be signed by or on behalf of the company;
- ◆ bills of parcels, invoices and other demands for payments, receipts, and letters of credit;
- ◆ applications for licenses to carry on a trade or activity; and
- ◆ websites.

An overseas company with a UK establishment must also state where the UK establishment is registered and its registered number on all business letters, order forms and websites that are used in carrying on that establishment's activities.

An overseas company that is not incorporated in the EEA must state on all business letters, order forms and websites that are used in carrying on business in the UK:

- ◆ the company's country of incorporation;
- ◆ the identity of the registry, if any, in which the company is registered in its country of incorporation;
- ◆ if applicable, the number with which the company is registered in that registry;
- ◆ the location of its head office;
- ◆ the legal form of the company;
- ◆ whether the liability of the members of the company is limited, whether the company is limited;
- ◆ if applicable, whether the company is being wound up or is subject to other insolvency proceedings;
- ◆ if there is a reference to the amount of share capital on business letters, order forms or websites, the reference must be shown as paid up share capital.

The name of directors is not required on business letters. But if a company decides to include the name of a director or directors (other than in the text or as a signatory) on business letters it must disclose the names of all the directors. In the case of a body corporate or legal person, it must disclose its corporate or firm name.

The disclosure of all this information must be in characters that can be read with the naked eye. Failure to comply with the various requirements regarding trading disclosures without reasonable excuse will constitute an offence for which the company and each of its officers may be fined.

TAXATION

General

Corporation tax

UK resident companies pay corporation tax on their profits and gains. The current full rate of corporation tax is 26 per cent. This will be reduced to 25 per cent from 1 April 2012, and will reach 23 per cent by 1 April 2014. There is also a "small" companies' relief which reduces the effective rate of tax to between 20 per cent and 26 per cent (or the main rate for that year) for most types of UK resident company. The relief applies to annual profits within certain bands not exceeding £1,500,000. The bands are shared between associated companies wherever resident.

A company pays corporation tax at the same rate on both income profits and capital gains. Accounting profit provides the starting point for calculating income profit for tax purposes, though some categories of costs are not deductible. In particular, items of capital expenditure are not deductible. However, capital

allowances are available for expenditure on certain capital assets, essentially providing a revenue deduction for some capital depreciation.

Capital gains are calculated separately, mainly by reference to the difference between sale proceeds and expenditure on acquisition. A number of reliefs are available, including a relief where the proceeds of sale of business assets are reinvested in replacement business assets.

Relevant profits and gains

Corporation tax potentially applies to the worldwide profits and gains of UK resident companies. However, the UK has an extensive network of double tax treaties and many treaties contain a permanent establishment clause. Profits or gains of a UK resident company referable to a permanent establishment in a treaty country will not generally be subject to UK tax.

Non-UK resident companies which carry on a trade in the UK through a permanent establishment in the UK will also be subject to UK corporation tax at the same rates as a UK resident company but only in respect of the profits and gains of that establishment. (In determining whether a non-UK resident company is carrying on a trade in the UK there is no direct correlation with the registration categories of "place of business" and "branch" referred to above.)

The small companies' relief is only available to UK resident companies. However, under EU law or if there is a "non-discrimination" article in any relevant double tax treaty, the benefit of small companies' relief will normally extend to many non-UK resident companies with a branch in the UK on the basis of taking account of their worldwide profits in applying the thresholds. The small companies' thresholds are shared between associated companies wherever resident.

Liability to pay corporation tax

Corporation tax is generally payable nine months after the end of a company's accounting period. However, "large companies" have to pay corporation tax by quarterly instalments, some of which fall to be paid on a current period basis. This regime applies to companies and groups with profits over £1,500,000. There is a facility for UK companies who are members of a group to deal with their instalment obligations on a group basis.

Most UK companies are required to "self-assess" their corporation tax liability. Failure to pay the full amount of tax can attract interest and penalties.

Structure of the UK operation

Where a non-resident company is contemplating carrying on a trade within the UK, as described above, the choice is usually between establishing an unincorporated branch or a separate UK resident subsidiary. The main points which should be considered in this respect are as follows.

Losses

In circumstances where the UK business is likely to be loss-making in its early years, it may be appropriate to have an unincorporated branch in the UK. This is because it is often possible to obtain relief for such losses in the country of residence of the non-UK resident company. In addition, losses can be carried forward and set against future profits of the UK branch; in this way, it may be possible to obtain double tax relief for losses arising. Any overseas rules regarding branch loss recapture would need to be taken into account.

If business is initially carried on through a branch, it is usually possible to convert the branch into a UK subsidiary at a later stage in a manner which is relatively tax free (see below).

Repatriation of profits

The UK does not impose any withholding tax on the repatriation of branch profits.

A UK subsidiary will generally repatriate profits by paying dividends. There is no UK withholding tax on the payment of dividends by a UK resident company.

UK resident individuals and certain other shareholders obtain the benefit of a tax credit equal to 10 per cent of the cash dividend. A number of UK double tax treaties entitle a foreign parent company to a repayment in respect of part of the tax credit associated with a dividend received from a UK company. However, in practice, with the tax credit at 10 per cent, the repayment claim under most treaties has effectively been eliminated.

Funding the UK operation

UK branches

Except in the case of non-UK resident banks operating in the UK, a UK branch is not permitted a deduction for corporation tax purposes in respect of notional interest paid to its head office on borrowings. However, a deduction will be allowed in respect of a proportion of costs incurred by the head office which relate to the activities of the branch.

The profits of a UK branch have to be calculated as if it were a distinct and separate enterprise dealing wholly independently

with the non-UK resident company of which it is a permanent establishment. In relation to funding, the permanent establishment is assumed to have the same credit rating as the non-resident company and to have the equity and loan capital a distinct and separate entity would have. In practice this will limit the amount of deductible interest expense of a UK branch to that of a comparable UK subsidiary. These rules will apply except where a relevant double taxation treaty has conflicting provisions on capital attribution. They are designed to make the choice between operating through a UK branch and a UK subsidiary broadly neutral from a tax point of view.

These capital attribution rules are particularly relevant to banks which operate in the UK through branches: a UK bank branch can operate entirely with loan capital whereas a UK bank subsidiary would need a minimum regulatory capital. The rules require an amount of equity and loan capital to be attributed to the UK branch of a non-UK resident bank for corporation tax purposes, based on the equity and loan capital that would be needed if the branch were an independent, free-standing bank trading in the UK in the same or similar conditions and circumstances (and with the same credit rating). No deductions in arriving at profits chargeable to corporation tax are permitted in excess of those which would have arisen on those assumptions.

UK subsidiary

There is no minimum share capital requirement for a UK subsidiary (unless it is a PLC or operates in the fields of insurance or banking) and interest on loan capital will generally be deductible in computing UK profits. So from a UK tax standpoint, there may be advantages in funding a UK subsidiary by way of a loan. However, UK transfer pricing and thin capitalisation legislation may apply to restrict the amount of tax relief for interest on a loan from a connected party (such as the parent company). Where these provisions apply, the tax relief for interest is limited to the amount of interest that the UK subsidiary would have paid on an arm's length borrowing.

In addition, certain interest payments by a UK subsidiary may, for UK tax purposes, be treated as equity distributions: in particular, interest in excess of a reasonable commercial rate (even if paid to an unconnected lender) and certain interest payments on securities with no particular dates for redemption or redeemable after a period of greater than 50 years. A deduction for such interest is not allowed.

There is an overall cap on the amount of tax deduction which a UK subsidiary or branch can claim for its financing costs. Broadly, UK finance costs which exceed the global group's overall external finance costs are not deductible. This is known as the "worldwide debt cap".

Interest on debt (other than debt repayable, broadly, within one year) and bank debt, generally has to be paid subject to a withholding tax currently at the rate of 20 per cent of the interest payment. UK companies can pay interest without withholding to other companies liable to UK corporation tax and to certain tax-exempt UK bodies such as charities and pension funds.

UK double tax treaties based on the OECD Model Treaty usually contain a provision to reduce or eliminate any withholding tax which would otherwise arise on the interest payment. The benefit of such provisions in UK double tax treaties is not available in respect of interest in excess of that which would have been payable if the parties were at arm's length. The precise wording of UK double tax treaties varies in this respect. Some double tax treaties impose no limitations on the considerations which can be taken into account. In such a case, HM Revenue & Customs can take into account thin capitalisation factors (including the size of the loan, its terms and whether it would have been made at all in absence of the special relationship between the borrower and the lender) to determine if interest is "excessive".

Interest can be paid under a reduced withholding pursuant to a treaty right if a direction is obtained from HM Revenue & Customs. Until such a direction is obtained, tax will have to be withheld and a repayment claim made under the treaty.

Interest may also be paid under a reduced withholding tax to a company resident in another EU state which is a 25 per cent associate on the basis of the EC Interest and Royalties Directive, provided an exemption notice has been obtained from HM Revenue & Customs. The exemption may be restricted if the companies have a "special relationship" and the amount of the interest exceeds what would have been paid by parties dealing at arm's length, or where anti-avoidance provisions apply.

There is no requirement to withhold tax from interest paid on a "quoted Eurobond".

Management expenses

Subject to transfer pricing restrictions, tax deductions can be obtained for reasonable management and other overhead expenses paid by a UK subsidiary to a non-UK resident parent company. Costs for the UK branch in this respect may be deducted, but no deduction will be allowed for any profit element.

Transfer pricing

Pursuant to UK legislation on transfer pricing, dealings with most associated persons have to be dealt with for corporation tax purposes as if they were on arm's length terms even if they were not. The "arm's length" concept is to be interpreted consistently with the OECD Model Treaty and OECD Guidelines. Companies have to self-assess on this basis and retain appropriate records.

Incorporation of a UK branch

If a business is initially established through an unincorporated branch, it is possible for the branch to be incorporated on a largely tax free basis. There are two sets of rules for this. The first applies generally to the transfer of assets treated as being a reconstruction involving the transfer of business; the second was introduced by way of implementation of an EC directive and can accordingly apply only to the incorporation of a UK branch of a company resident in another EU member state.

Sale of the UK business

Gains arising on capital assets of a branch will be subject to UK corporation tax on disposal.

A gain on the sale of shares in the UK subsidiary by a non-UK resident parent will generally be outside the scope of UK tax. Disposals of capital assets by the subsidiary itself will generally be subject to corporation tax. A relief for disposals of "substantial shareholdings" is in certain circumstances available to corporate shareholders. This may be relevant to share disposals by the UK subsidiary (subject to satisfying the detailed conditions, including a 10 per cent threshold and certain trading requirements). Broadly, when a trading company or member of a trading group with a substantial shareholding in a trading company or the holding company of a trading sub-group disposes of shares in that company, any gain arising on the disposal is exempt, and any loss is disregarded, for corporation tax purposes.

Double tax relief

A UK subsidiary will normally be able to take advantage of the UK's double tax treaties for the avoidance of double taxation on income, profits and gains including (as applicable) the reduction or elimination of any UK withholding tax which would otherwise arise on any royalty payment. UK companies are entitled to make royalty payments to non-UK residents without deducting tax, or at a reduced rate of deduction (in line with the relevant treaty), where the paying company has a reasonable belief that the beneficial owner of the royalties is entitled to relief from UK tax on those royalties under the terms of a double tax treaty. Where no treaty is available, the UK's relatively generous

unilateral double tax relief provisions may apply. However, where a treaty exists, the claimant cannot apply for unilateral relief. Decisions of the European Court have indicated that the UK branch of a company resident in another EU/EEA State should be entitled to the same benefits under a UK double tax treaty as a UK resident company. Finance Act 2000 extended the availability of double taxation relief to UK branches of non-UK resident companies.

Remuneration of employees and agents

Employers in the UK are obliged to make payment on account of their employees' liability to income tax on their salaries and other remuneration under a system known as "pay as you earn" (PAYE). The liability extends to overseas employers with branches in the UK. Employees of a UK subsidiary or UK branch who are either resident in the UK or who work in the UK will have relevant income tax liabilities. (Some individuals may not be subject to income tax under the terms of a relevant double tax treaty.)

The employer is also obliged to make National Insurance Contributions ("NICs") both on its own account (employers' NICs) and by deduction from amounts paid to its employees (employees' NICs). The full employers' rate of NICs is currently 13.8 per cent of the remuneration.

Employers are not usually liable to account for the income tax or National Insurance liabilities of self-employed persons, such as agents or independent contractors, whom they engage to provide services. Special rules apply where so-called "personal service companies" are used to avoid the operation of PAYE and NICs.

Value added tax

Value added tax ("VAT") will be payable by persons who carry on business in the UK on their supplies of goods or services unless their supplies are exempt (for instance, certain banking and other financial services) or the applicable rate of VAT is zero or relevant annual turnover is less than a specified amount (currently £73,000 pa). The full rate of VAT (applicable to most items) is 20 per cent.

Persons who make taxable supplies are generally able to recover VAT charged on supplies to them, ('input tax') so that VAT is in a sense a tax on the end-user. Persons who make only exempt supplies cannot recover their input tax. Partial recovery is generally available for persons who make a mixture of taxable and exempt supplies (of which financial businesses would be a typical example).

Capital duty, stamp duty and stamp duty land tax

There is no capital duty on the issue of shares or debentures by UK incorporated companies.

UK stamp duty is payable on transfers of shares and certain other securities at the rate of 1/2 per cent of the sale price. A complementary tax, stamp duty reserve tax, arises on agreements to sell shares and other relevant securities (with offset for stamp duty paid on any document of transfer).

Stamp duty land tax is payable on land transactions at rates up to 4 per cent of the sale price for non-residential or mixed use property. For residential property, the maximum rate of stamp duty land tax payable is 5 per cent of the sale price.

Save for certain transactions in partnership interests, acquisitions of other types of property (such as intellectual property, goodwill and debt) are not generally liable to UK stamp taxes.

PERSONNEL

Employment contracts

Every employee is employed under a contract of employment. The contract may be contained in a formal written agreement, but this is not essential - in legal terms, a court will recognise an unwritten, implied contract of employment. Even if the employee does not have a written service contract, he or she is entitled to receive written notification of the more important terms of his or her contract (see "Written particulars" paragraph below) and other statutory employment rights.

Contracts of employment are subject to the common law of England, like any other contract. An action for damages for breach of a contract of employment will generally be heard in the courts. There is, however, a statutory regime parallel to the courts which regulates employment matters. Most disputes relating to statutory employment rights will be heard in the first instance by an employment tribunal, where the procedure and rules of evidence are less formal than in a court.

Statutory employment rights apply to almost all members of staff, whatever their status. They apply to working directors, to overseas nationals who work in the UK and to those who work in England but whose contracts of employment are governed by the law of a country other than England. In addition to these general statutory rights, terms and conditions of employment in particular industries may be specially regulated, for example, by statute, arbitration agreements or trade union agreements.

The following is a brief summary of the principal statutory provisions relevant to contracts of employment.

Written particulars

Written particulars of certain principal terms of employment must be given to every employee within two months of the start of his or her employment. These particulars are specified in legislation and include details of salary, job title, place of work, working hours, notice periods, sick pay entitlement, holiday entitlement, disciplinary and grievance procedures and pensions.

If any change is made in the terms, the employee must be notified in writing within one month of the change.

Period of notice

A contract of employment, like any other contract, can be for a fixed term, or can be indefinite but terminated by notice. There are statutory minimum periods of notice, depending on length of service, which must be given to or by an employee to terminate his or her contract provided he or she has at least one month's service. These minimum periods may not be reduced by agreement between the parties but can be increased. An employee is required to give one week's notice of termination. An employer must give one week's notice during the first year of employment and then at least one week's notice of termination for each full year of employment, up to a maximum of twelve weeks' notice for an employee who has been employed for twelve years or more.

Redundancy payments

Where an employee is dismissed for redundancy (i.e. broadly, where the business is being shut down; where the employee is surplus to requirements and is not being replaced; or where there is a change in the place of work) statutory compensation is usually payable to employees with more than two years' service in addition to any rights which he or she may have under his or her contract of employment. The amount of compensation is calculated by reference to the employee's age, salary and length of service, and the maximum amount of "a week's pay" allowed in computing a statutory redundancy payment is £400. The maximum possible statutory redundancy payment is currently £12,000 (for an employee paid in excess of £400 per week who has 20 years' service over the age of 41). (These figures are accurate from 1 February 2011 but are subject to review from time to time.)

In some circumstances the employer is required, before implementing redundancies, to consult with "appropriate representatives" of the employees (i.e. a recognised trade union or representatives specially elected by the employees) and to notify the Secretary of State. These rules apply if the employer proposes to make redundant 20 or more employees at one establishment

within a 90 day period. Where more than 20 but less than 100 redundancies are proposed, consultation must begin in good time and in any event at least 30 days before the first dismissal takes effect, and at least 30 days' notice must be given to the Secretary of State. Where 100 or more redundancies are proposed, consultation must begin in good time and in any event at least 90 days before the first dismissal takes effect and at least 90 days' notice must be given to the Secretary of State.

If the consultation procedure is not complied with, the employee representatives may apply to the employment tribunal for a "protective award", which entitles employee representatives to claim up to 90 days' pay on behalf of each affected employee. Failure to notify the Secretary of State is a criminal offence and may result in a fine.

Unfair dismissal

Employees with one or more years' service have statutory protection against unfair dismissal by their employer. A dismissal is fair only if it is for a reason which is permissible under the relevant legislation (e.g. incapability, redundancy or misconduct) and the employer has acted reasonably in treating the reason as a sufficient ground for dismissal, taking into account the employer's size and administrative resources. Some dismissals are automatically unfair (e.g. dismissal on the grounds of pregnancy). A claim for unfair dismissal is in addition to any rights (e.g. to notice of termination) which the employee has under his or her contract on termination of employment, although a dismissal may be unfair for statutory purposes even if it is not also in breach of contract. Failure to renew a fixed term contract may amount to unfair dismissal.

Unfair dismissal claims are made by the employee to an employment tribunal. The application must usually be made within three months of the effective date of termination of employment. Before the tribunal can make a finding that an employer has acted reasonably, it must be established that the procedure adopted by the employer leading up to and including the dismissal was fair.

An employee who has been employed for less than one year currently has no right to claim unfair dismissal compensation unless he or she has been dismissed for an "inadmissible" reason (e.g. taking part in trade union activity or for pregnancy related reasons or whistleblowing).

It is possible to exclude the right to compensation for unfair dismissal as part of a settlement agreement (known as a "compromise agreement"). However, under employment protection legislation, certain procedural steps have to

be followed for an agreement to qualify as a compromise agreement. In particular, the employee must have received independent legal advice about the terms and effect of the compromise agreement.

If a dismissal is held to be unfair, the maximum amount of compensation which can be ordered is £80,400 (as from 1 February 2011). This is made up of a basic award (maximum £12,000), calculated in the same way as a statutory redundancy payment, and a compensatory award (maximum £68,400), based on the financial loss to the employee.

The tribunal can also order reinstatement or re-engagement of the employee, but such orders are relatively uncommon. If the employer refuses to comply with such an order, further compensation can be ordered. Compensation may also be adjusted by up to 25 per cent if the employer has unreasonably failed to comply with the disciplinary procedures set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures. Where an unfair dismissal is also a breach of contract, unfair dismissal compensation is in theory payable in addition to damages which may be awarded by a court for breach of contract. In practice, however, in assessing damages for breach of contract, a court would take account of any statutory compensation received.

Unions

Trade unions in the UK have a right to be recognised by UK employers for collective bargaining purposes where recognition has the support of a majority of those voting in a secret ballot and at least 40 per cent of the workers in the business. Collective bargaining can cover negotiations relating to pay (including pensions), hours and holiday and such other additional matters as the employer and union may agree. Collective agreements with trade unions are only legally enforceable if the agreement is in writing and states expressly that the parties intend the agreement to be a legally enforceable contract. However, where an employer formally recognises a trade union, any agreement reached through collective bargaining can be incorporated into the contracts of employment of the unionised employees.

Works councils

Employees in organizations with 50 or more employees can apply for a works council to be set up which is provided with information and consulted by the employer about issues in the organisation in which they work. In order to trigger the right, 10 per cent of the workforce must make a request for the employer to negotiate an agreement in respect of information and consultation. Alternatively, the employer may choose to initiate

negotiations. The relevant legislation sets out the “standard” arrangements for information and consultation (which will apply if other arrangements are not agreed). Broadly, these include the provision of information and consultation on developments, threats and changes to employment within the organisation.

Transfer of Undertakings (Protection of Employment) Regulations 2006

These Regulations contain provisions designed to safeguard employees' rights in the event of an undertaking (which includes any trade or business situated in the UK) and on the contracting-out, recontracting or contracting-in of services if there is an organized grouping of employees situated in the UK which has as its principal purpose the carrying out of the services. The Regulations provide that the employment contracts of the transferor's employees are transferred automatically to the transferee, together with all the transferor's rights, powers, duties and liabilities in connection with such contracts. The dismissal of any employee will be presumed to be unfair if it is connected with the transfer (see “Unfair dismissal” paragraph above).

Working time

Regulations were brought into force in 1998 introducing for the first time in the UK rights and obligations for employees and employers relating to work and recreation periods. The key restriction is a limit of 48 hours on the average working week assessed over a 17 week period (although this can be waived by written agreement with the employee). Employees are entitled under statute to 28 days' paid holiday per annum. This can be inclusive of bank and public holidays.

Minimum wage

In April 1999 a national minimum wage was introduced which applies to almost all employees. The current rates as from 1 October 2010 are £5.93 per hour for workers aged 21 and over, £4.92 per hour for workers aged 18-20 and £3.64 per hour for workers aged 16 and 17 (excluding apprentices). From 1 October 2011 the rates are being increased to £6.08 for workers aged 21 and over; £4.98 for workers aged 18-20 and £3.68 for workers aged 16 and 17 (excluding apprentices)

Data Protection

Data Protection Act 1998 regulates the processing of information relating to individuals. Employees can gain access to information held about them (including their personnel files) on request, provided they pay a fee (maximum £10); they may challenge any misuse of information held about them and they may obtain orders to erase or amend inaccurate data.

The Act also includes restriction on the ability of an employer to “export” personal data from the UK to a country which is outside the European Economic Area.

Discrimination

It is unlawful for an employer to discriminate against employees (and other types of worker) and applicants for employment on grounds of sex, marital status, race, colour, ethnic group, national origin, sexual orientation, religion or belief, disability or age. There is no qualifying period of service for employees to bring discrimination claims. Compensation awarded as a result of unlawful discrimination is not subject to a statutory maximum amount.

Certain provisions of European law (e.g. Article 141 of the Treaty of Rome, the Equal Treatment Directive and the Anti-Discrimination Framework Directive) provide direct or indirect protection against discrimination in the UK.

Working conditions

Employers are under various statutory duties to safeguard the health and safety of employees. These extend to working conditions (for example, temperature of working environment and provision of sanitary facilities) and safety of premises, machinery and equipment.

The Human Rights Act 1998 came into force in October 2000 and gives protections on basic civil rights against a public body. The Act does not apply directly to private employers. This means that an employee may not bring a legal action under the Act against his private employer solely on the basis that his human rights have been infringed. The Courts (as well as the employment tribunals) will, however, apply the principles of the Human Rights legislation in any cases that may be brought before them e.g. employment disputes.

OVERSEAS NATIONALS - IMMIGRATION ISSUES

What follows is very much an outline of the principal rules: separate more detailed notes are available on request. Please note that the UK immigration system has recently undergone a major overhaul and so you are strongly advised to take up-to-date advice before submitting an application or bringing an overseas national to the UK. This is particularly important as the practicalities are now very intricate and require as much care as satisfying the law. In particular, minor non-disclosures on an application form can have a catastrophic effect on an applicant's future ability to enter the UK.

Employment of EEA and Swiss nationals

European law contains extensive provisions regarding freedom of movement within the European Economic Area (“EEA”), including the UK, for nationals of other EEA member states and their families. The EEA consists of the EU and those EFTA countries which have applied the terms of the EEA treaty, currently Iceland, Norway and Liechtenstein. Switzerland benefits from similar immigration provisions as though it were an EEA member.

Swiss nationals and nationals of EEA countries normally undergo no formalities if travelling to the UK for employment purposes, except that they must possess a passport or identity card, to demonstrate their qualifying nationality. However, if proposing to reside in the UK for work they are well-advised to obtain a registration certificate from the UK Border Agency as proof of their immigration status here. Family members of EEA or Swiss nationals who are not themselves EEA or Swiss nationals must apply for a visa (an EEA family permit) before coming to the UK. Once in the UK, the family member should apply for a residence card or, in some cases, a family member residence stamp, both of which confirm the family member’s right of residence under European law. After five years of continuous residence in the UK, both EEA and Swiss nationals and their family members can apply for a confirmation of permanent residence.

Nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia were originally required to register with the UK Border Agency under the Worker Registration Scheme before working in the UK. This scheme came to an end at the beginning of May 2011 and now nationals of those countries are on an equal footing with Swiss nationals and nationals of other EEA countries.

However Bulgarian and Romanian nationals remain subject to restrictions: they are entitled to live in the UK without authorisation as self-sufficient or self-employed persons, but are under employment restrictions in the UK for the first 12 months. Subject to some exceptions, an employer needs to apply for a work permit before employing such an individual, and the individual will then need to apply for an accession worker card (which restricts the holder to the work specified on the card). Employers of low skilled workers are restricted to existing quota schemes in the agricultural and food processing sectors. Highly skilled workers from Bulgaria and Romania can apply under the Highly Skilled Migrant Programme for an authorisation which permits them to take any UK employment of their choosing.

Is a visa required?

In general, all non-EEA non-Swiss nationals require visas if they come to the UK under any immigration category for more than six months or to work. Moreover, certain foreign nationals (known as visa nationals) always require visas to visit the UK for any period for any purpose. For non-visa nationals coming to the UK for less than six months, whether or not there is a requirement for a visa depends on the category under which the individual is entering the UK (see below for the discussion of visitors, for example).

It is always worth checking if a non-EEA national is married to an EEA national. If so, the non-EEA national can come to the UK to live and work as the dependant of the EEA national. Although it can be counter-intuitive where the non-EEA national is the worker, coming to the UK through this route is substantially cheaper and easier than using the points-based system.

Points-Based system

The new points-based immigration system has five tiers.

Tier 1 – Highly skilled workers

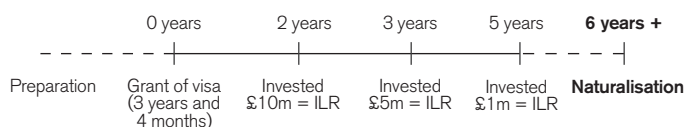
This tier includes the following categories: general highly skilled workers, investors, entrepreneurs and post-study workers.

Tier 1 (General)

Tier 1 (General) replaced the old Highly Skilled Migrant Programme but it was closed to new applicants in December 2010. Workers who are currently in the UK under Tier 1 (General) can extend their visas under the same terms as their original applications.

Tier 1 (Investors)

To qualify for Tier 1 (Investor) status, an applicant must have at least £1m of personal funds to invest in the UK or personal net worth of at least £2m and at least £1m under their control in the UK which has been borrowed from an FSA regulated financial institution. Within three months of the grant of the “specified date” (usually, the date of entry into the UK), the applicant must invest at least £750,000 in UK Government bonds or the share or loan capital of certain types of UK registered trading companies. If applicants invest £1m in the UK, they will qualify for indefinite leave to remain (“ILR”) after five years in the UK. However, it is now possible to “fast track” the ILR process by making larger investments. Those who invest £5m will qualify after three years and those who invest £10m after two:



Migrants in this category are no longer required to remain in the UK for nine months in each year and instead are allowed to be absent from the UK for up to 180 days each year without jeopardising their applications for ILR. There are no English language or maintenance requirements. A Tier 1 (Investor) may be employed or self-employed in the UK.

Tier 1 (Entrepreneur)

This category is suitable for individuals intending to enter the UK to set up their own business or to join an existing business as a business partner or major shareholder. To be eligible, the applicant must have £200,000 of their own money available to invest in the UK business. Those who have access to only £50,000 qualify if their funds come from registered venture capitalists, registered UK entrepreneurial seed funding competitions and/or a UK Government Department. There are also English language and maintenance requirements. After arriving in the UK, the applicant must register with HMRC (as a director or self-employed person). In order for leave to remain to be extended, the applicant must have invested the £200,000 and created at least two new full-time jobs for UK workers. Entrepreneurs qualify for accelerated ILR after three years if they have created the equivalent of ten full-time jobs or at least £5m in income from business activity in a three-year period and have had continuous residence in the UK for that period. Property businesses are not eligible.

Tier 1 (Post-study work)

This is a bridge into highly skilled and skilled work for international students who have taken degree-level courses at UK institutions. It is a points-based assessment. Successful applicants are expected to swap into a different tier as soon as possible but the visa is issued for a maximum period of two years.

Tier 2

There are four main categories under Tier 2: general skilled workers, ministers of religion, elite sports persons and intra-company transfers.

Tier 2 (General)

Applicants under this tier require sponsorship by a UK employer which has been registered with the UK Border Agency as a licensed sponsor. This involves a named officer within the organisation taking responsibility for certain duties such as recordkeeping and notifying the UK Border Agency of suspected breaches of immigration conditions, absences by the worker and so on.

Unless the job is on the official list of shortage occupations, an employer must carry out a resident labour market test (to

show that the post cannot be filled by a settled worker) before issuing a certificate of sponsorship to the applicant. The applicant will then use the certificate of sponsorship ("COS") to apply for a visa and must score a certain number of points based on their qualifications and prospective earnings. The total number of applicants who can come to the UK (for all employers combined) under this category has now been fixed at 20,700 from 6 April 2011 to 5 April 2012. This quota has been split into monthly allocations of COS available to registered sponsors. If a month is oversubscribed, COS applications are ranked using a points system designed to favour jobs on the shortage occupation list, scientific researchers and those with a higher salary. If an applicant is unsuccessful in one month, the application will not be rolled forward, meaning employers will be required to submit a new request the following month. Applicants escape the cap which will not apply only where the job being sponsored has a salary of £150,000 or more. There are maintenance and English language requirements.

Tier 2 (Intra-company transfers)

This is for employees who are employed by an overseas business for at least six months and are now being transferred to a UK group entity. There are four routes into this category. The first, long term staff, requires that the employee has worked for the overseas business for 12 months before coming to the UK; the second short term staff, requires the employee to have worked for the overseas business for three months before coming to the UK; the third graduate trainee, requires the employee to have worked for the overseas business for three months before coming to the UK; the fourth, skills transfer, does not require the employee to have been working for the overseas business before coming to the UK. The sub-category under which the employee applies affects how long they will be allowed to stay in the UK, with established staff being allowed to remain for up to five years, short term staff for 12 months, whilst skills transferees will only be allowed to remain for six months. An intra-company transfer will not lead to permanent UK residence for new applicants. There are minimum salary requirements.

Tier 3 - Low skilled Workers

This is currently suspended and is unlikely to be re-introduced, given the quantity of available labour from the EEA since the expansion of the EU to twenty-seven countries.

Tier 4 - Students

Education providers need to be licensed to sponsor non-EEA students. Students aged over 18 are granted leave for the length of their course and are allowed to switch to Tiers 1 and 2. Students may work for 20 hours per week during term-time provided that the work they do does not fill a permanent, full-time vacancy.

Tier 5 - Temporary workers

This tier includes the following categories: youth mobility scheme, creative and sporting workers, government authorised exchange workers, international agreement workers, religious workers and charity workers. Temporary workers are generally permitted to stay in the UK for 12 to 24 months depending on the sub-category under which they are applying. Tier 5 migrants cannot obtain ILR or switch into longer-term categories within the UK.

Sole representative of an overseas firm

This category is for a senior employee of an overseas parent company who is coming to the UK to establish a wholly-owned subsidiary or branch of that parent company in the UK where there is currently no branch.

Commonwealth citizens

The old “working holidaymakers” scheme no longer exists, although some Commonwealth countries participate in the new Tier 5 Youth Mobility Scheme, which is also open to some participating non-Commonwealth countries. Special (more favourable) immigration rules apply to certain Commonwealth citizens who have recent UK ancestry.

Visitors

All visitors must show that they intend to leave the UK at the end of the visit (which must not be more than six months in duration except in the case of academic visitors who may stay for up to 12 months, or pre-arranged longer term visas), that they have enough money to support themselves without working, that they do not intend to work, provide services or study (except on a course with a registered provider as a student visitor) and that they can meet the cost of their return trip.

There are various categories of visitor visas: business visitors, sports visitors, entertainer visitors and special visitors (including children, parents of a child at school, visitors for private medical treatment, visitors for marriage and student visitors). Note that business visitors may carry out “permissible activities” for an overseas employer whilst in the UK (which includes attending meetings, site visits, signing contracts etc), but this is limited in duration and nature. To avoid the employer or the employee committing a criminal offence, care must be taken that a business visitor's activities in the UK are not used to disguise what is in reality a UK job which is likely to require an employment visa. Non-visa nationals who are business, sports or entertainer visitors do not require visas for visits of up to six months.

Further detail on visitors can be found in our briefing note “Visiting the UK – immigration law & practicalities”.

Visa application process

Most visa applications are now made online. After submitting an online application, the applicant must attend an overseas visa application centre to have fingerprints and a digital photograph taken (known as biometric information). After the biometric appointment, the applicant must submit the completed application, their passport and any supporting evidence to the local UK Border Agency post (usually the local Consulate) for consideration. There are detailed rules as to the supporting evidence which must be included (especially on the financial means available to the applicant and dependants) and applicants must submit original documents. Because of the nature of the information which must be demonstrated on finances, applicants should allow at least three months to prepare the application papers. Visa applications now demand significant disclosure, including of comparatively trivial criminal offences, which may be long in the past: any non-disclosure may be treated as attempted deception and could result in the applicant being denied entry to the UK for 10 years.

Dependent spouses and minor children may usually accompany the foreign national to the UK but require a prior visa as dependants.

The issue of a visa does not guarantee admission to the UK, which is always at the discretion of the immigration officer at the point of entry. In practice, entry is seldom refused when a visa has been obtained.

Within seven days of arrival in the UK, certain foreign nationals (not including EEA citizens and their families) with permission to stay in the UK for more than six months must register with the police.

If an extension of the permission to remain in the UK is required, it is important to apply before the existing permission expires.

Permanent residence and British citizenship

After five years continuously satisfying the conditions of one of the long stay categories above (although notably not Tier 2 (intra company transfers)) and passing the ‘Life in the UK’ test or an English for Speakers of Other Languages (ESOL) test, most foreign nationals and their dependants become eligible to apply to the UK Border Agency to have immigration and employment restrictions lifted (indefinite leave to remain, otherwise known as settled status). This requirement can be reduced to two or three years under the Tier 1 (Investor) and Tier 1 (Entrepreneur) sub-categories although this does not speed up the route to citizenship. After a further twelve-month period (but not less than six years of being in the UK unless

they have married a British person), the foreign national and his or her dependants may apply for British citizenship - the grant of citizenship by the UK Border Agency is always at their discretion.

Employer's responsibility to prevent illegal working

Before any employee starts work, the employer must check (and retain copies of) specified original documents which confirm that the prospective employee is entitled to work in the UK. If the documents disclose a time-limited right to work in the UK, the employer must repeat these checks at least every 12 months. We can provide further details as to the documents which must be checked. Note, however, that a National Insurance number on its own is insufficient to prove that the prospective employee is entitled to work in the UK. Civil and criminal penalties can be imposed if employers breach these rules.

REAL PROPERTY

Interests in real property in the UK can be acquired by purchasing the freehold (i.e. an indefinite interest) or a leasehold interest (i.e. for a limited period). The use of land is restricted by town and country planning and other regulations. The construction of new property, a change in the use of an existing property and the refurbishment of property may require extensive approvals, which can often take a considerable time to obtain.

A tax on property, called business rates, is levied by local authorities on business property. All business property in England and Wales has a rateable value. Properties are revalued every five years. The last revaluation was in 2010, based on the value of the property on 1 April 2008. Business rates are levied by applying a multiplier to the rateable value; the standard multiplier is known as the "Uniform Business Rate" and is applied subject to the availability of any reliefs, such as small business rate relief.

GRANTS AND OTHER FINANCIAL INCENTIVES

Substantial grants and other kinds of financial assistance are available from government sources. In particular, incentives have been created to encourage investment in areas of the UK suffering from problems of unemployment and economic imbalance. These incentives include cash grants towards certain types of capital expenditure and loan finance. A number of enterprise zones have also been established in areas requiring industrial and commercial development. Each zone is designated for a period of ten years. During this time expenditure on buildings in the zone can be written off for tax purposes, and the buildings are exempt from local authority rates and the new uniform business rate.

The availability of such assistance can clearly play a large part in determining the location of any new venture in the UK, and detailed advice should be obtained on the qualifications for and the requirements of these incentives.

CONTACT DETAILS

If you would like further information or specific advice please contact:

DAVID COLEMAN

DD: +44 (0)20 7849 2455

david.coleman@macfarlanes.com

JULY 2011

MACFARLANES LLP

20 CURSITOR STREET LONDON EC4A 1LT

T: +44 (0)20 7831 9222 F: +44 (0)20 7831 9607 DX 138 Chancery Lane www.macfarlanes.com

This note is intended to provide general information about some recent and anticipated developments which may be of interest.

It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The firm is not authorised under the Financial Services and Markets Act 2000, but is able in certain circumstances to offer a limited range of investment services to clients because it is regulated by the Solicitors Regulation Authority. It can provide these investment services if they are an incidental part of the professional services it has been engaged to provide. © Macfarlanes July 2011