A Practical Guide to Conducting Business in the UK

Oury Clark

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Contents

1 Introduction

1.1 About this Guide

This Guide is intended to provide a brief outline of some of the major accounting, legal, commercial and practical issues that may be of interest to an overseas investor setting up and running a business in England and Wales.

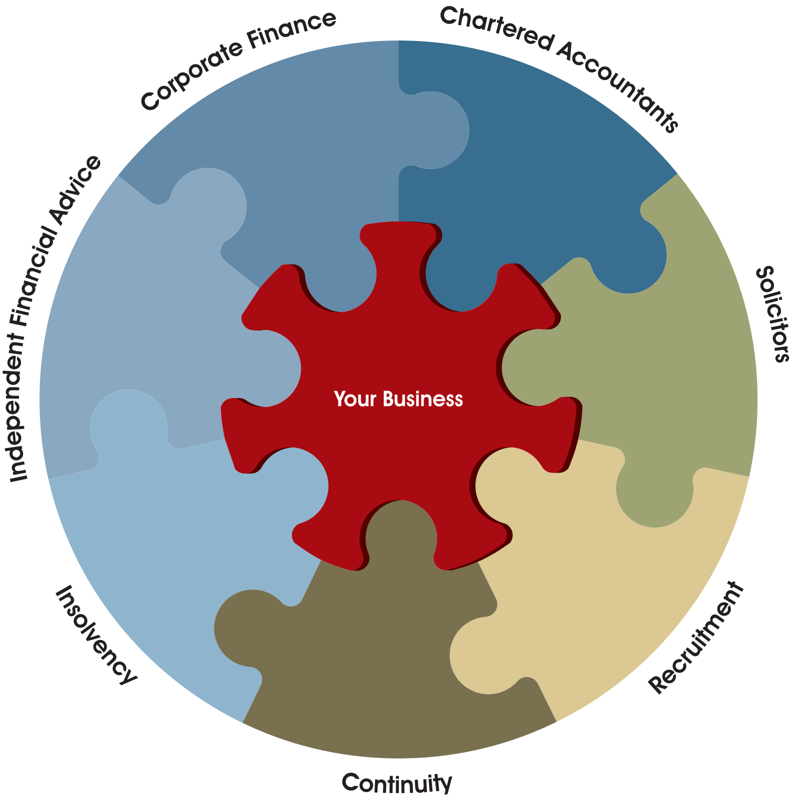
The United Kingdom of Great Britain and Northern Ireland is comprised of the countries of England, Scotland, Wales and Northern Ireland, which are governed by three separate and distinct legal systems.

This guide outlines the position under the laws of England and Wales and any reference to the “UK” herein simply means England and Wales. Although the position is likely to be similar in Scotland and Northern Ireland, there are regional differences and any business considering setting up in either Scotland or Northern Ireland should take specialist advice from a suitable practitioner.

Many areas of law change with great speed. This Guide is not exhaustive and should not, therefore, be regarded as constituting legal or professional advice and should not be relied on as such. Law and practice is current as at 6 April 2012. Neither Oury Clark Chartered Accountants nor Oury Clark Solicitors accept any responsibility for any errors this guide may contain whether caused by negligence or otherwise or for any loss howsoever caused or sustained by any person who acts or refrains from acting because of matters contained herein.

1.2 About Oury Clark

Oury Clark comprises an accounting firm, a law firm, a business consultancy and a recruitment agency. We aim to be able to provide a client with a single point of contact to deal with all their requirements, whether legal or financial, so we can supply an all-round service that is value for money.



We appreciate that the time differences between the UK and the rest of the world demand around the clock response, which is why we are contactable by email and fax, and by telephone during extended office hours: there are partners and staff available from 7am to 7pm Monday to Friday and arrangements can be made to deal with matters outside these times.

With Offices in London and near Heathrow, we are ideally positioned to assist businesses setting up in England and Wales.

1.2 About Oury Clark

1.2.1 Oury Clark Offices

For further information see our website http://www.ouryclark.com or email us at contact@ouryclark.com.

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1.2 About Oury Clark

1.2.2 Oury Clark Solicitors

Immigration and Visas
The laws that govern the arrival and departure of people into the UK and their right to work in the UK.

Employment
The laws that govern staff and their employers. UK employment law is different from most European, American or Asian countries.

Corporate and Commercial
Includes: company incorporation; shareholders' agreements; partnership agreements; joint ventures; acquisitions/mergers/
disposals; commercial contracts; terms and conditions of sale; licences and exploitation agreements, etc.

Intellectual Property
Trade Mark, Patent and Copyright registration for the UK, Europe, or worldwide.

Commercial Property
Renting or buying a property for business use.

1.2 About Oury Clark

1.2.3 Oury Clark Chartered Accountants

Audit
Auditing is the verification of all financial aspects of a business. Any company or group of companies with a turnover of £6.5M or more is legally required to have an annual audit.

Back Office Services
Payroll; bookkeeping; invoicing; VAT returns; management accounts; statutory accounts preparation; company secretarial; registered office.

Personal Taxation
Working closely with our independent financial advisers ensures that your tax affairs and any tax planning measures are tailored to your personal financial position.

Company Structure and Advice
Consider the best structure for your business to enable you to achieve your commercial goals in a tax efficient manner and with any future exit strategy in mind.

1.2.3.1 Oury Clark Corporate Finance

Providing support at all stages of a transaction: buy-side advisory; sell-side advisory; business valuations and financial modelling.

1.2.3.2 Oury Clark Independent Financial Advice

Income Protection
These policies provide a payment to the employer in the event of a member of staff being unable to work for in excess of three months and the benefit continues to be paid until either full recovery has taken place or the member of staff reaches normal retirement age.

Health Care
We have access to a number of plans for the provision of private medical costs for qualifying employees

Investment
Tax-efficient investments are used whenever possible.

Pension Scheme Arrangements
Portfolio design, asset allocation and choice of funds.

1.2 About Oury Clark

1.2.3.3
Oury Clark
Insolvency

Insolvency (Company and Individual)
We deal with creditor-lead forensic investigations of insolvent companies and individuals in order to maximise the return to creditors.

Services
Acting as trustees in bankruptcy; supervising of voluntary arrangements; administrator; administrative receiver; fixed charge receiver; liquidator; advising director; forensic investigation.

1.2.4
Oury Clark Continuity LLP

Planning
OCC can work with you to ensure a practical and usable business continuity plan to cover the loss of any resource available to your business. Our planning is not dependent on any particular disaster; we aim to help protect your business regardless of the scale of the situation.

Consulting
We can provide the necessary tools and introduction to Business Continuity Management to enable you to work through and create your own plans and procedures. OCC also have the skills necessary to audit your BCM process and provide a high-level review.

Testing
We provide in-depth training exercises to evaluate your organisation's ability to execute your Business Continuity Plans and analyse its effectiveness.

Training
OCC can provide an introductory training session with your organisation to provide a good base understanding of Business Continuity Management and its importance to your business.

Software
Oury Clark Continuity are the exclusive UK providers of BCM Solutions. BCM Solutions is an advanced web-based Business Continuity solution hosted and managed by OCC.

1.2.5
Arlington Recruitment Ltd.

Recruitment
Screening, interviewing and selection of candidates.

Human Resources Management
Management of HR issues: holidays, sickness, payroll, grievance, performance, disciplinary, redundancy, dismissal.

1.3 Why Invest in the UK?

The UK has much to offer any potential investor; it attracts the most inward investment in Europe, and worldwide, it is second only to the US.

Excellent communication links make the UK a gateway to Europe and the numerous international airports, including 5 in and around London, connect it to the rest of the world.

The UK has world renowned universities, coupled with funding and grants, making it a leader in research and development. This is supplemented by a highly skilled workforce sustaining the financial centre in London.

The UK has internationally competitive taxation rates for companies.

At Oury Clark we have excellent links with banks and government agencies. We have the capability to deal with your requirements in setting up business in England; from locating premises to tax advice, to dealing with employment matters and immigration requirements. Let us deal with the administration of setting up in the UK so you can concentrate on your business - after all, your business is our business!

2 UK Matters

2.1 Geography

The United Kingdom of Great Britain and Northern Ireland (UK) is a group of islands situated in North-Western Europe and made up of four countries: England, Northern Ireland, Scotland and Wales. The geographical term “British Isles” also includes the Channel Islands and the Isle of Man, however these do not form part of the UK.

In all, the UK covers an area of 245,000 km2. The climate is generally temperate, with temperatures rarely dropping below freezing in the winter or above 30 degrees Celsius in the summer. The hottest months are July and August. The terrain comprises mainly rugged hills and low mountains, with level to rolling plains in east and southeast.

The UK’s main cities are: London (capital of England), Belfast (capital of Northern Ireland), Cardiff (capital of Wales), Edinburgh (capital of Scotland), Birmingham, Glasgow, Liverpool, Leeds and Manchester. Due to the established infrastructure, travel between and within major cities is simple and efficient.

The UK has a constantly improving rail network providing inter-city travel connecting London and Edinburgh in just four hours. The UK is also connected to mainland Europe via the Channel Tunnel, which provides a high-speed rail link for passengers on foot or by car. The Eurostar runs with trains connecting London to Paris in 2 hours 15 minutes. London’s Underground service connects London’s airports and rail stations as well as providing quick and easy travel in and around the capital.

All major cities have international airports that connect the UK to the rest of the world. Flight times from London:

to New York - approx. 8 hours;
to Geneva - approx. 1hour 40 minutes;
to Hong Kong - approx. 12 hours

Regular domestic services run from all airports.

2.1 Geography

2.2 Language and Culture

The primary spoken language in the UK is English. In Wales, Welsh has official status and ranks equally with English - both languages are shown on all road signs - though Welsh is understood only by a minority.

The main religion is Christianity but the UK is a multicultural society.

2.3 Population

The Office for National Statistics estimates the UK population to be 62.3 million people, as of the end of 2011 - with 84% of the population situated in England, and 7.7 million of those concentrated in London. Further information about the demographics of the UK is available at http://www.statistics.gov.uk.

2.4 Currency

The currency of the UK is the pound sterling (symbol £; international abbreviation GBP). The Bank of England is the central bank of the United Kingdom. At present, there are no firm plans for the UK to join the Euro.

2.5 Labour Force

At the end of 2011, there were some 29.12 million people in work, representing 70% of the working population. This includes those in self-employment who account for about 3.95 million. The workforce is generally well-educated and there is a wide range of skills available.

3 Political and Legislative Matters

3.1 Political System

The United Kingdom (UK) is a constitutional monarchy. The Queen remains Head of State though the position is politically neutral and the country is in practice governed by Parliament which sits in London.

Parliament comprises two Houses, sometimes called ‘Chambers’. The House of Commons (also known as the Lower House) is, in practice, the superior of the two although most legislation must be passed by both houses before becoming law. It has 650 Members who are elected by universal suffrage for all eligible voters over the age of 18 in a General Election.

There are some citizens who are not eligible to vote, such as prisoners and the insane, but the vast majority of UK citizens have the vote.

The Parliament is elected for a five-year term, although the Prime Minister may choose to call an election sooner.

The House of Lords, or Upper House as it is sometimes known, is not elected. Historically, it comprised senior bishops of the Church of England (the official state Church), hereditary peers, senior members of the judiciary (‘Law Lords’), and Life Peers – members appointed by the monarch on the recommendation of the Prime Minister to sit as members of the house for their lifetime.

Following reforms in 1999, the majority of hereditary peers lost their rights to sit in the House, though 92 were allowed to stay on. Although the government has promised further reform, there is no timetable for this to be completed.

As of December 2011 there are currently about 788 members of the House of Lords. For further information see http://www.parliament.uk.

Ultimately, the powers of the legislature, the executive, and the judiciary are derived from the Crown – the UK has a constitutional monarchy. The present head of state is HM Queen Elizabeth II. She came to the throne in 1952.

Following referendums in 1997, and progress being made in the political attempts to bring an end to terrorism in Northern Ireland, that province, as well as Wales and Scotland, all have their own local parliaments, known as assemblies in Wales and Northern Ireland, and as the Scottish Parliament in Scotland.

Although the bulk of funding that each assembly has to spend in its region comes from London, and each is still represented in cabinet by a minister; each assembly has a degree of autonomy, though still being short of fully devolved government. Scotland has the power to vary the basic rate of income tax and has greater legislative powers than Wales. Because of historical differences, Scotland and Northern Ireland have legal systems, etc. that are different from those in England and Wales.

3.1.1 Channel Islands and the Isle of Man

These are part of the British Isles, but are not part of the UK and are referred to as ‘Crown Dependencies’. They have their own legislatures, again deriving authority from the Crown. Their nationals are recognised as UK nationals.

Certain areas of government, such as defence and civil aviation, are dealt with by the UK parliament, albeit being adopted by local legislation. In other respects, such as economic and tax policies, etc., the islands are completely self-governing, with their own administrative and judicial systems.

3.1.2 Constitution

The UK does not have a written constitution. There is no one document that sets out the rights and duties of government, the judiciary, etc.

The rights of citizens are enshrined in common law (judge-made law) and statute, such as the Human Rights Act. Specific aspects of parliamentary procedure are dealt with by statute, but much comes from historical precedent.

Some commentators have seen the 1998 Human Rights Act as the beginning of a written constitution in the UK. This is, perhaps, overstating the case: earlier enactments, such as Magna Carta and the Bill of Rights, set some fundamental limits on the authority of the state. Magna Carta dates from 1215, but did not lead to the creation of a written constitution.

Importantly, under the Human Rights Act, while the courts can decide that an individual's rights have been infringed and can declare that a particular piece of legislation is incompatible with the Act, they cannot strike down legislation that is incompatible. More detail on the Human Rights Act can be found at section 15.6.

3.1.3 Electoral System

As mentioned above, the House of Commons has 650 elected members, of which one, the Speaker, is non-partisan - traditionally his or her seat is not contested at elections. Each member represents ('sits for') an individual constituency. This is a geographical area comprising an average of approx 68,000 voters. Areas closer to the seat of power – London – are under-represented (i.e. the number of voters in each constituency is greater) whereas those in areas further away from London, such as the highlands of Scotland, are proportionately over-represented.

Voting is by way of secret ballot, either in a general election, when all Members of Parliament are voted for, or in a by-election, when a casual vacancy, caused by death or resignation, has to be filled.

The vote always takes place on a Thursday, though the government is experimenting with alternative voting arrangements in an attempt to increase the level of voter turnout.

The election is carried out on a system known as 'first-past-the-post': the winner is the candidate who achieves the highest number of votes, even though that may not be over 50% of the total votes cast. Voting is now based largely on the political party of which a candidate is a member.

3.1.4 The Executive

Whoever can command a majority in the House of Commons forms the government. In practice, this means that the Prime Minister (in effect the chief executive) is the leader of the majority party. In theory, they can be a member of the House of Lords, but since the early 1900s, all Prime Ministers have been members of the House of Commons. The leader of the largest party is invited by the Queen to form a government.

The Prime Minister then appoints his Cabinet – ministers with responsibilities for particular aspects of the administration, such as the economy, defence, foreign policy and so on. Cabinet ministers are normally, though not always, the head of an administrative department; their formal title is usually Secretary of State for [department], though the head of the Treasury (the economic ministry) is known as the Chancellor of the Exchequer, and the Secretary of State for Business, Innovation and Skills sometimes goes by the name 'President of the Board of Trade'.

The Prime Minister ('PM') also appoints more junior ministers who assist the department heads in the political running of the administration. Ministers are normally chosen from the ranks of the PM's own party, but there have been occasions where members of other parties have been given ministerial posts. Since ministers are responsible to Parliament, they are all members of the legislature, whether MPs or members of the House of Lords.

If the party has a majority, the above process should not present a problem; however, if there is no overall majority, then there may be a minority or coalition government, depending on whether appropriate arrangements can be made with one or more of the other parties.

This was the case with the most recent election, which resulted in an agreement between the Conservative and Liberal Democrat parties leading to the formation of a coalition government. The Prime Minister, is the leader of the Conservative Party but several Cabinet positions are held by Liberal Democrat MPs including that of Deputy Prime Minister, which is held by the leader of the Liberal Democrats.

The Civil Service carries out the actual administration – state employees who carry out the will of their political masters. By tradition, the Civil Service is apolitical. A recent development has been the appointment of politically biased, paid advisers to ministers; these are nominally civil servants, but eschew the traditions of impartiality.

The Government is subject to scrutiny by Parliament. This is done by ministers giving reports to Parliament and answering questions, and by committees of the two Houses scrutinising the activities of various departments and calling ministers and Civil Servants to account.

However, where a government has a large majority in the House of Commons, the actual power of Parliament is limited – the opposition parties may criticise the government, but there is little they can actually do. In effect, a government with a large majority can be regarded as a quasi-dictatorship: provided party discipline is strong enough to ensure consistent majorities in any votes in the Commons, it can largely do as it wishes.

3.1.5 Local Government

Whilst the details of this framework differ between the countries of the United Kingdom some elements are common to all, the principal of which being that Local Government derives its power from Central Government. Its funding comes both from central funds and also from its ability to raise local property taxes – such as the council tax – which are paid by households in the area.

In England, local government is generally structured through County Councils, who are responsible for relatively large scale activities such as the maintenance of major roads, police forces and local education.

Some areas no longer have County Councils - Berkshire, for example, ceased to have an overall County Council on 1 April 1998 and its functions have been passed over to the District Councils – renamed as Unitary Authorities to reflect their enhanced responsibilities.

The next tier is the District Council, which looks after matters at a more local level, dealing with matters such as housing and environmental issues.

In some areas there are also Parish Councils, dealing with matters at a very local level, such as street lighting.

In major conurbations, the structure is dealt with largely at district level, with local councillors sitting on a citywide body to make local policy. The major exception to this is London, which has its own Assembly and Mayor to deal with large-scale issues, while largely leaving the District and City Councils to handle local matters.

3.1.6 Judicial Review

In recent years, an increasing number of decisions taken by government, both national and local, have been challenged in the courts through a process known as judicial review. This allows the courts to overturn administrative decisions if the decisions are unfair or go beyond the legal powers of the administration; however, it does not allow the courts to overturn a decision purely on policy grounds or because the judge disagrees with the decision.

3.2 How Legislation is Made

3.2.1 Acts of Parliament

Statute law – Acts of Parliament – is the supreme source of law in the UK, except with regard to the European Union. As government has become involved with more and more aspects of the running of the country, particularly since 1945, there has been a vast increase in the level of legislation being produced.

The majority of legislation is introduced by the government to give legal effect to its political policies. A very small amount of law comes from law introduced by individual MPs under a system known as ‘private members’ bills’: this is where a handful of MPs from all parties win a ballot to allow them to try to bring in legislation on a subject where they have a special interest .Very few pieces of draft legislation introduced in this way are ever enacted, although the publicity surrounding the debates can bring moral pressure to bear on the government – which is why the winning MPs are heavily lobbied by pressure groups seeking publicity for individual causes. The third source of statute comes from private bills – these are bills proposed and financed by extra-Parliamentary bodies, such as local authorities and companies.

To become an Act of Parliament, the draft legislation is introduced to Parliament as a Bill, either in the Lords or the Commons. It is then ‘read’ to the House (not in detail – the first reading is now no more than a formality, with only the title being announced). Assuming it passes a vote, requiring a simple majority of the members present, it goes then to its second reading. This involves the Bill being debated on the main principles of the proposed legislation, and is followed by a vote. If the Bill is passed at this stage, it is then subject to detailed scrutiny by a standing committee of the House – in the case of the House of Commons, the committee will have between 16 and 50 members, with its membership reflecting the party balance in the House. The committee considers and debates the Bill clause by clause, in theory both for the way it is drafted and the legal impact it will have. In practice, particularly with very technical bills, such as those dealing with taxation, the quality of scrutiny leaves much to be desired. Once through the standing committee, the Bill goes to the ‘report stage’ – a report is made to the House detailing the committee’s amendments, which are then voted on.

The Bill is then read for a third time, with the debate being confined to the actual contents of the Bill, rather than its general principles. If the Bill is one that has been introduced in the Commons, it then passes to the House of Lords. The procedures there are similar to those in the Commons, except that there is no standing committee. If the Lords disagree with a Bill passed by the Commons, they have a limited veto power. For most Bills, they can delay enactment by a year. In the case of 'money bills' – Bills dealing with financial matters – the delay can only be one month. Any public bill passed by the Lords cannot become law until the House of Commons passes it – if the Commons rejects it, it is not just a matter of delay but one of termination.

The final step is for the Bill to be read before the Lord Commissioners, who represent the Queen. They signify consent by raising their hats – at that point the Bill becomes an Act of Parliament and is said to have received Royal Assent. Although the Act may now be on the statute books, its provisions may not come into immediate effect. In many cases, some or all of the Act's provisions may only be effective from a date set out in a Statutory Instrument (see 3.2.3 overleaf).

3.2.2 Case Law

Statute is subject to judicial interpretation, and the body of law developed by the courts is known as case law. The courts are bound by a doctrine known as precedent – the earlier decision of a more senior court binds the hands of the lower courts in the future.

Since 1966 however, the Supreme Court (formerly known as the Judicial Committee of the House of Lords) ceased to be bound by its earlier decisions.

In addition the European Court of Justice became the court of final appeal as of the Constitutional Reform Act 1995.

Case law is reported via a system of law reports, and this represents a major source of law. It shows how the courts have interpreted the will of Parliament where legislation exists, and creates new law where there is no statutory guidance.

3.2.3 Delegated Legislation

The other major body of law in the UK is delegated legislation, also known as secondary legislation. This largely takes the form of Orders in Council, Regulations and Rules known as Statutory Instruments. Government departments produce these, and the idea is that they give detailed procedural guidance to matters not set out in the relevant Act, where authority is given in the Act to address such matters by way of a Statutory Instrument. They are useful in that they enable Parliament not to have to debate the minutiae of, for example, double-tax treaties. However, there are dangers where matters of substance are dealt with in this way as they technically have Parliamentary approval (having been 'laid before the House' for, normally, 40 days before becoming effective) but where there is little or no effective scrutiny. Some 3,000 such instruments are created each year.

3.3 Europe

Following the UK's entry into the European Union in 1973, in certain areas, Parliament is no longer supreme in many aspects of governing the UK. The Maastricht Treaty which came into force on 1 November 1993 actually established the European Union. Prior to that, the grouping was known as the European Economic Communities, and consisted of the European Community, the European Coal and Steel Community and the European Atomic Energy Community. In addition to bringing the separate communities together, Maastricht introduced inter-governmental agreements on security and foreign policy and brought about greater cooperation in justice and home (internal) affairs.

The relationship between national parliaments and the EU continues to evolve. However, it is clear that in many areas, such as those dealing with competition policy or VAT (value added tax, a sales tax common throughout the EU), which derive from European law, it is that law which overrides national law. Under the Treaty of Rome, EU Regulations have direct force of law in the UK, even where they have not been enacted here. Directives, however, simply require member states to give legal effect to their contents, so have no force of law until they have been so enacted – but if loss occurs because of a failure to implement the Directive, or if the implementation is faulty, the offending state may be liable to pay damages.

The EU presently comprises 27 member nations: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Norway, Iceland and Liechtenstein are members of the European Economic Area ('EEA'). Under the EEA Agreement, which came into force on 1 January 1994, all EU legislation in relation to goods and services also applies in the EEA member states.

4 Structure Matters

Having made the decision to operate in the UK, an overseas investor will need to decide on the appropriate commercial vehicle for the UK operation. Outlined below are the main structures whereby businesses are run in the UK. The choice should not be made without detailed consideration of the pros and cons that each has to offer. The tax treatment varies for each structure and this can have a major effect on the actual profitability of the operation overall. A vehicle should be chosen which provides the most appropriate mix of tax breaks and commercial advantages to the overall operation of both the business and the parent group.

The main types of business structure that might be considered in the UK are:

- UK establishments
- Limited companies
- Partnerships and sole traders
- Limited Liability Partnerships
- Limited Partnerships

By far the most common format adopted by overseas businesses wishing to trade in the UK is the limited company.

In addition to the above, overseas businesses wanting to trade in the UK could also consider:

- Agency arrangements
- Distribution agreements
- Joint ventures

Each of these is looked at in more detail in the following pages.

4.1 UK Establishment

When an overseas business trades in the UK in its own right, as an extension of its existing business, it is called a ‘UK establishment’. Where it is an overseas corporation that is forming a UK establishment, that UK establishment will be subject to certain administrative regulations, similar to those for UK companies (see next section). When the UK establishment is first established, various documents have to be filed with the Registrar of Companies in accordance with the Overseas Companies Regulations 2009.

The Registrar is the chief officer of a government agency, Companies House. Companies House is where details of all incorporated bodies operating in the UK are kept, including copies of accounts, details of directors and so on.

There is a standard form that has to be filed with the Registrar (Form OS IN01). This gives information regarding the overseas company’s place of incorporation, officers, directors and the date the business set up a presence in the UK and an address (and named individual) in the UK where formal notices can be legally served.

The form has to be accompanied by a copy of the overseas corporation’s constitution and by-laws, translated into English if necessary.

The copy has to be certified by one of the corporation's officers and paperwork has to be filed with Companies House within one month of the UK establishment being established in the UK.

It should be noted that all of this information is publicly available - certain details of which may not otherwise normally be available in the home jurisdiction (such as copies of the "parent" accounts).

This is often a reason why many overseas companies prefer to operate in the UK via a wholly-owned UK limited company.

Similarly, if the UK establishment incurs debts in the UK and defaults on them, the 'parent' entity is wholly liable for these, without any limitation. In addition there are ongoing filing requirements with Companies House (see 5.12: Ongoing filing obligations) under either circumstance, though in the case of the limited company the documents may refer solely to the company itself, rather than the parent.

4.2 UK Company or Wholly-Owned Subsidiary

For most overseas investors, establishing a UK subsidiary company is generally the preferred vehicle for investing in the UK. It has the advantage of giving limited liability. The liability of a shareholder in a company limited by shares is generally limited to the amount for which the shares were issued - if there is any part of that subscription money for the shares still owing, the shareholder will be liable to contribute that money, but no more.

A private company limited by shares need only have one shareholder (although a public limited company must have at least two shareholders) and a private limited company need only issue a minimum of one share and this can be for a nominal value - often a single ordinary share priced at £1.00 (or even a lower denomination of nominal share value such as 1 pence).

The management of the company is vested in the directors - a sole director will suffice for a private limited company, although a public limited company must have at least two directors. An additional advantage to incorporation of a company is that the process is relatively quick and cheap.

There are public filing obligations. All limited liability companies are subject to registration at Companies House. At Oury Clark, we can incorporate a limited company electronically without the need for you to complete and sign any documentation. The limited company can be incorporated within 24 hours, or even on a same-day basis. Documents that are required by law to be filed with the Registrar of Companies are available for public inspection.

It is worth noting, however, that the information that is placed on public file is restricted to the company; this is in contrast to the arrangements with regard to UK establishments, where the disclosed information is in relation to the parent entity; there is, therefore, considerable merit in incorporating a UK subsidiary as this restricts the data that is publicly available.

4.3 Partnership

A Partnership is the relationship that exists between two or more parties (which can be individuals or certain other entities) carrying on a business in common with a view to making a profit. There are three types of partnership in the UK:

- a general partnership (governed by the Partnership Act 1890);
- a limited partnership (governed by the Limited Partnership Act 1907 and the Partnership Act 1890); and
- a limited liability partnership (governed by the Limited Liability Partnerships Act 2000).

Conventionally, a partnership is taken as being of the general type unless ‘limited’ is specifically mentioned.

In the case of the general partnership, all of the partners are jointly and severally liable for all the partnership’s debts. This means that, if the partnership itself runs out of money to pay off its creditors, the creditors can attack the personal assets of any and all of the partners. The liability of each partner is unlimited.

There are no formal requirements in setting up a general partnership - the mere intention of two or more parties to carry on a business in common with a view to making a profit is sufficient to create the partnership. It is strongly advised, however, that the partners enter into a written partnership agreement to regulate their respective rights and obligations and the conduct and management of the partnership. This becomes particularly useful should there ever be any disputes or disagreements between the partners in the future.

In a limited partnership (not to be confused with a limited liability partnership), there must be at least one general partner (who has unlimited liability - similar to a partner in a general partnership) and at least one limited partner (whose liability is limited to the extent of the capital they have contributed - or agreed to contribute - to the limited partnership).

However, limited partners are not allowed to participate in the management and running of the business – they are, effectively, ‘sleeping’ partners. The management of the business is carried out by the general partner(s).

Owing to the restrictions on authority limits, limited partnerships are not often used as a vehicle for conventional joint venture arrangements. However, for tax reasons, the limited partnership has gained acceptance in the UK as a vehicle for certain types of investment, such as filmmaking, some property ventures and investment in unquoted shares.

A general partnership requires a minimum number of two (general) partners, a limited partnership at least one general partner and one limited partner and a limited liability partnership (see further details below) must have a minimum of two members. There is no upper limit on the number of partners (or members in a limited liability partnership) nor is there any requirement for partners (or members) to be UK resident.

A limited partnership must be registered with the Registrar of Companies. However, for both a general partnership and a limited partnership, there are no public disclosure rules for partnership information and accounts, unless the general partner is itself a limited company - in which case the partnership accounts have to be filed along with the limited company's accounts.

There is no restriction on companies being partners, so it is possible for there to be a partnership where all or some of the partners are actually limited companies in their own right.

If a partnership is chosen as a legal structure, individual partners are taxed on their own share of the profits. So, losses arising from the partnership's trade can be set against other income of the partners and losses from other trades can be set against partnership income.

In the absence of a written partnership agreement, the statutes mentioned above will determine the relationship between partners regarding matters such as sharing of profits and termination of the partnership. For a joint venture, it would be normal for there to be a detailed partnership agreement setting out the rights and obligations of each partner, termination provisions, profit shares and so forth.

There is no requirement for any of the partners in either a general or limited partnership to be UK resident. Except in Scotland, a partnership has no legal personality distinct from the partners.

4.4 Limited Liability Partnership

The Limited Liability Partnerships Act 2000 came into force on 6 April 2001. The Act introduced a new form of corporate business association, the Limited Liability Partnership (LLP), the object of which is to allow a business 'to trade with limited liability while retaining the organisational flexibility of a partnership, the partnership practice of distributing profits to members annually and the associated partnership basis of taxation'.

An LLP, therefore, has the internal flexibility and informality of a partnership whilst externally - to give protection to creditors and those with whom it trades - it has obligations akin to a limited company.

LLPs are required to file accounts with Companies House, notify changes in its registered office, etc. LLPs are incorporated by registration with Companies House. Unlike the older types of partnerships, LLPs are recognised as legal entities in their own right.

An LLP must have at least two members. At least two of the members must be appointed to take on the responsibilities of the day-to-day management and control of the LLP, including the requirement to file annual accounts at Companies House - similar to the duties of a director of a limited company.

These two members are known as the 'Designated Members'. As with partnerships, there is no requirement for any of the members of the LLP to be UK resident. As with the incorporation of a limited company, Oury Clark can incorporate an LLP electronically for you - without the need for you to have to sign any incorporation papers - within 24 hours, or even on a same-day basis.

4.5 Agency Agreements

It may be possible to achieve the investor's objectives by appointing a UK agent to deal with the business's affairs here. If that route is chosen, the relationship between the agent and his principal must be carefully documented, and should cover items such as

- The duration of the arrangement;
- Rights and obligations of each of the parties;
- Authority limits;
- Remuneration arrangements; and
- Termination provisions.

Generally, the agent will be able to enter into binding contracts on behalf of his principal, unless he is specifically limited.

4.6 Distribution Agreements

There are prohibitions in EU competition policy affecting distribution arrangements (see section 12.10 EU competition policy). Advice needs to be taken about any proposed distribution agreement.

The use of a standard agreement may be suitable, but often such agreements will, by default, contain clauses that breach EU regulations, or infringe English law, such as limitations on liability.

There are basically four types of distribution agreement:

4.6.1 Exclusive

The supplier grants the distributor the right to distribute some or all of its products on an exclusive basis within a specified territory. The agreement would need to be drawn up so that it fell within one of the 'block exemptions' (a pronouncement by the EU that certain competition policy restrictions do not apply to a certain industry - one example being the exemption given in respect of motor manufacturer franchises and dealerships). If that is not possible, an application for 'negative clearance' (where the Commission confirms that it is satisfied the policy restrictions do not apply in a specific case) would have to be made.

4.6.2 Sole

The supplier appoints a distributor as their only or sole distributor within a territory, but the supplier reserves the right to supply the products directly to end users. Such an agreement should always clarify the meaning of the term "sole distributorship" and would contain similar provisions and restrictions to those in an exclusive arrangement, with the advantage of affording more control to the supplier over the territory who can continue to deal with their customers in the territory whilst setting targets for the distributor. As for exclusive distributorships, the agreement would need to be drawn up so that it fell within one of the 'block exemptions'

4.6.3 Non-Exclusive

The supplier grants distribution rights to more than one distributor in a particular territory. No block exemptions affect these agreements. If EU competition rules would impact on the agreement, an application for individual exemption or negative clearance would be needed.
The supplier forms a network of selected distributors, typically to sell specialised and/or high quality items. The agreement will typically require the distributor to employ highly skilled staff, and the products can be sold to end users or other network members, but not to anyone else.

The supplier appoints a distributor as part of a selective distribution system, whereby the distributor will usually agree to only sell on products to end users or to other approved distributors. Furthermore additional distributors may be appointed if they meet certain criteria.

4.6.4 Selective

Selective distributorship arrangements are particularly suitable where the nature of the product requires an enhanced level of service or advice at the point of sale to the customer and where the supplier or manufacturer will be required to provide after-sales support. This area of the law is prone to Infringement of EC competition law, so consideration must be given to but has lawfully been used to whether the agreement falls within one of the 'block exemptions'.

4.7 Joint Ventures

4.7.1 Limited Company

The most common vehicle for joint ventures is to use a limited company set up specifically for that purpose. However, other vehicles that may be appropriate are a general partnership, a limited partnership, or limited liability partnership.

In the absence of a specific business vehicle (i.e. a legal entity), the parties may simply enter into a contractual arrangement governing their respective rights and obligations and the management and conduct of the business between them. An outline of these arrangements is given below.

There is no specific joint venture company, but a normal limited company can be used - if one is used as the vehicle for a joint venture there are additional matters that will need to be addressed, in particular how the profits are to be split and what the funding and management arrangements are to be.

It is normal for these matters to be set out in a joint venture or shareholders' agreement. Each agreement has to be tailored to meet the specific requirements and circumstances of the parties.

4.7.2 Partnerships

There is no specific joint venture partnership recognised in English law. The rules governing joint venture partnerships are the same as those dealing with any other partnership as outlined above.

4.7.3 Contractual Arrangement

This is the most informal method of dealing with a joint venture. A contract is drawn up dealing with profit shares, etc. It is particularly suitable for one-off projects. It has the advantage of avoiding the liability problems that come with partnerships and the publicity and administrative burdens that accompany a limited company structure.

4.8 Note Paper

4.8.1 Limited Companies

All businesses have requirements as to what should go on notepaper, invoices, etc. These vary according to whether the business is VAT-registered and also differ from one type of business organisation to another.

The requirements vary depending on the particular piece of stationery in question:

Since October 2008 letters, emails and orders must show:

- The full registered name of the company (and not just a trading name).
- The place of registration in the UK – this will be either England and Wales, Scotland or Northern Ireland.
- The address of the registered office.
- The company number.
- You need not list the names of the directors, but if you choose to do so, you must list the names of ALL of the directors.

There is no requirement for the details of the company secretary to be given - you should note that there is now no longer any requirement for a private limited company to have a company secretary.

Invoices

- Name and address or registered office of the company.
- VAT registration number.
- Invoice number which must be sequential.

Cheques, Forms and Official Publications

- These simply have to show the name of the company.

Premises

- The address of the registered office has to be displayed prominently within the premises.
- The name of the company has to be displayed in a conspicuous position outside every office or place of business of the company.

Websites

- Company registration number
- Place of registration
- Registered office address
- VAT No.
- Name, geographic address and trading name

4.8.2 Partnerships

On every letter, order, invoice and receipt a partnership is required to show the names of all the partners (unless there are over 20 of them) together with details of the principal place of business of the partnership.

The same information has to be displayed at every place of business of the partnership.

If there are more than 20 partners and the partnership takes advantage of the exemption, then details of where a list of partners' names may be inspected have to be given instead.

Invoices have to give the VAT registration number where applicable.

4.8.3 Sole Trader

If the business uses a trading style or name that is something other than the proprietor's own name, then his name as well as the business address has to be shown on all letters, orders, invoices and receipts.

Again, if the business is VAT registered then invoices have to give the VAT registration number.

4.8.4 Limited Liability Partnerships

Every LLP has to have its name displayed outside every office or place in which it conducts business. This has to be both conspicuous and legible.

On business letters, notices and other official publications, bills of exchange, promissory notes, endorsements, cheques, etc., and all invoices receipts and letters of credit, the LLP has to state its name and that of its members and the address of the registered office as well as identifying the fact that it is an LLP.

As with partnerships, where there are more than 20 members, an LLP may choose not to show the names of individual members but rather to give details of where a list of members' names may be inspected instead.

On business letters and order forms, an LLP must show its place of registration and registered number. The place of registration will be Cardiff, London, Edinburgh, England, Wales, Scotland or England & Wales.

In addition, on all business letters and order forms the fact that the business is a limited liability partnership has to be stated and the address of the registered office also has to be given.

4.9 Accounting and Auditing

4.9.1 Financial Statements

All businesses, whether incorporated or not, need to maintain accounts and keep records of transactions. All companies are required by law to maintain accounting records that enable accounts to be drawn up that represent a true and fair reflection of the companies' finances.

Unlike many jurisdictions, particularly in mainland Europe, the UK does not prescribe the form in which books and records have to be kept, and similarly there is no specific chart of accounts that has to be followed. This means that each business can develop a methodology that is appropriate to its requirements.

There are some specific requirements for record keeping so that payroll taxes - Pay As You Earn (PAYE) and National Insurance Contributions (NICs) - and Value Added Tax (VAT) can be accounted for correctly.

Companies and LLPs are required to file financial statements with Companies House. Unincorporated enterprises are not required to do so. For companies and LLPs, the financial statements must give a true and fair view of the entity's profit or loss and of its balance sheet at the end of the financial period.

This means that the UK's generally accepted accounting principles (GAAP) have to be followed, and this will include compliance with UK accounting standards. These are primarily in the form of Financial Reporting Standards published by the Accounting Standards Board, and largely follow the requirements of comparable International Accounting Standards.

Additionally, the Companies Act 2006 sets out a prescribed format that all companies have to follow for their financial statements. Small and medium-sized companies are allowed to file abbreviated accounts with Companies House, and these show less detail than in a full set of financial statements. A small company is permitted to present such abbreviated accounts to its shareholders, whereas a medium-sized company is not allowed to do so.

For unincorporated businesses, there is no such compulsion to follow UK GAAP, but the profit and loss account which is used as the basis of preparing the entity's tax calculations must be compliant. In practice, however, UK GAAP are followed by most unincorporated entities.

4.9.2 Audit Requirements

Only registered auditors are allowed to carry out such audits – they are qualified accountants belonging to one of the recognised professional bodies, such as the Institute of Chartered Accountants in England and Wales.

Audits are carried out in accordance with approved international standards on auditing, as set by the Auditing Practices Board ('APB') - this is an independent body under the auspices of the Financial Reporting Council (a non-statutory body that regulates the accountancy profession and investigates published accounts for breaches of UK accounting standards) which has representative members from the main UK and Irish accountancy bodies, as well as members drawn for the business and academic worlds, the legal profession and the public sector.

An audit does not involve scrutiny of all the transactions of an enterprise; rather, it is conducted on a test basis, and structured so as to minimise the chances of undetected errors. However, an audit cannot guarantee that the financial statements are accurate or are free from error.

For financial statements commencing on or after 15 December 2009, the audit is conducted in accordance with UK clarity ISAs (International Standards on Auditing.)

The auditors will provide a formal audit report in respect of the financial statements. This will confirm whether, in their opinion, the financial statements give a true and fair view of the results of the entity and of its assets and liabilities.

There is a general mandatory audit requirement for limited companies. However, there are some exemptions from the statutory audit requirement for private companies and LLPs. If the entity has a turnover of less than £6.5 million and gross assets of less than £3.26 million, the entity may opt to dispense with the statutory audit.

These limits apply on a group basis net of consolidation adjustments, so it is often the case that even a small UK subsidiary of a larger overseas parent will need to be audited, even if the UK company has turnover and gross assets below these thresholds.

There are no such exemptions available if the entity operates in a regulated field, such as financial services. Similarly, public companies (PLCs), even if they are not quoted, cannot take advantage of the exemption. Also, if the holders of at least 10% of the voting rights insist on an audit, then the exemption cannot be used.

If the entity does take advantage of the exemption, the directors (for a company) or designated members (for an LLP) must include in the financial statements a statement confirming that the entity qualifies for exemption from audit and that they are aware of their responsibilities for ensuring that the entity maintains proper accounting records and for preparing financial statements that give a true and fair view.

5 Company Matters

5.1 Limited Liability

If an overseas company has a UK limited company as a subsidiary, then generally its liability for the debts of that subsidiary will be limited to any unpaid amounts on the share capital. In practice, the parent company may be called upon to act as guarantor where the UK company has few, if any, assets of its own, such as when starting up. This situation will often be encountered when trying to lease premises or when taking out bank or other borrowings.

5.2 Outline

Here is a brief outline of the requirements for limited liability companies incorporated under the Companies Act 2006, the present statute governing UK companies:

- The documents forming the constitution of the company are called the Memorandum and Articles of Association;
  - Under section 8 of the Companies Act 2006 Act, the memorandum of association is a memorandum stating that the subscribers wish to form a company under the 2006 Act and agree to become members of the company and, in the case of a company with a share capital, to take at least one share each. The memorandum must be in a prescribed form as stipulated by the 2006 Act and authenticated by each subscriber.
  - The memorandum is essentially a "snapshot" of part of the company's constitution at the point of registration and will have no continuing relevance. It cannot be amended or updated during the life of the company.
    Historically, the company's objectives were construed narrowly by the courts, meaning that some activities undertaken by companies, even in good faith, were ultra vires (or outside the powers of that company). However, by reforms brought about by the 1989 and 2006 Companies Acts, a company can now have a general clause in its Memorandum stating that the object of the company is to carry on business as a general commercial company and that it is to carry on any trade or business whatsoever; it can also state that it has the power to do all such things as are incidental or conducive to the carrying on of any trade or business by it;
  - The Articles provide the detailed rules for the rights of shareholders, the powers and duties of directors and, to some extent, the management of the company's business.
    Companies may adopt their own specifically tailored Articles, but in the absence of which, a 'model' set of Articles pursuant to The Companies (Model Articles) Regulations 2008 will be applied as the Company's own Articles. When adopting specifically tailored Articles, any aspect of those model Articles that are not specifically excluded or modified will apply also;

- The Memorandum and Articles are legally Companies may adopt their own specifically tailored binding on all members of the company, just as if they had individually been signed and sealed by each one individually and by the company. They therefore represent a binding contract, not just between the company and each member, but also between the members themselves;

- A copy of these constitutional documents must be filed with the Registrar of Companies on incorporation. Amendments can be made to the company's Articles at any time in the future, or indeed new Articles can be adopted in their entirety. However, as stated, the Memorandum cannot be altered after incorporation;
- Every private company must have at least one shareholder (and two as a minimum for a public company). Shareholders do not have to be individuals and do not have to be UK resident;
- Every private company must have at least one director. Two is the minimum for a public company. In neither case is there a requirement for any of the directors to be British or to live in the UK;
- Private limited companies are no longer required to have a company secretary (with effect from 6 April 2008), although public limited companies do. In a private limited company, where there is only one director, that person cannot also be the company secretary. For public companies, generally only professionally qualified people (barristers, solicitors, qualified company secretaries and qualified accountants) or corporate bodies can serve as the company secretary.
  There is no such requirement as regards the secretary (if any) of a private company. As with directors, the company secretary need not be British or UK resident; and
- A director or secretary need not be an individual – it is quite permissible for a company (or various other legal entities) to be appointed to either or both of these offices. However, a company must have at least one individual person acting as a director before other entities can be appointed in addition.

5.3 Company Formation

A private company limited by shares or by guarantee can be formed by a single person and only has to have one member. There is no upper limit on the number of members. A company limited by shares is by far the most common form. Companies limited by guarantee are companies where the members' liability is limited to the amount they have agreed to contribute to the company's assets if it is wound up.

A company is traditionally formed by delivering the following documentation to the Registrar of Companies:

- The Memorandum of Association. The memorandum must be in the prescribed form and must be authenticated by each 'subscriber' to it. For these purposes, the subscribers are the founder members, or their nominees, who agree to take and pay for at least one share each;

- The Articles of Association – as with the memorandum, they have to be signed by the subscribers. If the default Articles of Association (the "model articles" in the case of companies limited by shares in accordance with the Companies (Model Articles) Regulations 2008) are used without modification, a copy does not need to be filed, but Companies House must be notified that they are being used in this form; such notification is most easily made in the covering letter used to send all the other paperwork to Companies House;
- An application for registration must be lodged via Form IN01 setting out the proposed company name, the type of company being registered (whether public or private, limited by shares or guarantee or unlimited liability), the details of the company's registered office (must be In either and Wales, Scotland or Northern Ireland), whether model articles have been adopted or whether they are bespoke, details of the first directors and secretaries (where applicable), a statement of capital and of initial share capital where the company is to be limited by shares, or a statement of guarantee where the company is to be limited by guarantee and a statement that the company is compliant with the requirements of the 2006 Act

Companies can also now be incorporated electronically, whereby the above-documents are filed without the need for formal signatures to be added. Oury Clark can offer this service. This is very convenient for overseas clients as it avoids the need for documents to have to be signed and the originals sent back to the UK. This also makes the incorporation process much quicker and more efficient.

Once the relevant documents and incorporation fee have been filed with Companies House, provided everything is in order, a certificate of incorporation will be issued. This is, in effect, the company's birth certificate and confirms that it has been formed as a legal entity in its own right.

It carries a unique registration number that endures for as long as the company exists, irrespective of any change of name. The creation of the company is formally published in the London Gazette, an official government publication.

A private company can immediately commence trading from the date of incorporation appearing on its certificate of incorporation.

Incorporating a company electronically can be done within 24 hours of filing the required documents with the Registrar of Companies electronically (and the certificate of incorporation issued at that time), or even on a same-day basis for a nominal additional fee.

If incorporating a company by means of filing the required documents featuring manuscript signatures, the whole incorporation process can typically take anything from three to seven working days, although once again same-day incorporations are available on payment of a nominal additional fee.

An alternative to incorporating a company from scratch is to buy a pre-existing company (referred to as an off-the-shelf company) from a company formation agent. This is a company that has been dormant since incorporation and will be supplied with a certificate confirming that it has never traded, etc. The name can be changed to something more suitable to the purchaser's requirements (shelf companies typically have stock names, such as ShelfCo112 Ltd) and the constitutional documents can also be tailored to the purchaser's requirements.

As the company is already in existence, it is able to trade immediately. Off-the-shelf companies were more common in the past when it could take Companies House significantly longer to incorporate a company - this was an issue when parties required a business vehicle to trade immediately.

Due to the fact that Companies House now offers a same-day incorporation service (for an additional fee of around £50) and the advent of electronic incorporation, there is now far less need for off-the-shelf companies.

The incorporation process can be performed in hard copy or on-line. Oury Clark offer both bespoke (electronic and hard copy) and off-the-shelf companies to our clients.

5.4 Company Names

Every company has a name and number. The fact that there is limited liability is denoted by the last word of the name being, in the case of a private company, Limited, and for a public company, Public Limited Company. Abbreviations and Welsh equivalents may be used.

The Registrar of Companies maintains a list of all existing company names. No two companies are allowed to have the same name, and there are also restrictions on names that are so similar as to be confusing. A company does not have to use its corporate name as its trading name, ('business name' for the purposes of the Companies Act 2006). It could, for example, be called Exempli Gratia Ltd. but trade under the style of Id Est Trading. Provided the requirements of the Companies Act 2006 regarding business names are followed (e.g. the name should not be misleading or use the name of a government body without having been granted prior approval from that body), such trading styles are allowed.

There is no register of business names, but there exists a tort (common law wrong) of passing off – this is where one business engages in a similar area of work using a similar name such that confusion could arise in the minds of the public. The wrongdoer can be compelled by the courts to stop using that trading style, and damages may also be recoverable.

In addition to the above requirements, there are also certain statutory regulations dealing with company names and trading styles. No name can be registered which would, in the opinion of the Secretary of State, constitute a criminal offence or be offensive. In addition, no company can have a name that would be likely to give the impression that it was in some way connected with local or national government. Finally, there are several words that cannot appear in a company name, or can only appear in certain circumstances or where consent has been obtained where relevant. Among these are:

British	International	Scottish	England
Ireland	United Kingdom	English	Great Britain
National	European	Group	Holding

Oddly enough, the abbreviation UK is not a prohibited one.

The display of the company name must be in characters that can be read by the naked eye and must appear in a conspicuous place outside the Company's registered office and outside any location where it carries on business or keeps it records available for public inspection. The name must appear legibly on the following documents:

- Business letters, notices and other official publications;
- Bills of exchange, promissory notes, letters of credit, endorsements, and cheques;
- Orders for money or goods purporting to be signed by or on behalf of the company; and
- Bills of parcels (an itemised statement of articles sold, prepared by the vendor); and
- Invoices and receipt; and
- Applications for licences to carry on a trade or activity; and
- All other forms of business correspondence and documentation; and
- Its websites.

The registration of a particular name at Companies House does not, of itself, give the company any proprietary rights. These only accrue once the company commences trading in the UK and thereby generates goodwill. The only exception to this is where the name is registered as a trademark (see 15.1.3: Trade and Service Marks or Names). Conversely, the registration at Companies House of a specific name does not give any assurance that trademarks, etc. are not being infringed, so care needs to be taken when choosing a company name or business trading name.

5.5 Registered Office

Every company has to have a registered office in its country of incorporation - either in (i) England and Wales, (ii) Scotland, or (iii) Northern Ireland. This is the address where legal documents and formal papers can be served on the company. It does not need to be the address from which the company trades, and frequently it will be at the offices of the company's solicitors or accountants. Oury Clark's offices act as the registered offices for many of our clients.

5.6 Company Seal

There is no longer a requirement for UK companies to have a company seal, although some companies (particularly large organisations) maintain one. Additionally, there are many non-UK jurisdictions that expect corporate documents to be sealed.

5.7 Public Companies

A company may be either private or public. The main restriction on a private company limited by shares is that the company's shares cannot be offered for public subscription. There are various legal issues that must be complied with before a company can be incorporated as a public company including:

- The company must have at least two directors and a company secretary;
- It must have a minimum allotted share capital of £50,000. At least 25% of this must be paid up and, if there is a premium on the shares i.e. where the shares are allotted for more than their face value (also known as nominal or par value), the whole of the premium has to be paid;
- Shares taken by a subscriber to the memorandum of a public company and any premium on the shares must be paid up in cash (section 584, 2006 Act).
- Its name must end in 'public limited company' or 'plc' (or the Welsh equivalent 'cwmni cyfyngedig cyhoeddus');
- It must be registered with the Registrar of Companies as a public company; and
- Before it can start operating its business or exercising any borrowing powers, it has to obtain a certificate from the Registrar of Companies confirming compliance with the various regulations regarding share capital. This is a separate document from the certificate of incorporation. The details given are:
  - Confirmation that the nominal value of the company's allotted share capital is not less than the authorised minimum;
  - The amount (or an estimate) of the preliminary expenses and details of who paid, or is liable to pay, such expenses; and
  - Details of any amount or benefit paid or given (or intended to be paid or given) to any promoter of the company, and what consideration has been or will be given for such payment or benefit; and
  - Stating that the company meets the requirements for the issue of a certificate under section 761 of the 2006 Act.

Public companies are generally subject to stricter statutory requirements than private companies. Among the main areas where there are significant differences are:

- The rules relating to the payment and maintenance of capital;
- Publication of, and content of, accounts;
- Loans to directors; and
- Redemption or purchase of their own shares.

Simply because a company is a public company, it does not mean that it is publicly quoted or listed on the London Stock Exchange. Many remain privately owned and have plc status for kudos or other commercial reasons.

It is possible for the owner or promoter of the business to deal with all the paperwork required to get a company incorporated. However, because the way in which the company's constitutional documents are written can have a significant impact on the way it operates, this is an area where advice should be taken before incorporation and most companies are incorporated by company formation agents or solicitors or accountants for their clients.. Although it is generally possible to rectify or amend any areas where matters are not functioning as they should, it is preferable to get things right from the outset.

It is possible for a private company to re-register as a public company, and vice versa.

5.8 Shares

5.8.1 Share Capital

The treatment of shares is different for private companies and public companies.

For private companies, the previous requirement for a specified initial authorised share capital (i.e. the maximum nominal value of shares issuable by the company) was abolished by the Companies Act 2006. Instead, a private company wishing to restrict the number of shares it can issue should do so by way of a special resolution within its articles. Share capital for private companies does not have to be denominated in sterling – it is quite possible for some or all of the shares to be denominated in one or more foreign currencies

For public companies the requirement for an initial specified allotted share capital remains. The nominal value must be no less than the authorised minimum of £50,000 and must be nominated in either sterling or euros, (please note that subsequent issued share capital can be denominated in a foreign currency). This initial share capital must be maintained by the public company.

The issued share capital is that part of the authorised share capital that has actually been issued to its members. Shares can be issued fully or partly paid – i.e. with some of the subscription money owing. Also, the shares can be issued at a premium – that is, they can be issued for more than their par or nominal value. Any such premium is accounted for separately from the issued share capital in the company's accounts. However, it is not permitted for shares to be issued at a discount on their par or nominal value. There is no stamp duty on the issue of shares.

Shares do not have to be issued for cash – it is not uncommon for other assets to be transferred to the company as consideration for the shares. In this case, there may be stamp duty implications, depending on the nature and value of the property transferred. In addition, there are particular valuation and administration matters that public (but not private) companies have to comply with.

5.8.2 Types of Share

It is quite common for companies to have more than one class of share. Unless prohibited by its Memorandum, a company can have different classes of shares carrying different rights.

For example, there may be preference shares, carrying a fixed or variable rate of return, on a cumulative or non-cumulative basis (i.e. if the dividend is not paid, whether these accumulate or not) or which are converted into other classes of share. Most typical shares are known as 'ordinary' shares.

Class rights can be altered only by the approval of the holders of that class of shares – it is not possible for changes to be imposed by, say, the directors or other classes of shareholders.

5.8.3 Issue and Transfer of Shares

A company may also issue bearer shares, i.e., securities where proof of ownership is a certificate rather than a register of holders, though this is very unusual in the UK as most shares have to be registered. In addition, it is possible for a company to have stock instead of, or as well as shares. Again, this is unusual, but there may be circumstances where the ability to have fractional amounts necessitates the use of stock.

Directors of a private company with only one class of shares may, unless they are prohibited from doing so by the articles, allot shares (or grant rights to subscribe for shares or to convert any security into shares) without any prior approval from the members.

Directors of public companies; private companies with more than one class of shares; or private companies with only one class of shares where the company's articles prohibit the issue of new shares without a resolution being passed, may only allot shares if they have been given prior authorisation by the mechanism prescribed in the company's articles. The prior authorisation, or a renewal of such authorisation, must state the maximum number of shares to be allotted and the date on which it will expire (which must not be more than five years from the date of the resolution or incorporation if the authority is included in the articles).

Share capital can be reduced by special resolution (although court confirmation will be required in the case of a public company), and the company may also purchase its own shares. Shares can also be cancelled, sub-divided and consolidated.

It is normal for existing shareholders to have pre-emption rights in respect of new issues of shares - this means that existing shareholders have the right of first refusal over the issue of new shares, allowing them to preserve their percentage shareholding in the company (provided that they have sufficient funds available to subscribe for the new shares).

These pre-emption rights can be waived by the members, or there may be alternative provisions already set out in the Articles (by which the members are already bound). All issues of shares have to be ratified by the board of directors. Any issue of new shares must be notified to Companies House using prescribed forms.

Share transfers of registered shares are effected by way of a stock transfer form or the electronic equivalent: CREST. As mentioned above, in private companies, it is quite usual for there to be pre-emption rights in favour of existing shareholders – so as to prevent dilution of existing shareholdings or to prevent the shares being transferred to persons whom the existing members do not approve.

Public companies normally have no such restrictions; indeed, if they are quoted or seeking a listing, these are not allowed to have such restrictions. For bearer shares, transfer can be effected by delivery.

For registered shares, membership of a company is not conclusively established until the new member's name has been entered in the Register of Members of the company.

5.9 Company Meetings

There are two types of company meetings of shareholders;

- General meeting (including annual general meeting);
- Class meeting.

Each has its own requirements as regards notice periods, etc. These are normally set out in the Articles, though there are some specific statutory requirements. Under the Companies Act 2006, only public companies and private traded are required to hold an Annual General Meeting (AGM), a private company does not have to hold an AGM, though it can if it wants. Instead of calling a shareholder meeting, many decisions can now be made remotely by written resolution (see Section 5.10: Resolutions).There is no requirement for meetings to be held in the UK. Additionally, informal meetings can be held where, if all the members entitled to vote at a formal meeting give their assent, an informal decision will be binding, unless there is a specific statutory requirement for a formal meeting to take place because of the nature of the subject matter.

5.10 Resolutions

As an alternative to calling meetings of the members (or a class of members) of the company for the purpose of proposing and passing resolutions, members can instead pass a written resolution. Written resolutions can be initiated by the board of directors or at the instance of the members themselves (who, between themselves, hold at least 5% of the issued share capital - or such lesser amount as may be prescribed in the Articles).

As soon as the company receives signed written resolutions - or an authenticated document intimating that member's consent to the proposed resolution(s) - from such number of members who between them hold the required percentage shareholding necessary to pass the proposed resolution(s) (a simple majority (more than 50%) is required in order to pass an ordinary resolution, not less than 75% is required in order to pass a special resolution) then the resolution(s) will be passed.

The written resolution process cannot be used when seeking to remove a director or the auditors of the company, where a meeting of the members will need to be held.

5.10.1 What is a Resolution?

A resolution is an agreement or decision made by the members, a class of members, or the directors of a company to carry out certain changes. This could include resolving to change the name of a company, to alter its share capital or to change its articles.

5.10.2 How do companies pass resolutions?

The company's members vote on whether to pass or reject a proposed course of action. Each member's voting power will usually depend on the number of shares he or she owns. In most cases, a member who owns one share will have one vote. A resolution is passed when a pre-determined majority of votes have been cast - such as a majority of 75% for a special resolution changing the company's name. If the necessary majority is not obtained the proposed resolution fails.

5.10.3
Who can vote?

The company's articles of association may state the conditions on members' voting rights, but generally a member will have one vote for each share they hold on a written resolution or one vote on a show of hands at a general meeting unless a poll is called. If there is a valid call for a poll at a general meeting members would usually posses one vote per share, as in the case of a written resolution.

If a member is unable to be present at the meeting they may appoint a proxy to vote for them. In the case of joint holders of shares it is the vote of the holder named first in the register of members that will be counted, unless the company's articles specify otherwise.

5.10.4
Who must receive copies of the resolution before and after approval?

The company must circulate notice of the intention to propose a resolution to its members. If a company has auditors, it must send copies or otherwise notify them of the contents of all proposed resolutions. The Companies Act requires that certain resolutions (for example any special resolutions) are delivered to Companies House within 15 days of passing them.

5.10.5
Resolutions and Private Companies

Private companies can pass resolutions:

- by a written resolution, which they must circulate to every eligible member electronically or by hard copy, or
- by taking a vote at a meeting of members

The Companies Act has the effect that private companies no longer have to hold Annual General Meetings (AGMs). New provisions regarding written resolutions enable private companies to dispense with general meetings altogether, except for two limited purposes - see 5.10.6 below.

5.10.6
Written resolutions and private companies

Private Companies can pass almost all resolutions as written resolutions (e.g. a resolution that has been circulated, either on paper or electronically, to the members without the need for a meeting.

Exceptions to this are:

- a resolution to remove a director; and
- a resolution to remove an auditor.

These resolutions need to be passed at a general meeting.

5.10.7
Resolutions and public companies

Public companies have to hold AGMs within 6 months of their financial year ending in addition to any other meetings held during that period. A public company can only pass a resolution by taking a vote at a meeting of the members, which may be the AGM. It cannot pass a written resolution.

5.10.8
What records of meetings and resolutions must be kept?

The company must keep minutes of all proceedings at general meetings or decisions made by a sole member. They must also keep copies of all resolutions of members passed other than at general meetings. They must keep these records for 10 years and make them available for inspection by members on request

5.10.9
Resolutions and meetings

The vote on a resolution in a general meeting is by a show of hands unless the members call for a poll. A poll is a vote based on the number of shares held by members rather than a show of hands. A declaration by the chairman that the resolution is carried on a show of hands is all that is required for a resolution to be passed - but this does not apply in the case of a poll. There is no requirement to record the number of votes for or against on a show of hands.

A private company must give a minimum notice of 14 days of a general meeting. A public company must give a minimum of 21 days' notice of its AGM unless the company's articles specify a longer period of notice. A company may call a general meeting at shorter notice, with a majority of 90% of the voting rights in the case of a private company and 95% in the case of a public company. This does not apply to AGMs of a public company, where all members must agree. Notices for a public company's AGM must state that the meeting is an AGM.

Companies may give notice of a meeting:

- by electronic form;
- in hard copy form;
- by means of a website; or
- a combination of any of the above.

The notice must state the time, date and location of the meeting and any resolutions to be agreed.

5.10.10 Further information on resolutions

You can find further information on resolutions and meetings in the Companies Act 2006 Part 13.

5.11 Company Directors

5.11.1 Appointment

A company is managed by its board of directors. They have general management powers conferred on them through the Articles of Association. Certain acts of the directors, such as the issue of shares, the ratification of various contracts and so on may require the approval of the company in general meeting, or by the written resolution procedure referred to above.

5.11.2 Removal and retirement

The following section gives a brief overview of the duties and responsibilities of company directors in the UK. More detailed information can be provided on request should you require a more detailed understanding than that provided here.

There is no requirement in law for directors to either hold or not hold shares in the company, though there may be some such requirements under the Articles of Association of the company; such provisions are, however, unusual.

There is also no requirement for any or all of the directors to be resident in the UK.

The first directors are appointed as part of the company formation process (see 5.3: Company Formation). Subsequent appointments are made in accordance with the Articles; generally, this gives the Board the power to make an appointment to fill a casual vacancy, with the company confirming this by written resolution or at a general meeting. All directors have to sign a consent form, which is then filed at Companies House within 14 days of the date of appointment.

For a public company, it is normal for the Articles to have a provision requiring a proportion of the directors – usually one third – to retire at each annual general meeting. They can then stand for re-election.

For private companies, such provisions are unusual. As a general rule, a director can be appointed or removed by the shareholders by means of an ordinary resolution (i.e. by the holders of a simple majority - over 50% - of the issued share capital) provide that any member wishing to propose a resolution to remove a director gives the company 'special notice', i.e. a formal notice setting out their request at the registered office of the company at least 28 days before a general meeting. However, the Articles may provide alternative provisions regarding the appointment or removal of directors.

For public companies, directors can normally be removed by a majority vote of the board, or as previously mentioned, by an ordinary resolution of the company in general meeting.

If a director has been disqualified by the court following an action under the Company Directors Disqualification Act 1986, the minimum period of a disqualification order is two years and the maximum is 15 years during which he may not serve as a director or be involved in company management. It is open to a disqualified director to apply to the court for leave to act as a director or manager of a company.

5.11.3 Duties and liabilities

Directors of UK companies have various common law and statutory obligations. Examples of common law duties are that they have to act in the best interests of the company as a whole and must not make secret profits at the company's expense. Statutory duties include various administrative matters relating to the conduct of a company's business.

Breach of a common law duty may lead to a claim being brought by the company for damages. A breach of a statutory obligation may, in some circumstances, result in criminal prosecution, such as where directors are trading with intent to defraud creditors.

The definition of a director in English law is very broad. It includes not only those people who have been properly appointed as company directors, but also 'shadow directors' – people in accordance with whose directions the directors of the company are accustomed to act.

The board of directors is a single body; there is no two-tier management board as exists in some European countries. Also, even though some companies describe junior directors as 'associates' and the use of non-executive directors is widely encouraged, neither status is recognised in law – a director is a director.

The Companies Act 2006 has introduced and codified directors' duties further. A director now has the following statutory duties:

- to act within the powers conferred by the company constitution;
- to promote the success of the company for the benefit of its Members,
- to exercise independent judgement;
- to avoid conflicts of interest;
- to exercise reasonable care, skill and diligence;
- not to accept benefits from third parties; and
- to declare any personal interest in a proposed transaction with the company.

5.12 Ongoing Filing Obligations

For any business registered at Companies House, there is a range of ongoing filing obligations. This is the case whether it is a UK company or the UK establishment of an overseas company. A summary of the more commonly encountered matters is given below.

5.12.1 General administration

Companies have to give details to the Registrar of Companies of certain changes in their arrangements including:

- Changes to the Articles of Association;
- Appointments and resignations of directors and/or the company secretary;
- Any change in the location of the registered office; and
- Changes in share capital, including new share issues, reclassification and or subdivision of shares, etc.

5.12.2 Annual return

Each year, UK registered companies are required to submit an Annual Return. The Annual Return is a standard form that is issued by the Registrar of Companies. It contains information concerning shareholders, directors and share capital and the location of various registers that a company has to maintain, such as its Register of Members. The current details can be obtained from Companies House. All that is required is for the details to be checked and for the Annual Return to be signed and then filed at Companies House, together with the required filing fee. UK establishments of an overseas corporation do not file an Annual Return

5.12.3 Accounts and auditors

A company is required to keep accounting records that are sufficient to show and explain its transactions, to disclose its current financial position, and to enable the directors to prepare a balance sheet and profit and loss account that show a true and fair view. If the company has stock (inventory) it must maintain a record of that stock at the end of its accounting period. The accounting records must contain details of the company's assets and liabilities.

5.12.3.1 Books and records

The accounting records must be retained for at least six years after the end of the accounting period. Unlike in some jurisdictions, there is no set format in which the company has to maintain its accounting records, nor is there any particular chart of accounts that has to be followed. Companies are therefore able to use whatever systems are most suitable for their own requirements.

5.12.3.2 Annual accounts

UK companies have to file their annual accounts with the Registrar of Companies. Filing Deadlines are detailed in section 5.12.3.4. There are fines that are automatically levied if the accounts are not filed on time. Fines increase in consecutive cases of late filing. For persistent defaulters, the Registrar of Companies can take action against the directors.

The accounting reference date is the date to which the accounts are made up. Usually this is for a period of 12 months, but it may be for a longer or shorter period, although it may not exceed 18 months. By default, the accounting reference date is the end of the month in which the company was incorporated. This date can be changed simply by notifying Companies House (there are certain restrictions on how frequently the date can be altered). A company can choose its year-end – there is no compulsion to have accounts running to, say, 31 December.

There are detailed statutory requirements as to the form and content of published accounts, and all UK company accounts have to give a true and fair view. Amongst other things, this means compliance with the disclosure and accounting requirements of the Companies Act and also with UK accounting standards and generally accepted accounting practice. UK standards are generally compliant with International Accounting Standards (IAS). EU quoted companies have to comply with IAS's and so the UK's standards setters are in the process of aligning all UK standards with IAS's where there is, at present, divergence.

Small companies need not follow full UK standards and have their own accounting standard (the Financial Reporting Standard for Smaller Entities, or FRSSE) which is designed to reflect better the needs of smaller entities.

Included in the disclosures are details with regard to the amounts paid to directors, including pension contributions and benefits in kind; related party transactions (e.g. trading with other group companies); segmental and geographical turnover and profitability analyses; details of parent and subsidiary undertakings; and the identity of the company's ultimate parent.

UK companies with subsidiary companies (wherever situated) may also be required to prepare group accounts; this is usually only necessary if the group that the company heads is 'large' or 'medium' and if the company is not itself a subsidiary of a larger group that prepares consolidated accounts in the EU which are publicly available. A 'large' or 'medium' group is one that is not small with these limits being based on turnover, gross assets and number of employees.

The accounts will contain a directors' report. This gives brief information concerning how the business has performed over the last year, anticipated future developments, and so on. Larger companies have more fulsome disclosure requirements, including a statement with regards to disabled employees. Public companies and subsidiaries of public companies must make a statement of the company's policy with regard to the payment of suppliers

There are relaxations (exemptions) for the public accounting requirements for small and medium companies. Broadly, these are as follows:

5.12.3.3 Small and medium companies

Small

A small company is one that meets **at least two** of the following three criteria:

- Annual turnover must not be more £6,500,000;
- Gross assets must not exceed £3,260,000;
- The average number of employees must not be more than 50.

Small companies must deliver the following filings to Companies House:

- Abbreviated balance sheet and accompanying special auditor's report stating that the company is entitled to deliver abbreviated accounts; or
- full accounts.

Medium

A medium sized company must meet **at least two** of the following three criteria:

- Annual turnover must not be more than £25,900,000;
- Gross assets must not exceed £12,900,000;
- The average number of employees must not be more than 250.

Medium companies must deliver the following filings to Companies House:

- Abbreviated profit and loss account (this must be full if preparing IAS accounts);
- Full balance sheet;
- Special auditors' report;
- Directors' report; and
- Notes to the Accounts.

Where the exemptions are available, the company does not have to use them, and may choose to file full accounts instead.

These exemptions do not apply to companies operating in regulated sectors, such as banking, insurance or financial services, irrespective of the size of the company. These companies, together with any that do not fall into the small or medium categories, must file accounts that contain the following:

- A profit and loss account;
- A balance sheet;
- An auditors report;
- A Directors' report;
- Notes to the Accounts; and
- If appropriate, group accounts.

5.12.3.4
Filing dates

The company has to provide its members with its accounts prior to the due date for filing with Companies House or the actual date of filing, whichever is the earlier. Every company must send a copy of its annual accounts to every member of the company; every holder of the company's debentures; and every person who is entitled to receive notice of general meetings.

A public company must present its accounts before its members at an annual general meeting. However, private companies do not need to lay their accounts before members at a general meeting, unless the company articles specify as such.

Copies of the signed accounts (with original signatures) must be delivered to Companies House within nine months of the year end for private companies, or six months for public companies.

There is a special filing deadline for new companies – the first accounts have to be filed within 21 months of incorporation for a private company and 18 months for a public company or 3 months from the accounting reference date, whichever is longer.

The relevant date is the actual day of incorporation, not the month end, and the deadline can be difficult to meet in practice if the company has extended its first period to the maximum allowable of 18 months. For a public company, this will leave just a few weeks to get the accounts prepared, audited and filed.

5.12.3.5
Audit requirements

Where the company carries on business or has interests outside the UK, the Channel Islands and the Isle of Man, the filing period may be extended by three months on application to Companies House. Larger companies (broadly, those with a turnover in excess of £6.5 million) or members of groups where the group exceeds the threshold, and those in certain regulated industries such as financial services, must have their accounts audited and reported on by a qualified auditor.

5.12.3.6
Dormant companies

It is quite common for a company to be incorporated but for it to remain dormant, i.e. not trade during a financial year – for example to protect a particular name. Such dormant companies which would not otherwise be exempt from the need to appoint auditors (for example, because they are part of a large group), can, provided certain requirements are met, pass a special resolution exempting themselves from the audit requirement. Whilst qualifying dormant companies do not need to appoint auditors, simple annual accounts must still be filed at Companies House.

5.12.3.7
UK establishments

UK establishments of overseas companies are required to file their annual accounts within 13 months of the end of an accounting period. If the accounts are not in English, a translation has to be supplied. Normally, the Registrar will accept a copy of the accounts as prepared for the company's domestic requirements. If there is no local audit requirement then, the UK authorities will not usually impose one. If local filing requirements mean that there is no disclosure of financial information, accounts will still have to be filed with Companies House, albeit in a modified format.

5.12.4
Mortgages and charges

A limited company can grant a creditor – such as a bank – a mortgage or other legal charge over its assets, provided its constitution gives it that power. The charge can be either:

- fixed – that is, a charge over present or future property which fastens on that property when the charge is executed or, in the case of future property, when the property comes into existence, so long as it is capable of being ascertained; or
- floating – an equitable charge over a fund of assets which the borrower is left free to manage in the ordinary course of business.

In either case, the charge has to be registered with Companies House. There is a strict time limit on this of 21 days from the creation of the charge. If registration does not take place within that time, the charge may be void and thus could not be enforced in the event of receivership or liquidation.

6 Taxation Matters

6.1 Business Taxation

The structure adopted by an overseas investor for its United Kingdom venture will have implications for the taxation of its profits. H M Revenue and Customs (HMRC) administers direct taxes. The main points that apply to direct taxes generally are:

- For individuals, the main determinant of someone's liability to pay UK tax is residence. Broadly, a person's country of residence is the place where he lives during a tax year. In the UK, a main test (but not the only one) for this is for the individual to have a physical presence here for at least 183 days in the tax year. This is similar to most European jurisdictions. For historical reasons, the UK tax year runs from 6 April to 5 April following. This applies only to individuals, trusts and estates in the course of administration;
- For individuals, liability to pay UK capital gains tax (tax on capital profits rather than income) is determined by whether an individual was resident or ordinarily resident here in a tax year. Ordinary residence can be regarded as the country where that person normally resides;
- A company incorporated in the UK is resident in the UK for tax purposes. This is irrespective of where its central management and control is located. A company incorporated overseas is UK resident only if its central management and control are exercised here. The term 'central management and control' broadly means where board level decisions are taken, not simply where some aspects of day-to-day management are based. Companies pay corporation tax on their profits (which include capital gains). A company is free to choose its year end, subject to Companies Act restrictions;
- Double taxation agreements often have 'tiebreaker' provisions. These normally provide for residence to be determined on the basis of where an entity's 'effective management' is located.

6.1.1 Taxation of companies

6.1.1.1 Rates and payments of tax

The main rate of corporation tax is 24% (Financial Year 2012). However, this is being gradually reduced in annual increments of 1% so that by Financial Year 2014 it will be 22%. Companies with low profits (presently up to £300,000) may pay a reduced rate of 20%. Between the lower limit of £300,000 and an upper limit of £1.5M, the rate of tax gradually increases until an average rate of 24% is achieved. The upper and lower levels are all subject to restrictions depending on the number of other companies under common control, both in the UK and overseas.

The corporation tax year runs from 1 April to the following 31 March. The rate of corporation tax fixed by the government runs for that year. Where a company has an accounting year-end that is other than 31 March, and the corporation tax rate changes from one year to another, the company's taxable profits are apportioned pro rata over the two years and taxed at the rates applicable in the year in which they occurred.

Tax is payable on the company's total profits including those of its trade, income from other sources (e.g. interest received or rental income) and capital gains. Dividends received from other companies anywhere In the world are generally not subject to tax. Companies with profits taxable at the main rate of tax are required to pay their corporation tax by equal quarterly instalments (see 6.1.2). For smaller companies, the tax is due to be paid nine months and one day after the end of the accounting period.

6.1.1.2
Computation of taxable profits

Taxable trading profits are computed on the basis of the profit shown in the company's accounts, subject to adjustments. For example:

- Some expenses which are not exclusively incurred in earning profits of the company but which are deducted for the purposes of the company's accounts will not be allowed as deductions in calculating the profits chargeable to tax. Some expenditure is expressly non-deductible, such as business entertainment expenditure;
- Trading losses can (broadly) be offset against other taxable profits in the same year or the previous year. To the extent that they are not relieved in this way, they can be carried forward indefinitely, but can only be offset against future profits from the same trade;
- Depreciation and amortisation on tangible fixed assets is not deductible. Instead, there is a system known as 'capital allowances' which gives allowances for capital expenditure on a basis that is consistent between taxpayers;
- Small and medium sized entities qualify for a £25,000 Annual Investment Allowance which gives a full write off against tax on capital expenditure up to that level. There is only one Annual Investment Allowance available per group of companies under common control and operating in the same business sector.

Thereafter, and for purchases by large entities, the rate of write off is 18% per annum on the reducing balance basis;

- Some capital expenditure is classified as integral to a building; this attracts a write off of only 8% per annum on the reducing balance basis.
- In respect of intangible fixed assets, such as goodwill and intellectual property rights, tax relief is broadly given on the amortisation of those assets in the company's accounts provided that the intangible asset was not internally generated or purchased from a related party;
- Dividends received on ordinary shares are generally not subject to tax in the recipient company;
- Expenditure on qualifying research and development costs (relevant employee costs, materials, etc.) qualify for a special tax credit:
- For small and medium enterprises (on a group basis, fewer than 500 employees, an annual turnover not exceeding €100m and gross assets not exceeding €86m), the tax write off is 225% of the actual cost;
- For larger companies, the tax write off is 130% of the cost, and there is no tax rebate available;
- A patent box regime is being introduced from 2014 to provide for a 10% rate of tax on Income from UK and EU patents.
- Capital gains on what are known as 'substantial shareholdings' (broadly, a holding of at least 10% of the equity of a trading company by another trading company or trading group, where the holding has been in existence for at least 12 months) are not subject to tax; conversely, losses on such holdings are not deductible.

6.1.1.3
Interest payable

Interest payable is normally a tax deductible expense. The tax deduction on inter group interest may however be restricted in two cases. Firstly, if the company has a high level of debt to equity the interest deduction will be restricted to reflect a debt to equity ratio which would be acceptable to a third party lender. This restriction is what used to be referred to as 'thin capitalisation', but is now covered by general transfer pricing rules.

Secondly, interest tax deductions will be restricted by the Worldwide Debt Cap rules, which broadly speaking restricts the amount of interest on which a single subsidiary company in the UK can get tax relief, to the amount of interest paid to external financiers on a worldwide basis. There are gateway provisions which dis-apply the World Wide Debt Cap rules for smaller companies

6.1.1.4
Groups

UK tax law recognises the concept of groups of companies. Where losses are incurred in one group company they may be deductible against the profits of another group company. At present, the ability to freely offset losses in one company against profits in another is restricted to UK groups. However, in certain restricted circumstances this concept of "group relief" may be extended to losses incurred by subsidiary companies located in the EU. Also, capital assets can be transferred between UK group companies without attracting any corporation tax on any profit on the sale; if, however, the transferee company leaves the group within six years of the transfer, there is an exit charge which will tax the gain.

6.1.1.5
Tax returns and enquiries

Companies have to file self-assessment tax returns. A corporation tax self assessment return is due to be filed with HMRC within 12 months of the end of the accounting period (assuming that the accounts are for 12 months). If the return is filed late, penalties, of up to £1,000 may be imposed and, if the return is more than six months late, an additional penalty of up to 10% of the unpaid tax may be charged, rising to 20% if outstanding for a further 6 months.

HMRC has 12 months from the due filing date of the return (or the date the return was filed, if later) to commence an enquiry. Where errors are found, corrections to the return can be made, which will have an impact on the amount of tax due.

HMRC can only commence an enquiry outside this time if matters come to light of which they could not reasonably have been aware on the basis of information available to them.

HMRC may then make what are known as 'discovery' assessments to collect additional tax within a six-year time limit, which is extended to 20 years in cases of fraud or negligence.

6.1.1.6
Appeals

If there is a dispute with HMRC with regard to an assessment, tax determination or return, and agreement cannot be reached with them, there is an appeals system in place that allows for such disputes to be heard before an independent tribunal. Most appeals are heard by the First-tier Tribunal. More complex cases are generally dealt with by the Upper Tribunal (Tax and Chancery).

Where either party is dissatisfied with the decision of the Tribunal, there is a procedure whereby disputes over points of law can be referred to the courts and, ultimately, to the European Court of Justice. It should be noted that the courts will not normally overturn a finding of fact by the Tribunal – it has to be shown that the Tribunal have acted without evidence, or if the court decides that no tribunal sensibly applying the law to the particular facts could possibly have come to the same conclusion.

6.1.2
Corporation tax payments on account

A company paying tax at the main rate of Corporation tax, as opposed to the lower small companies rate, is required to make quarterly payments on account.

However, a company is not required to pay by instalments the first year it pays at the main rate unless its taxable profits exceed £10m. These limits are scaled down for short accounting periods.

The instalments are to be paid on the 14th day of the month starting with month 7. Provided the company's accounting period is twelve months long, instalments will be due on the 14th day of months 7 and 10 of the current accounting period and months 1 and 4 of the next accounting period.

Each instalment will be one-quarter of the tax liability (or the relevant percentage of the tax liability in the first three years). The company will therefore need to estimate its tax liability before the end of the accounting period and must revise it each quarter.

Any balance of tax not payable by instalments is payable on the normal due date i.e. 9 months and one day after the end of the accounting period.

6.1.3 Transfer pricing

UK law requires transactions between associated companies, whether of goods or services, to be dealt with at a fair value. The rules, called Transfer Pricing, apply to all intra-group transactions, whether the contracting parties are both based in the UK or one of them is overseas. There are relaxations of the rules for small and medium-sized groups.

There is a mechanism whereby pricing agreements can be agreed in advance with HMRC. In addition HMRC is prepared to enter into negotiations with overseas tax authorities, where there is also an advance clearance mechanism, to agree bilateral or multilateral agreements. Such advance pricing agreements have a pre-determined duration, normally between three and five years, but they tend to be available to very large groups.

These rules can prove to be a trap for the unwary, especially where there are arrangements for the 'free' use of, for example, patents and other intellectual property, or where surplus funds are lent interest free by a UK company to an overseas associate.

It is important that all supplies between group companies are documented and a reasonable transfer price is established.

The rules also apply to management charges. There is a general principle that reasonable management charges are tax-deductible. However, as with any other inter-company charge, it is preferable to have the basis of charge set out in writing before the first supply is made. The basis of charge should produce a result that is, as far as possible, a reasonable approximation of an arm's length price.

If goods and services supplied to or received from overseas associates are recorded in the accounts of the UK entity at other than market value, HMRC can adjust the taxable/tax deductible amount to market value. Where such adjustments are made, the taxpayer may also be liable to interest charges and penalties levied by HMRC. Unsurprisingly, HMRC will only ever make adjustments in its favour – so if, for example, an overseas associate lends surplus funds to its UK company at zero interest, there is no mechanism to give a UK tax deduction for the market value of the interest that could have been charged. However, most double tax treaties do provide a facility for asking the corresponding Competent Authority to take the adjustment into account and give relief for what is, in effect, double taxation. This process is known as the Mutual Agreement Procedure.

Due consideration must also be given to the VAT impact of any transfer price. It is possible to make a tax only adjustment in respect of transfer pricing which is not reflected in the company accounts.

6.1.4 Overseas taxation

There are no restrictions on the repatriation of trading and capital profits from the UK.

Payments of interest and patent royalties are both subject to withholding taxes. Those withholding taxes are subject to modification by individual double taxation treaties. The UK has probably the most extensive network of double taxation agreements in the world – presently more than 100. Where treaty relief is available to mitigate withholding taxes on interest, HMRC approval must be sought in advance of any relevant payment. In addition, there are general reliefs available in UK tax law for any overseas tax suffered on profits or gains that are liable to UK tax.

6.1.5 Permanent Establishment

The profits of UK permanent establishments of overseas companies are subject to UK Corporation tax. The taxable profits are computed along lines similar to those used for companies and transfer pricing rules also apply. Tax is levied at 25%, subject to any lower rate that might be applicable because of a double tax treaty.

If the permanent establishment (PE) makes losses, the parent jurisdiction may give relief for these. In addition, the losses should be available to offset against subsequent UK profits of the trade. If the PE is subsequently incorporated (i.e. its business is transferred to a UK company owned at least 75% by the parent company), any unused losses should be capable of transfer to the company. Any assets owned by the PE which qualify for capital allowances will transfer over at tax written down value, so no tax gain or loss accrues. Provided the necessary group relationship exists, any assets that would be chargeable to corporation tax on chargeable gains should also transfer over on a no gain/no loss basis.

6.1.6 Representation or agency

A crucial distinction is drawn between trading ‘in’ the UK and trading ‘with’ the UK. Generally, any profits made from trading with the UK, are not subject to UK tax. Those profits will actually arise in the relevant overseas jurisdiction and will be taxable there on local principles.

However, if the activities are carried on in such a way that a ‘permanent establishment’ is set up, HMRC will view that as constituting a taxable presence in the UK.

Permanent Establishment is generally defined by tax treaties and normally follows the OECD model.

6.1.7 Partnerships

Partnerships - other than Limited Liability Partnerships (LLPs) - have no separate legal existence under English law. The main principles in relation to taxation of partnerships follow this, so each partner is taxed on his share of the relevant partnership profit:

- For any tax year, partners are taxed on their share of the partnership profits from the accounting period that ends in that year. The tax liability is that of the individual partner. As this is not a partnership debt, there is no joint and several liability for it;
- Any expenses that are to be set against the profits must be incurred wholly and exclusively for the purposes of the trade, profession or vocation. This is identical to the basis for computing a trading company’s taxable profits;

- With regard to capital gains, there is a lack of statute law. In practice, if there is a capital disposal by the partnership, each partner is treated as having disposed of their fractional share of that asset.

Profits of the partnership are assessed on individual partners. Tax returns will be made in accordance with normal principles applying to the status of the particular partner. Where the partner is a body corporate, its corporation tax self-assessment will reflect its share of partnership profits. For individuals, their profits are dealt with via their personal tax returns.

These principles also apply to the taxation of the members of an LLP.

Non-resident partners are also taxable on UK profits of a Partnership or LLP in the same way.

6.2 Personal Taxation

6.2.1 Employee taxation

The UK has progressive personal tax rates. There is a tax free personal allowance of £8,105 in 2012-13. The basic rate of tax is 20%. There is a higher rate of 40% on the next slice of taxable income and 50% (45% from April 2013) on income over £150,000. There are a broad range of exemptions and reliefs available. Tax is payable on all income, whether pay or benefits in kind, such as company cars.

Employees have tax deducted from their salary by their employers. This is known as Pay As You Earn (PAYE). In addition to tax, employees pay National Insurance (social security) Contributions (NIC), of 12% on earnings over £146 per week, and 2% on earnings over £817. This is also deducted by their employer. The employer also has to pay National Insurance Contributions of 13.8% on earnings over £144 per week.

Every month the employer must pay over to the HMRC, PAYE and National Insurance Contributions deducted during the previous month from its employees, plus their own NI contributions. There are arrangements where employers with only very small amounts of PAYE and NIC can pay these over quarterly.

It is common for smaller businesses to sub-contract the preparation of the payroll to a specialist service bureau – a service that Oury Clark offers.

6.2.2 Self assessment

The UK has a system under which taxpayers are responsible for paying the right amount of tax to HMRC. This is known as ‘self assessment’.

Most taxpayers are dealt with under the PAYE system and so will have the right amount of tax paid over without any further action being needed. However, where taxpayers have untaxed income (for example, the self-employed) or pay higher rate tax on investment income, such as dividends or savings, there will be a need for a tax return to be filed and for the taxpayer to pay tax directly to HMRC. The same is true for people with taxable capital gains.

The critical date for filing returns and paying tax is (if filed on-line) 31 January following the end of the tax year (5 April). Failure to meet this deadline will result in HMRC charging interest and penalties. To ensure that there is a steady cash flow to the government, there are also on-account payments of tax due from taxpayers who have had a self-assessed liability the previous year.

6.2.3 Social security system

The UK social security system provides a system of benefits for the needy, such as unemployment benefit, sick pay and so forth. There is also a state run pension scheme. This is all funded, in theory, by national insurance contributions (NIC). Employees pay NIC via the payroll. Their employers also pay a contribution. At present, this is 13.8% of the total wages and salary cost (including any benefits in kind) for all but the lowest paid staff. The self-employed also pay NIC, most of which is collected via the self-assessment system.

6.2.4 Seconded staff

It is common for staff to be seconded from overseas companies to the UK operation, possibly to help in the initial setting up of the business, to assist in the expansion or development of the business or introducing a new product, etc.

Seconded staff will normally require a work permit (see next section) if their stay in the UK is to be anything other than a very short business trip. The following notes give a brief description of the taxation of foreign employees coming to the UK.

6.2.4.1 Secondments lasting over six months

Anyone coming to the UK from overseas to take up employment here will have several different factors to consider as regards taxation. There are planning opportunities, and there will also be some interaction between UK tax law and that of the home country. The likely length of the stay in the UK will also be relevant – a number of important factors in UK tax are decided by reference to the amount of time spent here. Careful planning can ensure that UK tax is minimised.

There are two important concepts that determine liability to UK tax – residence, and domicile. Generally speaking, if someone comes to the UK with the intention of staying here for an employment that is expected to last for more than two years, they will be treated as being both resident from the time they arrive here until they finally depart.

The main taxes that impact directly on an individual are Income Tax, Capital Gains Tax and Inheritance Tax.

Anyone who is 'resident and domiciled' in the UK is liable to UK income tax on his or her worldwide income on an arising basis. Broadly, this means that they are taxed on their income as it arises and their gains as they accrue, wherever that income or those gains occur in the world. There is tax relief given for any overseas tax paid.

It is possible for people who are resident, but not domiciled in the UK, to opt for a different basis of taxation: the remittance basis (as distinct from the arising basis). This means they will pay UK tax on UK source income and gains and any overseas income which is remitted to the UK. If the person has less than £2,000 of foreign income or gains not remitted to the UK, the remittance basis may be used without making a specific claim to HMRC. If, on the other hand, that income exceeds £2,000 in the tax year, then a claim can be made if the person opts to be taxed on the remittance basis.

Anyone making a remittance basis claim loses the right to a UK tax free personal allowance (see 6.2.1).

There is a fixed annual "Remittance Basis Charge" of £30,000 payable after the person has been resident for more than 7 years. The issues of residency, and domicile can be complex and the option to be taxed on either an arising or remittance basis are particular to individual circumstances; professional advice should be sought.

Finally, the term ‘remittance’ has a very wide meaning, and can include what are known as ‘constructive remittance’ – such as where funds are used to settle UK liabilities, but are not actually brought into the UK. An example would be where someone has a credit card registered in, say, California. That card is used to buy goods in the UK. The card balance is paid off from a bank account outside the UK that is used to receive income from overseas investments and employments. Those payments would count as constructive remittances, and be liable to tax in the UK.

Capital gains tax is a tax on capital profits (such as profits on the sale of shares or other investments). Anyone who is resident in the UK is liable to UK Capital Gains Tax on gains arising anywhere in the world. However, anyone who is not UK domiciled for tax purposes may consider their tax position on foreign gains with respect to either an arising or remittance basis (see above). UK based gains, however are subject to UK taxation.

Inheritance tax is a tax on a person’s estate at death, and is also payable on certain transfers of assets during their lifetime.

Domicile is the critical criterion here, not residence or ordinary residence. Anyone who is UK domiciled will generally be liable to Inheritance Tax on his or her worldwide assets; by contrast, someone not domiciled here is only liable to UK Inheritance Tax on assets located in the UK.

Planning - As can be seen from the short notes above, the UK has particularly favourable rules for non-domiciles – broadly, they will only be liable to UK tax on income or profits arising in the UK, or if remittances are made to the UK, subject to the £30,000 charge after 7 years (see previous page).

Non-UK investments - Having arrived in the UK, the main planning point is to take great care with regard to the source of any additional funds which may be needed here – if they come from overseas income or gains, a UK tax liability can arise. Generally, overseas income and capital accrued before arrival in the UK will not be taxable if remitted, but it is necessary to be able to demonstrate that the funds were generated prior to arrival in the UK. The arising or remittance bases of taxation may be considered according to the levels of foreign earned income or gains.

Non-UK employments - Any remuneration derived from employment duties performed in the UK is taxable in the UK, subject to the provisions for short term business visitors (see 6.2.4.2 p.79). For a non-domicile, remuneration derived from a non-UK employer, where the duties are carried out wholly outside the UK, will only be liable to UK tax to the extent that that income is remitted here. Therefore, where the inbound employee will still be carrying out overseas duties – e.g. visiting other EMEA branches on behalf of a US head office, or attending head office board meetings abroad – is scope to limit UK tax in relation to non-UK duties.

Travel expenses - For a non-domicile who performs duties in the UK, for the first five years from when the employee first arrives in the UK to commence his or her duties, the following travel costs are not taxable, provided the expense is either borne directly by the employer or is reimbursed to it:

- Cost of the employee travelling from his or her normal place of abode outside the UK to any place in it to perform the duties of the employment in the UK, and such return trips; and

- Where the employee works in the UK for a continuous period of at least 60 days, up to two return trips per UK tax year by the spouse and minor children (under 18) are also allowed

There are more generous arrangements available for staff who are in the UK for less than two years - it may be possible to secure tax exemption for all travel and accommodation costs while in the UK for such members of staff. This is a complex area, and advice should be taken before relying on this exemption.

The UK has a very extensive network of tax agreements with other countries. It may be possible for a person to be resident in their home country and also to be resident in the UK. Whether this is possible under the terms of the treaty varies from treaty to treaty, and, even if it is possible, it may not be advantageous to invoke that particular part of the agreement.

Similarly, the UK has a network of agreements dealing with national insurance (social security) contributions and the rules detailing whether and to what extent UK NIC has to be paid depend very much on individual circumstances. In many cases UK National Insurance can be avoided for at least the first year of a secondment.

Planning the tax and NI consequences of secondments is complex and much is specific to particular arrangements being made. Without specialist advice, it is an area where tax can be paid unnecessarily.

Where a period of secondment is brief, it is likely that there will be a tax treaty with the UK, which will exempt the employee from having to pay UK tax on the remuneration arising. For example, the model OECD Treaty (Article 15) states that the remuneration derived in respect of a temporary secondment not lasting more than 183 days will not be taxed in the country where the secondee is visiting; rather it will be taxed in his or her home country. This is subject to a number of caveats; the main one being that the remuneration has to be paid by the employee's overseas employer and that remuneration must not be recharged to the (UK) subsidiary or branch.

For employees who are to be in the UK for more than six months, or who cannot take advantage of treaty protection, normal PAYE will apply. This will mean that, irrespective of their residency status, PAYE will have to be operated. If the employer has insufficient 'tax presence' in the UK then the employer will not be required to operate a PAYE scheme. Instead, regulations allow HMRC to recover the tax due from the employee. In this instance no Employers national insurance is due.

It should be noted that there is an obligation to register the employee with HMRC if they are in the UK for more than 30 days continuously or 60 days in any tax year – this applies even if their earnings will be covered by treaty exemption.

Treatment of Benefits in Kind - If treaty relief is available for a short-term secondment, there may also be relief from a UK charge to taxation in respect of benefits in kind. This would be the case if the head office paid for all those costs. If, on the other hand, the UK establishment provided the benefits, then those benefits will fall within the scope of UK taxation and HMRC will deny treaty coverage.

Where the employee is within the scope of PAYE, or there are taxable benefits arising, Form P11D (a return of benefits and expenses) will need to be submitted by the employer in respect of that employee.

6.3 Indirect Taxation

6.3.1 Value Added Tax

The United Kingdom has a number of indirect taxes that are levied on certain goods and services: Value Added Tax, Excise duties, Customs duties, Landfill Tax and Insurance Premium Tax. These taxes are administered by HMRC. Local property taxes are levied by reference to the notional rental value of property. There is also Stamp Duty which is payable in respect of certain transactions that are evidenced in documentary form.

HMRC likewise administers this.

Value Added Tax (VAT) is a sales tax. It is applicable to most business transactions involving supplies of goods or services made in the UK, although there are certain exceptions. There are no local sales taxes in the UK.

The scope and nature of VAT is broadly as follows:

- All businesses which make 'taxable supplies' have to register for VAT if their turnover reaches a certain limit. At present, that limit is £77,000. This applies equally to all businesses. It is possible for businesses to register voluntarily for VAT, if they make taxable supplies or intend to do so;
- All VAT registered businesses must supply VAT invoices in a prescribed form;
- Supplies are subject to VAT depending on the place in which they are 'supplied';
- Goods are 'supplied' in the location where they physically change hands;
- Services are generally supplied where the customer belongs, but there are a number of exceptions to this;
- Supplies in the UK will be subject to UK VAT, supplies made in the rest of the EU are often subject to the reverse charge and supplies outside the EU are usually outside the scope of VAT altogether.

Zero-rated

Supplies in the UK maybe subject to VAT at 0%, 5% or the standard rate of 20%, some supplies are specifically exempt:

- Bank notes
- Books and newspapers
- Caravans and houseboats
- Supplies to charities, etc.
- Some clothing and footwear
- Construction of dwellings
- Drugs, medicines, and aids for the handicapped, etc.
- Most food items
- Gold
- Exports (see note below)
- International Services

- Protected buildings
- Talking books for the blind and handicapped and wireless sets for the blind.
- Sewerage services and water
- Sales by tax free shops

Exempt

- Insurance
- Postal services
- Betting, gaming and lotteries
- Finance
- Education
- Health and welfare services
- Burial and cremation
- Supply of services and goods to members of certain stipulated bodies, such as trade unions and professional associations
- Certain aspects of sport, sports competitions and physical education
- Works of art, etc.
- Fund-raising events by charities and other qualifying bodies
- Cultural services
- Some property (real estate) transactions

Reduced Rate

- Domestic fuel and power
- Installation of energy saving materials
- Grant funded installation of heating equipment or security goods or connection of gas supply
- Sanitary products
- Children car seats
- Residential conversions
- Residential renovations and alterations
- Contraceptive pills
- Mobility aids for the elderly
- Smoking cessation products

The detailed rules change from time to time and should always be checked.

6.3.1.1 Administration

Businesses have to account to HMRC for the VAT they have charged on supplies made. Generally, they can offset any VAT they have incurred. (The position where some supplies are VAT exempt and some are not is complex and advice needs to be taken as to how this affects the business's ability to reclaim VAT it has suffered.) The details are reported to HMRC via the submission of a VAT return – normally quarterly. The return form and any amount due must be submitted one month and seven days following the end of the relevant quarter. There are penalties for late or incorrect submission.

Where a trader normally receives refunds (typically those in the food industry, agriculture and other zero-rated businesses), it is common for the VAT return to be filed monthly. This will ensure that VAT refunds are received from HMRC on a regular basis, thus improving cashflow.

VAT and customs duty may be payable on goods being imported from European Union and non-European Union countries at the time of importation. There is a scheme for deferring payment of customs duty and VAT. Normally, VAT can be offset and reclaimed from HMRC.

6.3.1.2 Intrastats

As part of the UK's obligations to the EU, there is a system in place for monitoring UK sales to other EU countries. The system is known as Intrastats and is administered by HMRC. Traders have to supply details of their trading partners in the EU, including details such as the volume of business and giving relevant VAT registration numbers. Again, there is a penalty regime for incorrect or late submission of this information.

The Intrastat threshold for the 2012 calendar year is £250,000. Any business whose physical trade (that is, excluding the supply of services) with other EU countries exceeds this level has to comply with the reporting regime.

6.3.1.3 VAT planning matters for operating in Europe

Where a business incurs expenses in any member state of the EU or makes sales there, there may be VAT consequences. There are three main areas where businesses can be exposed:

- Failure to register with the UK VAT authorities;
- Not dealing with VAT in Europe properly;
- Not structuring the business efficiently.

6.3.1.4 Failure to register with UK VAT authorities

When it was introduced in 1973, VAT was supposed to be a simple tax. Sadly, it's not. To make matters worse, there is a whole raft of penalties and fines, which HMRC can – and will – levy on transgressors, including criminal sanctions.

One of the most common pitfalls is to set up in business in the UK and not to register. Businesses have to register if their taxable turnover exceeds the registration limit – currently £77,000

If a business sells to other VAT registered businesses, there is little point in not registering, even if the turnover is below the limit. The business can reclaim the tax on goods and services bought from other VAT registered traders and its customers will, in turn, be able to reclaim the tax it charges.

However, not all businesses make VAT able sales – for example, many aspects of financial services are VAT exempt, which means no VAT is charged on sales, but the business itself cannot reclaim VAT. The regulations covering who can and cannot register change frequently and specialist advice should be taken wherever there is any doubt.

In some circumstances, the potential loss can be very high if there is failure to register. With many start-ups, there is a large initial outlay in the first few months that the business is operating – it is probably worth registering for VAT so that the business can reclaim the tax on the goods and services bought in that period. It all helps with cash flow and profits. If the business is not registered at the start, it may be possible to make a claim later. VAT can be claimed back on certain pre-registration expenses as follows:

- VAT on supplies of goods obtained within three years before registration, if the goods are still on hand at the date of registration, either in their original state or incorporated into other goods; and
- VAT on supplies of services obtained within six months before the registration date.

In order to reclaim VAT, the claimant must have the appropriate VAT invoices.

6.3.1.5 Not dealing with VAT in Europe properly

If a firm does business in other EU countries – that is, actually makes taxable sales there – there is an obligation to register for VAT with the local VAT authorities if the value of those sales exceeds the local registration limits. Just as in the UK, there are penalties for not registering.

Where the business incurs costs in the EU, even where it has no local registration and does not need one, the VAT incurred may be reclaimed. This has to be done through an online procedure, separate to the company's normal VAT return. Many businesses with activities in Europe (even UK-based, VAT-registered ones) do not reclaim all the tax they are entitled to.

With VAT rates as high as 25% in some countries, this can represent a significant amount of money simply being thrown away.

In some cases, ignorance undoubtedly plays a part. In others, inertia or apathy may be responsible. Either way, the EU governments are making a profit from VAT not being reclaimed.

There is no doubt that there is a large amount of money at stake as there are businesses that specialise in recovering VAT on behalf of other companies.

By way of an example, suppose some executives from head office in Ohio go on secondment to a UK company to learn about some new software. The accommodation costs, etc. incurred in the UK are, say, €50,000. The associated VAT will be around €8,000. Provided the US corporation has the right documentation, all of this tax can be reclaimed.

However, it is not always the case that all the VAT can be reclaimed. Each country in the EU has its own local restrictions on what can and cannot be reclaimed. For example, in most countries, it will not be possible to reclaim tax on entertaining costs; Ireland and Germany prevent reclaims on hotel and other accommodation. In addition, most countries have a minimum level below which they will not deal with a refund. In the UK, this limit is £16.

The claim must be made within six months of the end of the calendar year in which the VAT was incurred.

6.3.1.6 Not structuring the business efficiently

In minimising the tax burden when setting up in the UK or elsewhere in Europe, it is vital that the business structure is as efficient as possible. This will include:

- Whether a group exists for VAT or other tax purposes;
- The location of the business. This is important since VAT rates differ widely throughout the EU. In some cases, such as with companies in the e-commerce business, it may make sense for certain aspects of the business not to be located in Europe;
- How and when management charges, staff recharges, etc. are made can have a major impact on the VAT liability;
- The rules governing VAT status are complex. In some cases, businesses cannot reclaim VAT – such as those in banking and insurance. There are caveats and exceptions, and knowing what aspect of the business may or may not be adversely affected by VAT is vital.

The VAT rules have complex provisions to establish where a supply actually takes place. For example, if a US company has a UK subsidiary, which has a European sales force and a central warehouse in Belgium, where are sales actually made? It is important to know where a sale 'belongs' so that the right paperwork can be done and the right VAT authority paid.

6.3.2 Excise & Customs duties

Excise duties are charged on alcohol, tobacco and hydrocarbon oils (e.g. petrol) on their manufacture or consumption in the UK. Customs duties are payable on the importation of items into the EU.VAT is charged on the duty–inclusive price.

The EU operates as a Customs Union. This means that once the goods have been properly imported into one EU country and duty paid on those goods there is no further liability to duty on transfers of goods from one EU country to another. This applies to customs duty, not excise duty, so, for example, the importation of wine from France to the UK is subject to paying UK excise duty.

Rates of excise duty are announced in the government's annual Budget, and are normally increased by at least the rate of inflation.

Careful planning is essential to ensure the correct rate of duty is paid. Goods are assigned categories by HMRC and this determines the relevant rate of duty. Advice on categorisation is therefore essential – getting it wrong can prove expensive.

Details on duty relief are given at section 13.5: Duty reliefs.

6.3.3 Insurance Premium Tax

Insurance premium tax is a tax applied to insurance premiums where the risk is located in the UK. There are two rates: a standard rate of 5% and a higher rate of 15%. The higher rate applies to travel insurance.

6.3.4 Stamp Duty

Stamp duty is payable in respect of certain transactions that are evidenced in documentary form, such as transfers or leases of real property and share/stock transfers. Rates vary from 0.5% to 15% and there are many exemptions and reliefs available, particularly on transfers of assets within groups of companies. From 1 December 2003, Stamp Duty Land Tax has replaced Stamp Duty with regard to transactions in land, although the old Stamp Duty regime remains for share transfers.

6.4 Tax Planning

6.4.1 Avoidance vs. evasion

Tax planning is the method by which businesses and individuals organise their affairs, within the legal, social and economic framework of the country in which they operate so as to retain as much of their income and gains as possible.

Tax avoidance is the legitimate organisation of a business's affairs so as to minimise its tax burden. Tax evasion is, by contrast, not legitimate and occurs where a tax liability is ignored or deliberately concealed.

6.4.2 Anti-avoidance

The UK has no general anti-avoidance rule. Instead, case law and various statutory rules have grown up to stifle abuses or to close perceived loopholes. Where there is a significant difference of opinion between the taxpayer and HMRC as to the operation of tax law, litigation may ensue.

In the first instance, any appeals go before a VAT Tribunal (an independent body) for a ruling. The parties can then appeal to the courts if they are dissatisfied with the decision. As with Revenue cases, the courts can only interfere where the Tribunal has erred in law or its finding of fact is unsustainable.

From August 2004, a new regime of notification of certain tax planning schemes has been introduced. Where a scheme exists that saves VAT, or is related to tax savings involving employment income or financial products, details of the scheme have to be notified to HMRC, who will then issue a reference number. The taxpayer has to include the reference number on their tax return.

Nonetheless, there remain many opportunities for properly structured tax planning, and inward investment is one area where careful planning from the outset can have a significant impact on the tax burden. Similarly, because of the interaction between financial accounts and taxable profits, accounting treatment and accounting policies affecting various transactions can also impact significantly on the tax bill.

7 Staffing Matters

7.1 Normal Terms of Employment

7.1.1 Normal Terms of Employment

It is compulsory to provide a written statement of the terms and conditions of employment, within 2 months of the start date, to any new employee if his or her employment continues for one month or more.

There are various items which must be included in the written statement. It is usually simpler to summarise everything up in one document, i.e. a contract of employment.

Clauses usually include (please note this list is not exhaustive):

- The names of the employer and employee
- The date when employment began
- The date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts)
- The scale or rate of pay, or the way pay is worked out
- The pay intervals (hourly, weekly, monthly, etc.)
- Terms and conditions relating to hours of work (including normal working hours).
- Terms and conditions relating to holiday entitlement including public holidays and holiday pay (enough information must be given to enable entitlement to be calculated precisely, including any entitlement to accrued holiday pay on termination)
- Any terms and conditions relating to sickness or injury, including sick pay
- Job title or a brief job description
- Place of work or, if the employee is required or permitted to work at various places, an indication of that fact and the employer's address
- Details relating to pensions and pension schemes should be included
- Length of notice to be given by both employer and employee
- Confidentiality clause
- If the contract is 'temporary', an indication of the expected duration or, if it is for a fixed term, the date when it is to end
- Particulars of any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, details of the third party
- Where the employee is required to work outside the UK for a period of more than one month:
    - Details of the length of the posting
    - The currency in which payment will be made
    - Details of any additional benefits arising from the posting
    - Any terms and conditions relating to the employee's return to the UK. (If the employee is to begin work outside the UK within two months of starting, all the particulars must be given before the employee leaves).
- Disciplinary and grievance rules

7.1.2 Executive Contracts

For managerial or executive staff a more formal and more detailed contract of employment is normal. These are often referred to as service agreements and may include more detailed clauses including:

- post termination restrictive covenants
- intellectual property clause
- conflict of interest provisions
- more detailed confidentiality clause
- time and attention obligations.

Advice needs to be taken when drafting such clauses as the law is constantly changing.

7.1.3 Changes

Contractual terms cannot be changed without the employee's consent. This is normally not a problem if it is good news – for example, a pay rise. But it can cause problems if a restriction of some sort is imposed or salary is being reduced. Advice should be taken before making any detrimental variations.

7.1.4 Compliance

Importantly, even though the overseas parent company may have a very good contract with excellent restrictions that work well in its own jurisdiction, such contracts often do not work under English law and may, in some circumstances, even be illegal. In short, if you are going to employ staff in the UK, other than temporary secondees, their terms and conditions must be compliant with UK law.

It should also be noted that there is no "standard" employment contract. Contracts of employment are designed for particular roles and responsibilities and are specific to the employer's requirements and their ability to recruit and retain staff. Contracts can often be the only protection a business has against employees when things go wrong so it is worth investing in a suitable agreement which often proves cost effective in the longer term, especially if a dispute arises later down the line.

7.1.5 Disciplinary and Grievance Procedures

In addition to an employment contract, many employers place non contractual policies in a "Staff Handbook". The most important of these are the Disciplinary and Grievance Procedures.

In order to comply with the *ACAS Code of Practice (Disciplinary and Grievance Procedures)* a fair procedure must be followed when disciplining or dismissing an employee or when dealing with an employee's grievance and in both instances the employer must act in a prompt and timely fashion. On some occasions it may be appropriate to deviate from the ACAS procedure; however, in general it should be followed:

- The employer should set out in writing the alleged conduct / circumstances which will have led to contemplation of dismissal or disciplinary procedures and invite the employee to attend.
- An investigatory meeting / evidence gathering exercise may be appropriate.
- The employer should then meet the employee to discuss the relevant issues. This meeting should be chaired by a senior member of staff who has not been involved in the investigatory stage. The employee has a right to be accompanied by a trade union representative or work colleague.
- After the meeting, the employer must inform the employee, in writing, of the decision. The employer must also inform the employee that he/she has a right to appeal this decision.

- If the employee wishes to appeal the decision he/she must inform the employer and a further meeting must be held and a final decision made. The meeting must be chaired by a different decision maker and the decision must be set out in writing.
- There is also a separate grievance procedure:
- The employee must set out in writing to the employer the basis for the grievance.
- It may be appropriate that an investigatory meeting/evidence gathering exercise takes place.
- The employer must invite the employee to a meeting to discuss the grievance. This should be chaired by a senior member of staff who has not been involved in the investigatory stage. The employee is entitled to be accompanied by a trade union representative or work colleague.
- After the meeting, the employer must inform the employee, in writing, of the decision. The employer must also inform the employee that he/she has a right to appeal.
- If the employee wishes to appeal, he/she must inform the employer and a further meeting must be held and a decision made. The meeting must be chaired by a different decision maker and the final decision must be set out in writing.

Failure to comply with the ACAS Code, may, unless appropriately justified, result in the Employment Tribunal uplifting/deducting any compensatory award if a claim is lodged citing breaches to these procedures. We therefore advise employers to have in place procedures which comply with the ACAS code. In consultation with you, Oury Clark Solicitors' Employment Team can draft these tailored to your business.

7.1.6 Staff Handbook

In addition to the disciplinary and grievance procedures, other common policies include:

- Equal opportunities policy;
- Anti-harassment and anti-bullying policy
- Health and safety
- Capability procedure

The Oury Clark employment team can assist in providing policies for any organisation.

The following things should be considered when drafting an employment contract:

7.1.7 Sick Pay

If an individual is off sick, unless the employment contract includes a clause providing an enhanced payment, the employee is not entitled to their salary for any time off. Most employers do, at their discretion, pay for time off they consider reasonable (e.g. 5/10 days per annum).

There is a Statutory Sick Pay Scheme (SSP) in force in the UK, which means that if an employee is absent for 4 or more consecutive days (including weekends) the employee is entitled to receive a minimum weekly payment of £85.85. SSP payments are reviewed on an annual basis. The maximum period for receiving SSP is 28 weeks.

An employer is not entitled to request a doctor's certificate until an employee has been absent for 7 calendar days, after which the employee is obliged to provide up-to-date doctor's certificates (known as a "fit note") for any time off.

7.1.8 Notice Period

An employee who has worked for a company continuously for one month or more must give and receive notice of dismissal/redundancy or intention to leave (resignation).

Often a contract of employment sets out the amount required by either party (please note they do not need to be the same, however it is common to do so). If the employment contract does not contain reference, the minimum legal period required by law is:

For an Employee:

- Not less than one week's notice if the employee has been continuously employed for one month or more.

For an Employer:

- one week's notice if the employee has been employed by the employer continuously for one month or more, but for less than two years;
- two weeks' notice if the employee has been employed by the employer continuously for two years; and
- one additional week's notice for each additional year of continuously employment up to a maximum of twelve weeks.

7.1.9 Annual Leave

Full time workers are entitled to 28 days holiday per annum. Part-time workers should be provided annual holiday on a pro rata basis and cannot be treated less favourably.

7.1.10 Minimum Wage

The UK operates a minimum wage of £6.08 per hour for (broadly) all workers over the age of 21 and over, £4.98 per hour for 18-20 year olds and £3.68 for workers above compulsory school age but under 18.There are detailed rules as to what counts as "work" for the purposes of the rules and some exceptions.

7.1.11 The Working Time Directive

In 1998 The European Union's Working Time Directive was implemented into English law. They govern issues such as hours of work, rest breaks, night workers etc.

The measures place an onus on employers to take the initiative in ensuring that they are not in breach of any of the requirements under the Regulations and that they protect their employees' health and safety. Employers are also responsible for applying for any necessary opt-outs allowed under the new regime.

The main rule is that no worker can be forced to work more than a maximum of 48 hours, including overtime (apart from those in certain excluded categories). Workers can voluntarily opt-out of the 48 hour week requirement. In order to do so, employees must provide their express consent (which is usually within the contract of employment and a separate side letter). Employees have the right to opt back into the Regulations (and therefore limit their working hours to 48 hours per week) at any time.

7.2 Pensions

If a business employs 5 or more individuals, it is legally obliged to set up a Stakeholder Pension Scheme into which employees can contribute money. The company does not have to contribute into this scheme.

Please note, the position in the UK is that there is a basic state pension at 65 for men and between 60-65 for women (depending on their precise date of birth). By 2018 all women will have a basic state pension at 65. Basic state pension age is planned to increase to 66 by October 2020 for both men and women.

Some employers offer enhanced pensions (either by providing a group/company pension scheme whereby the employer contributes or by contributing to the employee's private scheme).

There are a number of different schemes. However, occupational schemes come in two types:

- Defined benefit – typically based on a proportion of final salary. Here the employer has to ensure that the pension scheme is sufficiently funded to be able to meet its commitments. As salary rates rise this can prove very expensive, particularly if investment returns drop and life expectancy rises.
- Defined contribution (also known as 'money purchase') – where the employer pays a certain proportion of the employee's earnings into a scheme. The pension the employee will enjoy will depend on how big that fund is and what annuity rates are when he retires and wishes to draw down his pension. It is possible for the employee to make additional contributions to enhance the value of the fund. It is possible to defer drawing a pension at retirement to get a potentially larger pension in the future, but the deferral is not indefinite.

The vast majority of schemes now used by employers are of the money purchase type, with the level of pension benefit payable being dependent on the value of the fund at retirement. There are limits to the levels of income tax relief applied to pension contributions and to the level of benefits that can be drawn out. The government is keen to encourage citizens to make provision for their retirement, rather than rely on the State to look after them.

Stakeholder schemes were introduced in 2001 by the Government, which capped the charges applicable on private pension arrangements to try and encourage individuals to save.

Although there is currently no requirement for employers to contribute to a pension on their employees' behalf, compulsory contributions will be introduced in October 2012. For the first time all employers will be required to contribute a minimum of 3% (on a band of earnings) to an eligible employee's workplace pension scheme. This will supplement the 4% contribution from the employee and around 1% from the Government in the form of tax relief.

Employers will automatically enrol eligible workers to a workplace pension, and should an employee decide to opt of the scheme, they are to be re-enrolled by the employer every 3 years. The auto-enrolment process will be introduced from 1 October 2012 on a staged basis starting with the largest employers. The Government is currently revising the staging dates for employers

7.3 Other Benefits

Many employers offer additional benefits to employees, with more senior staff often having enhanced benefits packages. Such benefits may include:

- company car or car allowance;
- private health insurance;
- life cover;
- critical illness insurance;
- share (stock) options

With regard to staff seconded from the US in particular, a salary package that includes tax equalization arrangements (i.e. to ensure that the net pay remains the same in the UK as in the home country) is not uncommon.

Oury Clark Financial Advisers have the expertise to help you design, implement and manage an effective benefits package, and can advise on the tax consequences arising.

7.4 Health and Safety at Work

Businesses have a wide range of obligations regarding the health and safety of their employees and also members of the public. The more potentially dangerous the workplace, the heavier the burden (e.g., factories and mines have greater obligations than, say, offices).

Employers are obliged to have a written policy on health and safety. All employers should undertake a health and safety review and document their findings, taking action as appropriate. Employees have to record any accidents sustained at work.

There is also a requirement to maintain a minimum level of employer's liability insurance (currently £5 million). This has to be with an approved insurer and a certificate has to be issued to the employer.

7.5 Unfair Dismissal

Any employee must usually have at least one year's service to claim unfair dismissal. (Please note that the "qualifying period for unfair dismissal will increase to two years for all employees employed on or after 6th April 2012).

However, there are a few exceptions to the "qualifying period" requirement.

In order to "fairly" dismiss an employee an employer must have:

- A "fair" reason (see below)
- Follow a "fair process"

An employee who can show that he/she has been unfairly dismissed before an employment tribunal is entitled to compensation or to be re-instated into the same role / re-engaged. The level of compensation is presently capped at £72,300. In more than 99% of cases compensation is the remedy awarded.

Currently there are five "fair" reasons for dismissal:

- Capability
- Conduct
- Redundancy
- Some other substantial reason
- Statutory restriction

All employers should be aware that even if they have a "fair" reason to dismiss an employee they must also follow a fair procedure. The ACAS code provides full details about the fair procedure to be followed (see comments above).

7.6 Employees' Rights

7.6.1 Redundancy

Redundancy pay is payable to any employee who is made redundant after more than two years' service (full- or part-time). There is a minimum level of statutory redundancy pay due, but the employer may have a policy or express contractual provision to pay more.

The amount of redundancy pay due is calculated by reference to the employee's age, weekly earnings and length of service. Redundancy is one of the six fair reasons to dismiss an employee, however, in order to be a fair redundancy, there must be a genuine redundancy situation and a full information and consultation process must take place.

This information and consultation process for a redundancy is a procedure that involves a number of stages (meetings and letters should be provided at each stage and minutes taken of meeting discussions) however, in brief:

- A proposal must be created by the employer (a definite decision about redundancies should not be made as to which employees are to be made redundant until the consultation obligation has been fulfilled);
- A general announcement should be made to the organisation indicating that the business is considering redundancies / restructure;
- Affected employees must be placed "at risk" and informed that their roles are at risk of being made redundant;
- An "at risk" employee, should be invited into a meeting to discuss the situation and asked to consider the proposal, he/she must be given the opportunity to make suggestions about how to avoid the redundancy situation (this should be a genuine consultation exercise and the decision should, at this stage, not appear to be pre-determined);

A further meeting should take place to discuss any proposal suggestions raised by the employee in the first individual meeting. At this meeting the employee may be formally declared redundant. The employee must be informed of his/her right to be accompanied by a work colleague or trade union representative;

The employee must be informed of his/her right to appeal the decision.

7.6.2 Discrimination

The Equality Act 2010 is concerned with discrimination and harassment in respect of the following "protected characteristics":

- Age;
- Disability;
- Gender reassignment;

- Marriage and civil partnerships;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex; and
- Sexual Orientation.

There are various types of discrimination and other unlawful conduct set out in the Equality Act 2010 that apply to most (and in some cases all) of the protected characteristics:

- Direct discrimination;
- Indirect discrimination;
- Harassment;
- Victimisation; and
- Instigating, causing, inducing and aiding discrimination.

These rights cannot be waived under a contract of employment. The compensatory award in a successful discrimination claim in the Employment Tribunal is uncapped.

7.6.3 Other Claims

Other claims employers should be aware of are:

- less favourable treatment due to employment status (part-time / on a fixed terms contract);
- whistle-blowing (dismissal /victimisation as a consequence of disclosing criminal offences, breaches of legal obligation, miscarriages of justice, health and safety dangers, environmental dangers or any cover-ups relating to such matters).

7.7 Family Employment Rights

7.7.1 Maternity Rights

Every pregnant employee (no matter what her hours are or what size the business she works) who has given her employer proper notification of her pregnancy is entitled to:

- Reasonable time off with pay for antenatal care;
- Health and safety protection while pregnant and breastfeeding;
- 52 weeks' maternity leave which is made of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave (regardless of length of service);
- All her normal terms and conditions of employment (except wages or salary) while she is on maternity leave continue unaffected;
- The right to return to the same job;
- Priority for alternative employment in redundancy cases;
- The right to request flexible working conditions on return to work;
- Protection from dismissal, detriment or discrimination by reason of pregnancy or maternity;
- Suspension from work on full pay if there is an unavoidable health or safety risk to her as a new or expectant mother and the employer cannot find suitable alternative work for her.

Many pregnant women will also be entitled to Statutory Maternity Pay (SMP). This is largely refunded by the state, though all but the smallest employers are expected to bear some of the cost. SMP is currently:

- 90% of the employee's salary for the first 6 weeks of maternity leave;
- followed by 33 weeks at the average rate of £135.45 per week or 90% of her salary (whichever is the lower). Please note that SMP is reviewed on an annual basis.

Please note that employees must take at least 2 weeks' maternity leave.

7.7.2 Paternity Rights

Employees must satisfy the following conditions in order to qualify for ordinary paternity leave (OPL). They must:

- Have or expect to have responsibility for the child's upbringing.
- Be the biological father of the child or the mother's husband or partner.
- Have worked continuously for their employer for 26 weeks ending with week immediately prior to the 14th week before the expected week of birth.

Eligible employees can choose to take either one week or two consecutive weeks' paternity leave (not odd days). There are strict notice provisions.

Statutory Paternity Pay is paid by employers for either one or two consecutive weeks as the employee has chosen. The rate of Statutory Paternity Pay is the same as the standard rate of Statutory Maternity Pay. Employees who have average weekly earnings below the Lower Earnings Limit for National Insurance purposes do not qualify for SPP.

7.7.3 Other Rights

In addition to maternity and paternity rights, there is a right to unpaid parental leave. This right applies to employees who have completed one year's service with their employer and they are entitled to 13 weeks' parental leave for each child (18 weeks in respect of disabled children) which can be taken up to the child's 5th birthday.

Employees also have the right to take time off to deal with family emergencies, etc. The leave taken is, by default, unpaid, but employers may agree to pay staff taking leave under these provisions. The right enables employees to deal with unexpected or sudden problem and make any necessary longer-term arrangements.

Parents of children aged under 16 or of disabled children aged under 18 have the right to apply to work flexibly, providing they have the qualifying length of service (26 weeks continuous service). Employers have a statutory duty to consider their applications seriously and must follow a procedure when dealing with such requests.

Please note, however, that Parental Leave entitlements are likely to change over the next few years. For example, parental leave entitlement of 13 weeks (for each child) is likely to increase to 17 weeks by 2012.

7.7.4 Summary

Employment law is fast changing in the UK and it is often more cost-effective to seek advice at an early stage in order to avoid any unnecessary disputes. The Oury Clark Solicitors' Employment Team offer a bespoke service and are able to assist on a variety of employment matters, whether it be drafting a basic employment contract or drafting detailed restrictive covenants for a senior sales executive, or providing informal HR advice or acting on your behalf in defending a litigious claim in the Employment Tribunal.

8 Immigration Matters

8.1 UK Immigration Rules

The UK immigration rules significantly changed with the introduction of the points-based system which will affect any migrants coming to the UK from countries outside the European Economic area. The rules continue to change on a regular basis and the UK Border Agency is focussed on tightening entry to the UK and reducing migration.

Applicants should therefore check the new rules (or obtain professional advice) before making a visa application. As the processing is predominantly outsourced it is imperative that applications fall within the rules and are carefully put together.

Below are examples of the visa options which we regularly advise clients on.

8.2 Business Visitor Visas

This is a temporary visa for up to 6 months in any 12 month period, which enables individuals who are employed overseas to come to the UK as a visitor and to undertake various restricted business-related activities. The applicant must be able to show that they:

- are 18 or over;
- intend to visit the UK for no more than 6 months;
- intend to leave the UK at the end of their visit;
- have enough money to support and accommodate him/herself without working or help from public funds, or the applicant and any dependants will be supported and accommodated by relatives or friends;
- are based abroad and do not intend to transfer their base to the UK, even temporarily;
- receive their salary from abroad (although it is acceptable for the applicant to receive reasonable travel and subsistence expenses while the applicant is in the UK);
- not be replacing someone in the UK, including for temporary leave periods;
- can meet the cost of the return or onward journey; and
- are not in transit to a country outside the ‘Common Travel Area’ (Ireland, the UK, the Isle of Man and the Channel Islands).

The applicant must also be able to show that, during their visit, they do not intend to:

- take paid or unpaid employment, produce goods or provide services, including the selling of goods or services directly to members of the public;
- do a course of study;
- marry or register a civil partnership, or give notice of marriage or civil partnership; or
- receive private medical treatment.

Business visitors can only undertake various ‘permissible’ activities in the UK including (but not limited to):

- attending meetings (including interviews that have been arranged before they come to the UK) or conferences;
- arranging deals, or negotiating or signing trade agreements or contracts;
- undertaking fact-finding missions;
- conducting site visits;
- attending board meetings in the UK as a board-level director, provided they are not employed by a UK company (although they may be paid a fee for attending the meeting); and
- representing a computer software company by coming to install, debug or enhance their products.

If the applicant is a ‘non-visa national’ (for example, from USA, Canada, Japan, New Zealand or Australia), prior entry clearance is not required to enter as a business visitor visa, although the applicant may have to answer various questions about which business activities they will be doing when entering the UK. The applicant will only need to obtain a visa prior to obtaining entry to the United Kingdom for a business visit of up to six months if he or she is a ‘visa national’ (for example from India, Russia or mainland China). This type of visa is obtained by applying to the British Consulate in the applicant’s home country (or county of legal residence). Applicants are not able to apply for a business visitor visa from within the UK.

Applicants should be cautious of continuously using business visitor visas to enter the UK, especially if they are undertaking work which could be deemed to be in breach of the business visitor rules, which carries a potential 10 year mandatory ban from entering the UK if he/she is deported. Many more applicants are being detained and questioned at airports where they are frequently visiting the UK on this type of visa. In addition, the immigration authorities are now liaising with other UK organisations such as Her Majesty’s Revenue & Customs (the UK tax authorities) more than ever before which can cause difficulties if the applicant is spending over 183 days within the UK (if so, the applicant would need to be declaring his/her income in the UK and completing tax returns).

8.3 EEA National

Nationals of a European Economic Area (EEA) state are likely to be free to live and work in the UK without restrictions (please note that exceptions apply to this general rule in certain cases, for example Romania & Bulgaria).

Where prospective migrants are the non-European family member of an EEA citizen, then they may also have the right to live in the UK. Family members include the EEA national’s:

- husband, wife or civil partner;
- children or grandchildren (or the children or grandchildren of the EEA national’s husband, wife or civil partner) who are under 21 years of age or are financial or physical dependents;
- parents or grandparents of the EEA national’s husband, wife or civil partner;

- extended family whose health is dependent upon them; and
- unmarried partner where they have been living together in a relationship akin to marriage for 2 years prior to the date of application.

8.4 UK Ancestry

Citizens of a commonwealth country with one grandparent born in the UK may be eligible for a UK ancestry visa. Applications to come to the UK in this category can be made if it can be shown that the applicant:

- is a Commonwealth citizen;
- is aged 17 or over;
- has one grandparent:
  - born in the UK (including the Channel Islands or Isle of Man); or
  - Before 31 March 1922 in what is now the Republic of Ireland; or
  - On a British-registered ship or aircraft.
- is able to work and plans to work in the UK;
- can adequately support and accommodate themselves and their dependents without help from public funds.

This visa is granted for an initial 5 year period. Thereafter, provided the commonwealth citizen has lived and worked in the UK throughout this period they can then apply for indefinite leave to remain.

8.5 Youth Mobility

The youth mobility scheme is for young people aged between 18 and 31 from participating countries and territories who want to come and experience life in the UK. Every year the UK government allocates a number of places on the scheme for each country and territory. The countries and territories participating in the scheme, and the number of places allocated to them for 2012, are:

- **Australia** 32,500 places
- **Canada** 5,000 places
- **Japan** 1,000 places
- **New Zealand** 10,000 places
- **Monaco** 1,000 places
- **Taiwan** 1,000 places
- **Republic of Korea** 500 places

If the applicant is a citizen or passport-holder of a country or territory listed above, and that country or territory has not used all its places for this year, the applicant might be able to come to the UK under the youth mobility scheme. The applicant's national government will be his/her 'sponsor' during his/her stay.

Migrant's can also apply if they are British overseas citizens, British overseas territories citizens or British nationals (overseas).

Provided all the requirements for this visa are met it enables individuals to enter and work in the UK for up to 2 years, provided that, the applicant has access to £1,800 in available maintenance funds at the time of application. This visa can only be applied for once in an individual's lifetime and is not extendable.

8.6 Representative of Overseas Business Visas

(Previously known as Sole Representative Visas)

For businesses starting in the UK for the first time, a representative of an overseas business visa may be the best option for the first member of staff being sent to establish a wholly owned subsidiary or branch office in the UK.

This type of visa currently falls outside of the points based system.

The business is able to send over a representative provided:

- that person is not the majority owner of the business;
- he/she has worked for the overseas business for at least 6 months in a senior role;
- he/she will have full authority to take operational decisions in the UK in a full-time capacity; and
- the overseas business maintains its headquarters outside of the UK.

This visa is granted by British Consulates overseas (applicants cannot apply from within the UK). This visa is initially granted for a period of 3 years following which the applicant can apply (within the UK) for a further 2 year extension to the visa. Once the applicant has been in the UK for 5 years, he/she may be able to apply for indefinite leave to remain (which means that the applicant can remain in the UK to live and work without any particular visa).

Under this visa applicants can bring in their spouse/civil partner/unmarried partner, who will be free to work in the UK independently for any business, as a dependant on this visa. Children can also be dependants on this visa.

8.7 Points Based System Visas

Under the immigration rules, migrants that are not EEA nationals or are not eligible for the visas set out above, will need to pass a points-based assessment before they are given permission to enter or remain in the UK.

The Points-Based System (PBS) consists of five tiers. Each tier has different requirements but essentially points will be awarded to reflect the migrant's ability, experience, age, and where appropriate, the level of need within the sector the migrant will be working.

The 5 tiers are:

Tier 1 – Commonly used visas under Tier 1 are Investors and Entrepreneurs.

Tier 2 – Sponsored Skilled Workers with a job offer (equivalent to previous work permit system).

Tier 3 – Low Skilled Workers filling specific temporary labour shortages (currently suspended).

Tier 4 – Students.

Tier 5 – Youth Mobility and Temporary Workers.

Please note that foreign nationals applying under any tier except tier 1 will need to be sponsored in order for their application to be successful (whether by an employer, educational establishment or government). Organisations who wish to sponsor migrants will need to apply for a sponsor licence from the UK Border Agency.

Within this brief summary we have only considered those visas which are most relevant to individuals wishing to work in the UK and for those companies wishing to set up a subsidiary operation in the UK that will employ foreign nationals. There are a variety of other visas which may be applicable and applicants should carefully consider all relevant visa options (or obtain professional advice) before making any visa applications.

Applicants should note that when applying for a PBS visa from overseas, he/she will be required to provide his/her biometric information (photograph and fingerprints) prior to obtaining the visa. Biometric information is collected in the overseas country of application and is a mandatory requirement.

Set out below are some of the visas now available for individuals under the points based system. Please note that this is not a complete list. Applicants should obtain advice before applying for a visa.

8.8 Tier 1 Visas

8.8.1 Tier 1 Investor

To be eligible for an investor visa an individual must have:

- £1,000,000 that is disposable and in a regulated financial institution; or
- have £2,000,000 in personal assets and £1,000,000 that is in a loan from an authorised financial institution.

If the money is not held in pounds sterling, applicants must convert its value into pounds sterling on the relevant application form. The conversion rate used should be taken from www.oanda.com on the day of the application.

If the criteria are satisfied, the applicant makes the application in their country of origin or where they legally reside. They will be entitled to enter and remain in the UK for 3 years. After 3 years, the applicant can apply whilst in the UK for an extension for a further period of 2 years. If the applicant has remained in the UK continuously for 5 years in this visa category he/she may be able to apply for indefinite leave to remain in the UK.

8.8.2 Tier 1 Entrepreneur

The entrepreneur visa is for individuals investing in the UK by setting up or taking over, and being actively involved in the running of one or more businesses in the UK.

The applicant will need to achieve a minimum number of points in 3 categories under the points-based assessment, currently the minimum number of points needed stands at 75 points, which is the maximum score available, comprising:

- access to £200,000 of the applicant's own money or funds from a third party willing to provide the funds to an individual, or access to £50,000 made available by one of the following: (25 points);
- (i) 1 or more registered venture capital firms regulated by the FSA;
- (ii) 1 or more UK entrepreneurial seed funding competitions listed as endorsed on the UK Trade & Investment website; or
- (iii) 1 or more UK government departments, which have made the funds available for the specific purpose of establishing or expanding a UK business;
- the money must be is in a regulated financial institution (the financial institution must confirm that the money is available to the applicant) (25 points);
- the money is disposable in the United Kingdom (25 points). If the funds are not held in the United Kingdom, all of the £200,000 must be freely transferable to the United Kingdom and convertible into pounds sterling (25 points).

The applicant must also obtain:

- 10 points for English language; and
- 10 points for available maintenance funds. If applying from overseas the applicant must show that they have at least £3,100 (or equivalent in local currency) in their bank account every day for 3 months and a further £1,800 (or equivalent in local currency) per dependent.

The application is made in the individual's country of origin or where he/she legally resides. If the application is successful, entry clearance will initially be granted for a period of 3 years. After 3 years, the applicant will need to apply for an extension for a period of 2 years.

At the time of extension, the applicant will need to show that he/she has invested £200,000 in a genuine UK business which has been set up and is operating legally (by, for example, submitting bank statements and payroll/corporation tax documents) and has created the equivalent of 2 new full time jobs for resident workers. The above are examples of the requirements only. The applicant will need to ensure that he/she meets all the requirements for initial applications and extensions by checking the UKBA guidance and obtaining legal advice.

If the applicant has remained in the UK continuously for 5 years in this visa category he/she may then apply for indefinite leave to remain in the UK.

8.9 Tier 2 Visas

8.9.1
Tier 2
Skilled Workers
(replaces the work permit scheme)

Any migrant applying under the Tier 2 (Skilled Workers) category will need a sponsor (employer) in the UK. The two maintain categories are General and Intra Company Transfer, and for both a three stage process needs to be followed:

Stage 1

The sponsor (employer) must apply for a licence (via an online application form) from the UK Border Agency (the 'Agency'). The Agency will carry out appropriate checks on the sponsor before deciding whether to grant the application for a license. The Agency may visit the sponsor to ensure that all relevant human resources (HR) practices and procedures are in place. All sponsors will be rated as an 'A' or 'B' rated sponsor according to the Agency's assessment of the risk they pose as a sponsor and based on whether the Agency believes that the sponsor is a bona fide organisation operating lawfully in the UK.

The company will also be listed on the Register of Sponsors on the UK Border Agency website with its 'A' or its 'B' rating. The cost of licensing is dependent on the size of the organisation and the type of licence application being made. For example, a small company (a company with a turnover of less than £6.5 million and fewer than 50 employees) will need to pay £500 for a tier 2 licence, whereas a large company would need to pay £1,500.

Stage 2

Licensed sponsors will then be able to issue Certificates of Sponsorship (a virtual document with a unique reference number) to potential migrants with a specific graduate level job offer where efforts to recruit a UK national have been unsuccessful (please note that this latter requirement is not necessary for every Tier 2 category of visa).

Certificates of Sponsorship fall into 2 categories: 'Restricted' and 'Unrestricted'. 'Restricted' Certificates are subject to an annual limit set by the Government (currently 20,700 for the year 6 April 2012 to 5 April 2013 and the year 6 April 2013 to 5 April 2014 for Tier 2 (General) migrants). Unrestricted Certificates of Sponsorship are exempt from the annual limit and include new hires with an annual salary of £150,000 or more, some renewals and extensions

When applying for a 'restricted' Certificate of Sponsorship, the company must have conducted the Resident Labour Market Test (where appropriate) to determine whether any UK nationals could perform the role. In order to demonstrate this, evidence must exist of a genuine recruitment drive, for example adverts, curriculum vitae from applicants and notes of interviews) or an Intra Company Transfer.

Various strict criteria apply as to whether an individual is eligible for sponsorship, e.g. minimum skill levels, minimum salary levels and length of service

Stages 1 and 2 must both take place within the UK.

Stage 3

All migrants will then need to obtain entry clearance for which they will not be allowed to apply without a Certificate of Sponsorship. This entry clearance must be obtained by the applicant in his/her home country (or in their country of legal residence). The entry clearance process requires the migrant to obtain a minimum number of points, which is currently the full amount (50 points) across the following categories:

- assigned Certificate of Sponsorship (30 points);
- appropriate salary and allowances (20 points); and/or
- the migrant must also score a further 20 points by demonstrating that they have competence in English (10 points) and access to sufficient maintenance funds, which currently stands at £900 (10 points).

It is worth noting that obtaining a Certificate of Sponsorship from a UK licensed sponsor does not guarantee that a visa will be issued.

If all criteria are satisfied, the applicant applies online in their country of origin or lawful residence and will be entitled to enter and stay in the UK.

8.9.2
Tier 2
General

This category is for foreign nationals who have a skilled job offer at graduate level or above from a registered sponsor, to fill a gap in the workforce that either cannot be filled by a settled worker (via a resident labour market test); or is a job on the designated shortage occupations list; or attracts a salary of over £150,000 per year.

In order to qualify under the Tier 2 General category 50 points must be scored across the following categories:

- sponsorship (30 points)
- appropriate salary and allowance (20 points)

The migrant must further score 10 points for their English language requirement, and 10 points for maintenance, meaning that the migrant must have enough money to maintain themselves and any of their dependants also entering the UK. Initial applicants must have at least £900 in a bank account for 90 consecutive days prior to the date of application. Further funds will need to be evidenced if dependants are accompanying them (unless an A-rated sponsor will certify the applicant's maintenance funds).

The Certificate of Sponsorship for the Tier 2 General category should confirm that the job is at graduate level or above (either because it is in a graduate occupation list or is in a job listed on a shortage occupation list) and that the annual gross salary (before tax) being paid is at or above the minimum rate in the relevant code of practice or £20,000 per annum (whichever is the higher).

Salary comprises basic pay (excluding overtime) plus any allowances if they are part of a guaranteed salary package, but does not include other benefits, such as overtime, bonus or incentive pay, travel and subsistence (including travel to and from the source country.

If permission is given to enter the UK on a Tier 2 General visa, then the successful applicant will be able to live and work in the UK for a maximum of 3 years. At this point a further 2 year extension may be granted, which may lead to the migrant being eligible to apply for settlement having lived In the UK for 5 years.

8.9.3
Tier 2
Intra Company Transfer (ICT)

This category is for employers of multi-national companies who are being transferred by their overseas employer to a UK branch of the organisation.

Before applying under the ICT category, the migrant must have a sponsor, and a valid certificate of sponsorship:

When applying, 50 points must be scored from:

- sponsorship (30 points)
- appropriate salary and allowance (20 points)

Applicants do not need to score points for their English language ability if applying from outside the UK, but 10 points must be scored for English language ability if an application is being made to extend a permission to stay to more than 3 years in total.

The migrant must have enough money to maintain themselves and any of their dependants also covering the UK (10 points) – initial applicants must have at least £900 and further funds if dependants are accompanying them (unless an A-rated sponsor will certify the applicant's maintenance funds).

The length of the migrant's stay depends on the sub-category and current location of the migrant, but for long-term staff can be up to an initial 3 year period with a possible further application for an additional 2 years for other sub-categories the maximum length of stay will either be 12 months or 6 months as appropriate.

In some of the sub-categories, the migrant must have been working for the overseas employer for a minimum period directly before transfer.

8.10 Illegal Workers

Under the Immigration Rules, employers are liable to both criminal and civil penalties if they employ a person (aged 16 or over) who is subject to immigration control and who has no permission to work in the UK, or who works for an employer in breach of their conditions of stay in the UK.

If an organisation employs or has employed an illegal migrant worker without a legitimate reason for doing so, it could be liable for a civil penalty of up to £10,000 per illegal worker.

If an organisation knowingly employs or has knowingly employed an illegal migrant worker then it could be prosecuted and receive an unlimited fine and/or a maximum two year prison sentence for individuals responsible.

However, if the employer can show that they carried out appropriate checks on the original immigration documents of the migrant worker and retained copies, they will have a statutory excuse against the imposition of any civil penalties. These checks must be carried out every 12 months in order for the defence to be effective.

9 Finance Matters

9.1 Exchange Controls

The UK has no exchange controls. Currently there are no restrictions on funds coming in to finance a business, whether from companies or individuals, though there may be tax considerations as to the type and nature of finance used. For example, where a UK subsidiary has low equity but large debt to its overseas parent, interest on that debt may not be fully tax deductible.

9.2 Business Finance

Business finance in the UK can be divided into two main categories: debt and equity.

9.3 Debt Financing

A recurrent theme in UK bank lending is that banks lend to businesses, not security. Whilst security is important, it is not the sole determining factor and banks will also want to assess the business plan of the borrower to ensure that:

- The projected cash flows are reasonable;
- There is adequate funding in place to allow the business to trade as it hopes;
- Trading will be profitable;
- Overdrafts will be fully fluctuating (that is, it is cleared in full from time to time); and
- Peak facility requirements are within bank lending policy restrictions.

The business's bank manager will also want to ensure that management information – monthly or quarterly accounts, etc. – are provided, together with other reporting information, such as perhaps an aged debtors (accounts receivable) list.

Whilst the viability of the business is important, the banks do not wish to be exposed should the business fail. Therefore, security is a significant issue. Typically, they will look for a loan to value ratio of not more than 50%-70%. Where security is limited, they may seek guarantees from a parent company, or possibly personal guarantees from the directors, often backed up by some form of charge over personal assets.

The main types of debt financing include:

- Overdraft facilities
- Term loans
- Hire purchase and leasing
- Asset finance
- Discounting and factoring
- Bills of exchange and letters of credit

Many businesses have a mixture of debt funding. The most common is for there to be an overdraft together with a term loan. The overdraft is there to provide working capital and to meet short-term funding requirements. It is not intended to be a source of long-term lending.

Therefore, an overdraft should be fully fluctuating. Overdrafts are normally repayable on demand, but it is unusual for a bank to call in an overdraft without warning. If a business has both a term loan and an overdraft facility care should be taken to ensure that the term loan does not become repayable on demand by the operation of cross-default clauses in the term loan agreement.

When facilities are applied for, banks will often look at the overall business requirements to see whether the facilities requested are the most appropriate. In businesses which forecast rapid growth, it may be that some form of debtor funding, such as factoring, might be more appropriate than an overdraft.

9.4 UK Banking System

The Bank of England is the UK's central bank and has responsibility for setting interest rates. The regulator of the UK banking system is the Financial Services Authority.

9.4.1 Clearing Banks

Most retail banking in the UK is carried out by the major high street clearing banks (Royal Bank of Scotland (which operates in England as NatWest), HSBC, Lloyds TSB and Barclays). They are known as 'clearing banks' because they settle mutual indebtedness on a daily basis through the London Bankers' Clearing House.

These banks offer a wide range of services to individuals and businesses, including a current (checking) account, deposit account, foreign exchange service, loans, etc. Any business operating in the UK is likely to need to have an account with a clearing bank so that cheques and money transfers can be dealt with and receipts deposited.

9.4.2 Merchant Banks

These were originally banks that specialised in financing foreign trade, an activity that often grew out of their own trading businesses. This led them into accepting bills of exchange and functioning as accepting houses. More recently they have tended to diversify into the field of hire-purchase finance, the granting of long-term loans (especially to companies), providing venture capital, advising companies on flotations and takeover bids, underwriting new issues, and managing investment portfolios and unit trusts.

Many of them were established as long ago as the 17th century, and some offer a limited banking service. Their knowledge of international trade makes them well placed in dealing with the large multinational companies.

9.4.3 Foreign Banks

The UK, particularly London, has historically had large numbers of foreign banks operating here. With the adoption of the EU Banking Directive, the numbers of such banks represented here is likely to increase. Foreign banks tend to have a relationship with an existing clearing bank to facilitate the clearing of cheques. In addition to foreign banks, there is also a well developed secondary banking market (financial institutions which accept deposits and make loans but which have relatively few branches in the UK and therefore do not play a major role in the payments system as far as the general public is concerned) and other deposit takers.

9.5 Opening a UK Bank Account

UK banks are keen to assist overseas entities in opening accounts here. They each have slightly different procedures, but the following items generally apply.

Banks will not open accounts where they cannot satisfy themselves as to the customer's bona fides. Typically, accounts will not be opened where:

- All elements of an account are based overseas (i.e. company registration, domicile of officials and trading activity) and one or more elements are outside the EU, unless they are subsidiaries or associated companies of existing satisfactory clients of the bank; or
- It is not possible to establish, or the company is not prepared to divulge, beneficial ownership; or
- If the entity is incorporated within one of the countries subject to sanctions. The countries subject to sanction vary from time to time and will be determined by the UK Government and such supranational bodies as the UN.

9.5.1 Papers

Assuming that the bank is willing to open an account, there will be some paperwork. Generally, this will include:

- Consent Form – i.e. that the applicant confirms that they agree to the banks terms and conditions;
- Business Current Account Terms and Conditions;
- Mandate – this details who is a signatory on the account, gives sample signatures and sets authority limits, if any.

9.5.2 Establishing the identity of the company

Banks will also want to have documentary evidence regarding the customer. This is likely to include a written confirmation from an attorney/notary or lawyer qualified in the jurisdiction in which the entity is registered confirming:

- The company is properly constituted in accordance with local law and trading within its limitations/restrictions/trading abilities;
- The name and type of entity;
- The trading status (e.g. not dormant);
- The registered address;
- The name and addresses of the directors, secretary, limited partners and shareholders.

Some banks may dispense with all or part of this, if they can obtain suitable assurances from third parties, such as reputable credit-reference agencies, but there is usually a requirement that the company's attorney confirms, in writing, the first point.

9.5.3 Identification of owners, directors, etc.

To comply with UK anti-money laundering requirements, proofs of identification are also needed. These are likely to be as follows:

- All individuals with a shareholding of 20% or more in the company (see Beneficial Ownership)

  and unless they have already been identified and verified under 1 (above)

- A minimum of two directors who have principal control over the company (typically this means the managing director and the finance director). Where only one director has been appointed only this individual needs to be identified and verified and unless they have already been identified and verified under 2 (above)

- A minimum of two signatories on the mandate

Where the applicant company is listed on a recognised stock exchange (or is a subsidiary of such a company), the identification procedures may be relaxed.

9.5.4 Beneficial Ownership

There is also usually a requirement for the beneficial ownership of the company to be verified separately from identifying the company and its officers. This will normally entail name identification and address verification being obtained from the appropriate beneficial owners.

Beneficial owners are normally defined as those individuals with a 20% or greater shareholding in the company or limited liability partnership.

In addition to identifying beneficial owners, the banks will also look at individuals who exert significant control over the company/limited liability partnership without holding a formal position (i.e. a 'Shadow Director').

The bank will take extra care where the ultimate beneficial owner is based overseas, particularly if the shareholder is based in a high risk jurisdiction. In this case, banks often require that shareholders with a 10% stake must be identified.

9.5.5 Company Formation Agents

If you use a company formation agent to set up your UK company, the bank will not accept instructions to open an account in the company name from the formation agent. The bank will still need to carry out its normal identification checks on the owners of the company.

9.5.6 High Risk Jurisdictions

These are jurisdictions that are deemed by the Financial Action Task Force (FATF) to have material deficiencies in their money laundering controls and are not co-operating in the international fight against money laundering. This list is updated periodically and was last revised in October 2011. The countries on the list are:

- Bolivia
- Cuba
- Ethiopia
- Kenya
- Myanmar
- Nigeria
- Philippines
- Sao Tome and Principe
- Sri Lanka
- Syria
- Turkey

9.5.7 Documentation Required

9.5.7.1 Name Identification

The usual practice with regard to identification is to ask for the production of one document from each of the following groups:

- Current valid signed passport
- Full UK driving licence
- National Identity card
- Firearms certificate
- Debit card/credit card with photograph

9.5.7.2
Address Verification

Address verification must not contain a PO Box address:

- Full driving licence – if not used as name identification;
- Utility bill (e.g. gas, telephone, electricity) – less than 3 months old. Final demands and mobile phone bills are not acceptable;
- Bank/building society/credit card statements – less than 3 months old.
- Council tax bill for the current year – for UK residents only;
- Vehicle registration document;
- Motor insurance certificate; or
- House insurance certificate.

In some circumstances, copies of identification and verification documentation for overseas residents can be obtained and certified, as a 'true copy of the original', by an attorney/ notary/ solicitor qualified in the jurisdiction of residency:

9.6 Equity Finance

There are many and varied sources of equity finance in the UK. Typically, an unquoted company will be backed by private investors, often the founding directors or friends and family. Sometimes institutional funding is sought, particularly for development and venture capital.

The UK has a very well developed venture and development capital industry. Development capital is normally only available short-term as funders look for a very quick return. As they will not be involved with the business for long, they usually contribute little to the business other than funds. Venture capital, on the other hand, normally provides medium term financing. It is often quite expensive by comparison with other sources of finance. However, the investor is likely to want board representation and may bring added value in this way. A clearly defined exit route will always be wanted, perhaps by redeeming shares or looking for the company to become quoted.

Quoted companies often raise their investment funds on the UK or other Stock Exchanges, but equally will look at debt finance from banks and other institutions.

9.7 Grants and Incentives

There are over 250 different grants and incentives available for businesses setting up in the UK. The UK authorities, either national or local, provide some; others come from EU funding. There are two types of assisted areas in the UK, which are called intermediate and development. The most generous grants are available in the UK's assisted areas and in Northern Ireland.

In theory, locating in a development area gives access to a larger grant; in practice, this is not always true. All UK grants are discretionary, which means factors such as job creation, promotion of exports or economic development are also taken into consideration. The size of any grant will be determined by negotiation with the government department or agency offering the grant.

Information on the availability of grants and incentives can be obtained from Business Link (http://www.businesslink.gov.uk) or by talking to us.

9.7.1 Assistance available in the Assisted Areas

Those parts of the country where the Government is anxious to stimulate economic growth and create jobs are the areas where the most generous incentives are available. They are known as the Assisted Areas (for example Liverpool) and the level of incentive varies according to the location, with Northern Ireland enjoying the highest grants.

9.7.2 Enterprise Zones

Enterprise Zones are specific areas of the UK that have been chosen to receive targeted assistance. The Zones are in areas suffering from particular physical and economic decline. There are special incentives available to encourage commercial and industrial investment, such as exemption from business rates (local property taxes), a simplified planning (zoning) regime and special 100% tax allowances for expenditure on new commercial and industrial property.

Many local authorities provide financial incentives to businesses setting up in their area. This is particularly relevant in inner city areas where grants may be available to help with the acquisition of land, building conversions, etc. Local authorities may also provide subsidised training or give non-financial assistance, such as providing tailored inward investment packages.

The level of availability of local grants and incentives changes rapidly. The latest information can be obtained from the Department for Transport, Local Government and the Regions, or the Development Agency in Wales, both of which are charged with generating economic development.

10 Property Matters

10.1 Acquiring a Property

In England and Wales, there are two ways in which property can be held: freehold and leasehold. A freehold interest is for all practical purposes as good as owning a property outright. A leasehold interest is an interest granted by a landlord to a tenant for a defined period of time, usually in return for a payment of rent. The period of time can be from one day to 999 years.

The document that governs the relationship between a landlord and tenant is known as a lease. 99.9% of flats are held under leases as are the vast majority of commercial properties. Leases may be bought and sold like freehold property. The owners of freehold property can grant leases, and most tenants can grant sub-leases.

There is no restriction on foreign ownership of property in England and Wales. There is a long established and efficient Land Registration system, which provides a government backed guarantee of ownership.

An investor chooses either to rent property, on a long or short lease, or to buy the freehold. Many commercial properties will only be offered for lease. If the choice exists of taking out either a leasehold or freehold lease, the commercial decision as to which is better will depend on factors such as available financing and different tax treatments of each option.

10.2 Commercial Leases

A practical alternative for businesses that are starting up in England and Wales are ‘serviced offices’ or ‘serviced accommodation’. Space can be rented according to need with whatever facilities are required, including IT and telephone systems. Additional space can be taken or vacated as required.

This form of renting is very popular for new businesses where they want to ‘hit the ground running’. However, the cost is often significantly higher than if the tenant were to take normal rented space.

Many are modern business premises, whether industrial, warehouse or office constructed by property developers and sold on to investors, who then grant leases.

The length of the lease is agreed by negotiation between the Landlord and Tenant, and can range from one to more than ten years. Office leases are typically shorter than individual leases. It is also possible to buy a leasehold from the current tenant, and this will result in a shorter period to expiry.

Tenants increasingly prefer shorter leases. These give added flexibility to the tenant, but are less popular with institutional landlords. Therefore, there is often a higher annual rent for shorter leases.

The initial rent will be stated in the lease. This will be the amount payable until such a time a rent review can be undertaken if the lease allows for it to happen depending on the state of the market when the lease is granted, there may be a reduced rent for a period, or an initial rent free period.

The lease may contain a rent review. At the end of specified periods – typically every four or five years – the rent will be reviewed to reflect the market. These clauses are normally drafted on an upwards only basis, so that the rent will not reduce even if the market rent is less than the rent being paid under the lease. There are also usually arbitration provisions if the landlord and tenant cannot agree on the fair market rent.

When a building has more than one occupier (such as when different floors in an office block are leased to different tenants), the landlord will usually take out one insurance policy for the whole of the building and the premium will be recharged to the tenants.

There will be provisions regulating alterations to the property, usually involving obtaining the landlord's consent.

There may be permission to sub-let all or part of the property, usually subject to landlord's consent.

If the lease is part of a building or office block, the tenant will normally have to pay the landlord a proportion of the general expenses of the building as a whole and the repair of the structure of the building and of the areas used in common by all tenants (the 'common parts'). This is known as a 'service charge'.

The landlord will look at the prospective tenant to ensure that they can give a good covenant – i.e. that they will be able to pay the rent and service charges as they fall due and will not become insolvent during the course of the lease. Whilst a business's cash flow is important with respect to this consideration, so too is its net worth, where the covenant is uncertain (such as with a new business) the landlord may look to the parent company (if there is one) and/or the directors to provide guarantees. The landlord may also require a rent deposit from the tenant which is typically for a sum equal to between three and six months' rent.

It is highly likely that the lease will be drafted so that the tenant's repairing covenant is worded to ensure that there is an obligation on the tenant to put the premises into repair. At the end of the lease the tenant may well therefore find himself in a situation whereby the landlord insists that that the premises is put into a better state then it was at the beginning of the lease. To avoid this, the tenant should seek to limit its repairing obligation to keeping the premises in the same state as it is at the grant of the lease. This can be achieved through preparing a schedule of condition to attach to the lease. The schedule would show the state of the premises at the date the lease is granted by reference to photographs and a detailed description of its condition.

The tenant may be able to negotiate the inclusion of a 'break clause'. This gives the tenant the option to cancel the lease after an agreed period. This gives added flexibility to the tenant. The lease may also have renewal provisions, so that if the tenant wishes to remain in occupation at the end of the lease term, he may be able to force the landlord to negotiate a new lease with him. The Landlord and Tenant Act 1954 governs the tenant's right to renew a lease. All business leases have this right unless the lease specifically excludes the 1954 act where a lease is 'within' the Act, such renewal provisions will exist.

Many landlords will require the lease to be 'outside the Act'. For leases entered into before 1 January 1996, the outgoing tenant remains liable for the rent, etc. due under the lease if the new tenant defaults. This obligation remains even if the new tenant subsequently passes on the lease to a further tenant. The right of a tenant to assign a lease is commonly subject to the consent of the landlord.

Your legal adviser will be able to give guidance on the usual provisions of a lease. It is useful to talk to them at an early stage of the transaction whilst negotiations are ongoing to ensure that you negotiate the best possible terms with the landlord.

10.3 Use of the Property

Before agreeing to buy or rent any property, the purchaser must ensure that the property is suitable for the use to which it is to be put. There are often physical restrictions on door widths, etc. that may mean the property is unsuitable without extensive alteration.

Physical inspection is therefore essential and the particulars of the property provided by the surveyor or estate agent should not be relied upon in isolation.

Matters such as floor loading stress levels may be important, for example, and these are not normally set out in the particulars.

Also, the purchaser should ensure that there are no national or local regulations that would inhibit the use of the property as intended and legal advice should be sought as soon as possible in the process. The purchaser should also ensure that there are no restrictions in the lease or covenants attaching to a freehold which would conflict with the proposed business – there is not much point in taking a property which is to be used as a call centre only to find that that activity is prohibited!

In addition to ensuring the property itself is suitable for the business, regard should be had to local communications and infrastructure:

- Is there an adequate local workforce?
- Is there available car parking and public transport?
- How close are the premises to major roads, motorways (highways) and airports?

10.4 Property Taxes

In the UK, there is a system of local property taxes on business occupiers known as rates. Rates are payable irrespective of the profitability or income of the individual occupier.

The government at national level sets the level of business rates. The actual level of tax then depends on the value of the property. The valuations are generally based on notional rental levels and are reviewed every five years. Additionally, the acquisition of land, whether freehold or leasehold, is generally subject to Stamp Duty Land Tax – see Stamp Duty Land Tax, SDLT, (6.3.5) for more details.

10.5 Grants and Incentives

Many areas of the country offer some form of grant or incentive to encourage new businesses to set up in that region, or to expand existing activities. The size and availability of these may be an important factor in determining the location of the business. See Grants and Incentives at page 122 for more detail.

10.6 Planning Regulations

In the UK, planning (zoning) regulations are administered by local authorities. The regulations cover the development and usage of land and buildings. Almost all new buildings and modifications to existing buildings require planning permission from the relevant local authority. There are independent tribunals that hear appeals against planning decisions. If development takes place without permission, unauthorised structures may be demolished.

Additionally, where a building is to be used for a different purpose from its existing use, such as a warehouse being converted into office units, permission for such a change will also normally be required. Where consent is not gained, the local authority can obtain enforcement orders to prevent the mischief continuing. Where, however, the change has subsisted for a number of years without it being challenged, the validity of the change can become lawful. In each case where planning consent may be needed, expert advice should be taken in advance. For larger projects, such as Terminal 5 at Heathrow Airport, the proposal is dealt with at national government level rather than by local authorities, and may involve a public enquiry.

11 Acquisition Matters

The UK has no specific restriction on non-residents or overseas citizens or corporations owning property of any sort in the UK. It is not unusual for UK based businesses to be taken over by overseas purchasers. Generally, where the target business is operated by a company limited by shares, the purchaser can either buy the shares or buy the assets and undertaking. For an unincorporated business, such as a partnership or sole trader, it is not possible to buy the owner, so the normal method of acquisition is to buy the assets and undertaking.

11.1 Buying a Company's Share Capital

With a share purchase, as the company itself is being acquired, all its obligations and liabilities (even those the buyer does not know about) are taken over, whether actual or contingent. There are ways of structuring matters so that such unknown liabilities may be extinguished, but this needs careful and detailed planning and advice. It is normal for there to be a share purchase agreement, which sets out not only the price being paid, but also seeks various warranties and indemnities from the vendor. The actual document transferring title to the shares is a stock transfer form.

A share purchase is usually done where there are assets or contracts that cannot easily be assigned, or where there are substantial tax losses that the purchaser wishes to try to preserve and use to set against future profits. In this case, care must be taken to ensure that there is no major change in the nature or conduct of the trade, as this could prejudice the availability of the losses. It may also be the only way in which some vendors are willing to sell a business, particularly where there are capital gains tax considerations.

11.2 Purchase of Assets and Undertaking

This is where the purchaser agrees to buy specified assets and liabilities. The type of transfer required will depend on the type of property being transferred. For example, real property will be conveyed; leases and intellectual property rights, etc. will be assigned; and there will be physical or constructive transfer of moveable assets. Generally, liabilities cannot be unilaterally assigned. Accordingly, the purchaser will take over no liabilities except for:

- Employee obligations. Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE' – see page 136), the employee obligations of a business are automatically transferred on the sale of a business as a going concern;
- Any real (rather than personal) rights attaching to any property purchased or leased; and
- Any obligations expressly assumed by the purchaser with the necessary consents of interested third parties, such as hire purchase agreements that have been formally transferred.

The contract will normally set out arrangements for the collection of pre- and post-transfer debtors. Additionally, the purchaser may wish to have certain contracts that have attendant liabilities transferred to him with the consent of the third party. The most common examples are hire purchase and finance leases. The transfer/consent process is called ‘novation’.

Normally, where it is the assets and undertaking of a business that are being acquired, it is not possible for historic tax losses to be transferred, however tax advantages may be available for corporation tax purposes.

11.3 Due Diligence, Warranties and Indemnities

For any business acquisition, the principle of ‘caveat emptor’ (buyer beware) applies. The purchaser has to satisfy himself that it is worth buying the business at a particular price. There is no general obligation on the vendor to notify problems or liabilities to the purchaser.

Therefore, the purchaser should investigate the business being acquired, including, if the target is a company, the liabilities and history of the company. This task is mainly left to the purchaser’s advisers, usually accountants and solicitors, though it is increasingly common for would-be purchasers to have some input on the review such as technical staff evaluating certain specialised aspects of the business. The scope of due diligence reviews, and assignment of responsibilities, should be clarified at an early stage.

Ideally, review parameters and reporting methods and deadlines should be agreed in writing so that areas of overlap are minimised and no important aspects are omitted.

The purchase agreement will normally contain a series of warranties and indemnities. Their purpose is to elicit information from the vendor as much as it is to provide a remedy in respect of something that has not been disclosed. It is normal in a share purchase transaction for an indemnity regarding the tax affairs of the target company to be required. This is normally dealt with by way of a deed or covenant, commonly called a ‘Tax Covenant’.

The vendor will be advised by their solicitors and accountants as to the form and content of the disclosures, which are normally encompassed in a formal disclosure letter, accompanied by various supporting documents. The disclosures are generally quite detailed, and the volume of supporting paperwork can be considerable. Provided the disclosure is accurate and detailed enough to alert the purchaser to a potential liability, no damages should be recoverable from the seller in respect of matters properly disclosed.

Where there is a breach of warranty, the purchaser should be able to recover their loss, although it must be remembered that he has an obligation to mitigate that loss, and to show that it was reasonably foreseeable. Where the purchaser can show that the price paid was based on a profit multiple (i.e. the estimated value of the business as represented by the seller), the size of the claim can be quite considerable. Generally, the sale and purchase agreement will limit the overall quantum of the claim to the consideration paid. In the case of a breach of indemnity, a purchaser should, subject to any contractual limitations, be able to recover any loss actually incurred as a result of that breach. Clearly, for this to be a worthwhile exercise, the vendor has to have resources worth pursuing.

It is common for there to be contractual limitations on the extent of warranties and indemnities, for example as regards duration of the obligations and the minimum and maximum amounts of a claim. There may also be retentions of part of the purchase price for a specified period after the contract date as security for the acquisition to ensure that there are funds available to meet warranty claims if particular problems surface. It should be noted that there are tax consequences that arise when using retentions, etc. and advice should always be taken, both by the vendor and the purchaser.

11.4 TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") applies in cases where there is a "relevant transfer". This can apply in two cases:

- a transfer of a business, undertaking or part of a business or undertaking - where there is a transfer of ownership of an economic entity that retains its identity ("business transfer"); and
- "service provision changes" - when a client engaging a contractor to do work on its behalf, reassigning such a contract or bringing the work "in-house".

To qualify as a business transfer, the identity of the employer must change. Therefore, subject to very limited circumstances, TUPE does not apply to transfers by share take-over because, when a company's shares are sold to new shareholders, there is not transfer of a business or undertaking i.e. the same company continues to be the employer. TUPE will normally apply to a transfer of assets.

Service provision changes concern relationships between contractors and the clients who hire their services. Examples include contracts to provide such labour intensive services as office cleaning, workplace catering, security guarding, and refuse collection.

In respect of employees, where a "relevant transfer" under TUPE takes place: the employee automatically becomes an employee of the new employer. The new employer will be required to observe all terms and conditions (e.g. pay, provision of work) of employment which applied to employees before the transfer. This means that the new employer will be responsible for things such as:

- Claims regarding pay arrears;
- Outstanding legal claims;
- Personal injury claims;
- Disciplinary records; and
- Contractual requirements governing confidentiality, patents, etc.

The only rights and liabilities that do not pass are:

- Criminal liabilities (that the previous employer may have faced); and
- rights and liabilities relating to the provision of occupational pension schemes which relate to old age, invalidity or survivors.

However, please note, since April 2005, it is necessary to provide specified pension benefits to the transferring employees if they had certain pension rights prior to the transfer.

If a fundamental change to the contract is made as a result of the transfer, the employee may leave and claim constructive (unfair) dismissal. An employee who is dismissed either before or immediately after such a transfer and for a reason connected to it he/she may bring a claim for unfair dismissal, request a redundancy payment or wrongful dismissal. The only defence to such a claim would be to show the dismissal is a result of an economic, technical or organisational reason entailing changes to the workforce, and the employer has acted reasonably.

If an employee objects to transferring to the new owner, his or her employment will be regarded as terminated. There will be no dismissal, and no requirement to give notice on the part of the employee.

There is an obligation for the vendor to provide certain information to the purchaser about the transferring employees. The information should be given not less than 14 days before the transfer, or, in special circumstances, as soon as is reasonably practicable.

If the vendor fails to provide the relevant employee information, the purchaser can bring a claim against the vendor in the Employment Tribunal.

There is also an obligation on the vendor and the purchaser to inform and consult with representatives of any employees affected by the transfer in good time. If this is not done, the vendor and purchaser could be held jointly and severally liable for breaching this obligation under TUPE.

Advice should always be taken regarding complying with the employee information provision and the appropriate information and consultation obligations in relation to transferring employees.

11.5 Merger Control

Business mergers are subject to statutory control via the Competition Act 1998. This came into force on 1 March 2000 (further details are given in 12:11, 'The Competition Act 1998').

The provisions of Articles 81 and 82 of the Treaty of Rome, which seek to prevent anti-competitive behaviour, may also be of relevance (see 12:10 'EU Competition Policy').

12 Selling Matters

12.1 Conditions of Sale

Businesses need to ensure that the conditions on which they sell their goods and services are made known to the purchaser and are properly incorporated into the sale contract. This is most commonly achieved by having standard terms and conditions of sale. These will set out basic matters such as:

- Retention of title – a seller may, in certain circumstances, retain ownership of the goods sold until the buyer has paid for them. This is intended to act as a safeguard in the event of the default and/or financial collapse of the buyer. It is often ineffective where the goods have to be accurately identified, so careful drafting is necessary and the goods in question must be capable of the requisite degree of identification;
- Intellectual property – if the seller owns any intellectual property rights that may inadvertently be incorporated into a product, it is essential that those rights do not pass to the purchaser;
- Exclusions of liability – it is normal for liability for defective goods, etc. to be limited. However, there are certain matters that cannot be excluded, such as death and personal injury. Careful drafting is essential to ensure the effectiveness of such clauses; and
- Sale of goods legislation – certain rights are automatically attributed to a purchaser by law. Various terms are also implied (i.e. deemed to exist) in any contract for the provision of goods and services, details of which are set out at 12.4.

12.2 Distance Selling Regulations

The UK has domestic regulations giving effect to an EU-wide policy with regard to goods sold at a distance – i.e. where the customer is not physically present when the transaction is made. The rules therefore cover sales made over the Internet, by telephone, fax, and other forms of mail order.

The main provisions of the regulations (The Consumer Protection (Distance Selling) Regulations 2000) are that consumers should be given clear information including details of the goods or services offered, delivery arrangements and payment, the suppliers details and the consumer's cancellation rights before they buy;

The regulations also provide that:

- The consumer should be given information in writing;
- The consumer has a cooling off period of 7 working days; and
- The consumer has a right of cancellation.

In view of the opportunities for abuse, there are exemptions for the supply of certain types of goods, including shrink-wrapped software and certain audio/video products. Other excluded items include goods of a perishable nature, such as flowers, newspapers and magazines.

Certain types of sale are also excluded, including auctions, betting and gaming, and financial services.

12.3 Payment Terms

Terms for payment should be incorporated into the terms and conditions. There may also be a term allowing the vendor to charge interest on late payment. If the contract is silent as to interest on overdue debts, there is a statutory right for all businesses and public sector entities to charge interest at 8% (or such other rate as the Secretary of State may set) over base rate on any late paid debt, and can also claim the costs of recovery (Late Payments of Commercial Debts (Interest) Act 1998). This can be substituted by agreed contractual terms provided the remedy for late payment is ‘substantial’.

The default payment period is 30 days from either the delivery of an invoice, or the delivery of goods or services, whichever is the later. However, this is open to alteration by contractual agreement between he parties.

The Act allows the interest to be pursued separately from the principal debt. It also allows for the assignment of the interest to third parties.

The UK has a well-developed framework governing the supply of goods and services (the Sale of Goods Act 1979 (SGA) and the Supply of Goods and Services Act 1982 (SGSA)). Amongst these are certain terms that are automatically implied in every contract for the sale of goods. These are that:

- The seller has good title to the goods in question;
- The goods will be of a satisfactory quality;

12.4 Implied terms

- Where the buyer has made it clear that the goods will be used for a particular purpose, that the goods are reasonably fit for that purpose; and
- If a sample or description of those goods has been given, that the goods actually supplied correspond to that description or sample.

As regards the supply of services in the course of the supplier’s business, it is similarly implied that the services concerned will be supplied:

- At a reasonable cost (if the price is not stipulated);
- Within a reasonable time (if the time is not stipulated) ; and
- With reasonable skill and care.

Where products are sold to consumers, and do not conform with the contract for sale, the main remedies available are rejection of the goods, damages, repair or replacement and rejection.

Consumers also take the benefit of the Sale and Supply of Goods to Consumers Regulations 2002, which imply the following into consumer contracts for goods:

- If the consumer chooses to request a repair or replacement, then for the first six months after purchase it will be for the retailer to prove the goods did conform to contract (e.g. were not inherently faulty).
- After six months and until the end of the six years, it is for the consumer to prove the lack of conformity.

- If repair and replacement are not possible or too costly, then where the consumer has received some benefit from the goods, a partial refund can be sought, or a full refund if faults have meant they no benefit was enjoyed at all.

These are regulated under statute by the Consumer Protection from Unfair Trading Regulations (2008) and the Business Protection from Misleading Marketing Regulations (2008). There is also self-regulation by the Advertising Standards Authority Codes of Practice and the British Code of Advertising, Sales, Promotion and Direct Marketing. Various trade groups, such as the mail order industry, also have their own voluntary codes. These all establish standards that the members agree to follow. Where the provisions of any of the codes are broken, there is usually a complaints procedure. The threat of adverse publicity is normally enough to ensure adherence.

12.5 Advertising and Promotion

In addition to the advertising rules, there also exists legal intellectual property protection via concepts such as passing off, trademark protection and copyright. (See 15:1: Intellectual property protection).

12.6 Labelling

There are specific UK and EU regulations setting out the requirements for product labelling. Certain industries are heavily regulated in this respect, such as those concerned with hazardous substances, food, pharmaceuticals, electrical appliances and tobacco. Also, certain goods such as pharmaceutical products require licensing prior to import, manufacture and/or sale in the UK.

Other products, such as electrical equipment, have to be certified as compliant with EU safety regulations and specially marked as such (CE marking). It is an offence to apply a CE mark where the product does not conform to the relevant standards.

The Trades Descriptions Act 1968 as amended by the Consumer Protection from Unfair Trading Regulations 2008 makes it a criminal offence to apply a false description to any goods in the course of a trade or business or to supply any goods that are falsely described.

12.7 Weights and Measures

There are extensive and often complex regulations dealing with weights and measures for goods and the markings of these on packaging. Indications of weights and measures are treated as trade descriptions for the purposes of the Trades Descriptions Act (1968), so getting them wrong can represent a criminal offence. The current primary legislation is the Weights and Measures Act 1985.

The UK is currently 'bilingual' in its approach to weights and measurements: although the metric system is widely used, many things, particularly road distances, beer, people's weight and height and land area, are still typically dealt with under the imperial system.

All goods must be sold in metric measures. It is permissible for the Imperial equivalent to be shown on the price tag. The only exception is draft beer and cider – these must be sold by Imperial volume (pint or half-pint); all other drinks are sold in metric quantities.

Although the Imperial weights are the same in the UK as in the USA, people's weight is often expressed in stones (14 pounds each) and pounds. Liquid measures are rather different – there are 20 fluid ounces to an Imperial pint, not 16 as in the USA. A gallon is still eight pints

12.8 Product Liability

The UK imposes strict liability under the Consumer Protection Act 1987 on producers for damage caused by defective products. This means that the customer does not have to show negligence on the part of the producer. All that has to be shown is that the product was defective and that defect caused damage. This is in common with other EU countries and the EU-wide legislation implementing the 2005 Unfair Commercial Practices Directive (enacted in the UK by the Consumer Protection from Unfair Trading Regulations 2008). 'Producers' includes not only manufacturers, but also anyone who presents himself as the producer (i.e. own-branders) and those who import goods manufactured outside the EU, unless the overseas manufacturer can be identified.

There are various defences available, including being able to show that the defect was due to compliance with the mandatory regulations of a public authority. Damages awarded for defective products have no pre-set limit in the UK (some countries have set limits). There are however set time limits by which an action can be brought – broadly, three years from when the victim was aware of the facts that would have enabled the case to be brought and no proceedings can be brought after ten years from when the product was put into circulation. It is important to note that strict liability (i.e. legal responsibility for damage and loss caused by acts or omissions regardless of culpability, negligence or fault.) cannot be excluded.

The General Product Safety Regulations 2005 give the UK authority express powers relating to product recall, fines and imprisonment.

12.9 Consumer Credit

The granting of credit to consumers is regulated by the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006. Providers of credit have to be licensed. A regulated transaction is an agreement between an individual (the debtor) and any other person (the creditor) by which the creditor provides the debtor with credit of any amount which does not fall within an exempt category. Sole traders and partnerships are included, but companies do not have protection under the legislation. If an unlicensed provider gives credit, he (or the company and its directors) commits a criminal offence and the agreement will be unenforceable by the provider (though the debtor can still enforce it).

12.10 EU Competition Policy

Articles 101 and 102 of the "Treaty on the Functioning of the European Union" (the TFEU) are the most commercially significant provisions as regards competition policy.

The main thrust of EU competition policy is to try to ensure that distortion of the competitive environment is minimised, whether that distortion comes from private agreements between companies in one country, or across various member states. The provisions of the TFEU are directly effective in the UK and can therefore be relied on by individuals before national courts.

Article 101 prohibits agreements or arrangements that:

- Directly or indirectly fix purchase or selling prices or any other trading conditions or share markets or sources of supply;
- Limit or control production, markets, technical development, or investment;
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Under Article 102 of the TFEU, entities that have a dominant market position within the EU (or a substantial part of it) are prohibited from abusing that position, for example by limiting technical developments or imposing unfair pricing.

12.11 The Competition Act 1998

Competition law in the UK is essentially derived from the Competition Act 1998 and the Enterprise Act 2002.The Competition Act enacted the EU's directives covering anti-competitive agreements and the abuse of dominant market positions. The provisions of the Competition Act affect not just companies but any person, natural or legal, including partnerships, trade associations, etc. The Office of Fair Trading is responsible for enforcing the Act, and its provisions are now seen as some of the toughest in the world, and there are serious consequences for infringing the prohibitions.

Under the Act, it is only necessary to notify an agreement where there are reasons for believing that it will have an appreciable effect on competition and therefore be caught by the prohibitions. According to government guidelines, this is unlikely unless the parties to the agreement have a share in excess of 25% of the relevant market.

The Competition Act introduced two prohibitions: one of agreements (whether written or not) which prevent, restrict or distort competition and which may affect trade within the United Kingdom ('the Chapter I prohibition'); and the other of conduct by undertakings amounting to an abuse of a dominant position in a market which may affect trade within the United Kingdom ('the Chapter II prohibition').

Any agreements that infringe the prohibition on anti-competitive agreements will be void and unenforceable as between the parties unless they meet the criteria for exemption (i.e. the benefits outweigh any anti-competitive effect).

The Office of Fair Trading may impose fines of up to 10% of the undertaking's worldwide annual turnover for the previous business year and order that the infringement is brought to an end in the case of a breach.

In addition, third parties can claim damages for losses arising out of that breach. Very small businesses, unless they are involved in price fixing, will not be liable to the penalty regime, though they will still be exposed to claims from third parties. This exemption applies to agreements between parties whose combined group turnovers in their last financial year, preceding the infringement, does not exceed £20million.

The Director General of Fair Trading has powers to investigate suspected infringements of the prohibitions. These include requiring production of relevant documents and explanations thereof, and entry to premises, made forcibly if necessary under a search warrant issued by the High Court.

12.11.1 Chapter I prohibitions

The Chapter I prohibition covers agreements between undertakings that have the object or effect of preventing, restricting or distorting competition in the United Kingdom and which may affect trade within the United Kingdom, or a part thereof. These effectively mirror the requirements of Article 101 noted above.

An agreement that has those sorts of characteristics will not fall foul of the rules on that alone – it also needs to have as its object or effect an appreciable prevention, restriction or distortion of competition in the United Kingdom. In accordance with EC case law, an agreement will generally not be considered to have an appreciable effect on competition if the parties' combined share of the relevant market does not exceed 25%, although there will be circumstances in which this is not the case.

The Act provides for three types of exemption from the Chapter I prohibition, namely; the individual exemption, block exemption and parallel exemption, which applies where an agreement is covered by an EC individual or block exemption under Article 101 of the TFEU or would be covered by an EC block exemption if the agreement had an effect on trade between Member States of the EU.

12.11.2 Chapter II prohibitions

The Chapter II prohibition covers conduct by one or more undertakings that amounts to the abuse of a dominant position in a market in the United Kingdom (or a part thereof) that may affect trade within the United Kingdom. The requirements broadly mirror those of Article 102 noted above, and affect cartel arrangements.

An undertaking will be considered "dominant" if it "possesses a substantial level of market power." An undertaking will have a substantial level of market power if it has the "power to behave independently of competitive pressures". This must be judged against the background of a properly defined relevant market through assessment of:

- The goods or services which form part of the market (the product market);
- The geographic extent of the market.

Although there are no exemptions available under this Chapter, there are various exclusions that may be applicable. It is also worth noting that the Office of Fair Trading considers it unlikely that an undertaking will be individually dominant if its market share is below 40%

12.12 Restraint of Trade

To encourage businesses to come forward with information concerning unlawful practices, the government has announced a form of whistle blower's immunity. If the informant is the first to notify the authorities about such an agreement, even if it is party to it, it may escape the penalties that can be imposed.

There are no specific statutory measures that impact on contractual restraint. However, the courts have built up a body of case law that, in essence, strives to limit restraints to that which is reasonable, having regard to the nature of the subject of the restraint, the geographical restrictions, length of time that the restrictions are to apply and any other relevant facts.

Any restraint that is found to be unreasonable in all the circumstances will be ruled ineffective. This could lead to the entire agreement containing the offending clause being found invalid, however by careful drafting, this can be avoided.

12.13 Resale Price Maintenance

Impositions of obligations (as opposed to recommendations) on resellers to sell at a particular minimum price are prohibited under the provisions of the TFEU and the Competition Act 1998. An action to try to enforce a minimum resale price can be injuncted and heavy fines can be imposed on offending parties.

12.14 Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 ('C(RTP)A') is a radical development and in certain circumstances repeals one of the oldest tenets of English contract law, privity of contract. Prior to the Act coming into force, only the parties to a contract could enforce the provisions of that contract.

Under the provisions of the C(RTP)A, a third party may enforce any term of a contract to which he is not a party if either (i) the contract expressly provides that he may; or (ii) that term purports to confer a benefit upon him. The third party need not have existed at the date of the contract or even be named in the contract provided it can be shown that they are a member of a class or fit a particular description identified in the contract. The provisions of the C(RTP)A can be expressly excluded from a contract via wording in the contract to that effect.

The C(RTP)A does not have retrospective application, but applies to all contracts entered into on or after 11 May 2000; in respect of contracts entered in to before then but after 11 November 1999 it is applicable to the extent that the contract expressly provides for this.

13 International Trading Matters

The UK has a long tradition of international trade. Some 25% of our gross domestic product is accounted for by exports. As a result, we have a large body of people who are trained in international trade, covering all aspects from freight forwarding and shipping to the paperwork needed to expedite matters.

Insurance underwriters are very familiar with the risks associated with international trade (Lloyds of London being pre-eminent in this area and having its roots in covering such risks). Even the government, via the Export Credits Guarantee Department, provides insurance against the default of foreign buyers.

The banking sector provides some very sophisticated products to facilitate international trade. It should be possible to find a workable solution to most financial aspects of international trade, whether this is the transfer of funds, finding correspondent banks or dealing with such things as discounted letters of credit.

13.1 Imports

13.1.1 General

Goods may only legally be imported in to the UK through places approved by HMRC. Such places are typically ports and airports, and railway termini for the Channel Tunnel – in practice, the UK entry point is actually on the French side of the tunnel.

Most goods can be imported into the European Union (EU) without the need for a specific import licence. Also in most cases restricted goods already in free circulation within the EU do not require a further licence to import into the UK. However, for certain textiles, ceramics, footwear and steel the importer needs to apply for a licence to a competent EU Authority. In the UK this is the DTI's Import Licensing Branch (ILB).

13.1.2 Administration

Details of all goods imported into the UK from outside the EU have to be reported to HMRC. Either the importer or his agent does this using a form known as the Single Administrative Document (SAD). This one form acts as the import, export and transit declaration in respect of all trade with non-EU countries. The importer (or exporter) has to ensure that the goods are properly classified, using published lists of classifications, thus ensuring that the correct UK Tariff is applied. In respect of goods brought in from other EU countries, generally there is no need for there to be a declaration made to HMRC.

13.1.3 Controls

There are two types of import restrictions in the UK: those that fall under the EU Common Commercial Policy and those that the UK exercises in its own right. There are two important restrictions in the first category:

- Agreements with a large number of countries restricting trade in steel products; and
- Agreements under the Multi-Fibre Agreement affecting textile and clothing imports from countries with low labour costs.

The UK has a voluntary-restraint agreement with Japan limiting exports of cars to 11% of the UK market. Similar agreements have been negotiated with other Asian countries on imports of consumer electronic products.

Imports of some types of fruits and vegetables are subject to special licensing arrangements, as are imports of firearms and other weapons. The UK also imposes import restrictions on health, hygiene and safety grounds. Imports of most foreign poultry and milk are excluded by such arrangements, and imports of live animals are strictly controlled.

13.2 Exports

As a major trading nation, the UK has very few controls over exports. Those that do exist are mainly there for policy or national security reasons, or to control the movement of items of national/ historical importance. Trade sanctions are used as a matter of national policy, such as with Zimbabwe, and special export licences are required for embargoed nations. Military items, or items that may have a military application as well as a civilian one, are also controlled. Details of current guidance can be obtained from the Department of Business, Enterprise and Regulatory Reform.

There are also restrictions in place regarding the export of diamonds, live animals, endangered species and certain works of art. From time to time, there are also restrictions placed on certain types of scrap metal.

One further factor that needs to be borne in mind is regulations imposed by other countries – in particular the USA. It has rules which govern the re-export of sensitive items, such as high-technology goods (e.g. computers) to certain countries.

Exporters normally have to make declarations to HM Customs & Excise with regard to goods being exported. The declarations serve to gather trade data as well as being used for control purposes. In certain circumstances, simplified procedures are available, and details of these schemes can be obtained from HMRC.

13.3 European Union Sales

The European Union has both political and economic objectives. The political objective began as a result of France and Germany trying to find a way to avoid a repetition of the two world wars, but has broadened into one of developing closer relations between member states. The economic objective is to create, through a common market, with companies competing on a level playing field, growth in member economies and increasing standards of living for their citizens.

The common market is the abolition of all obstacles to the free movement of goods, persons, services, establishments, capital and payments together with the development of an agriculture, transport and competition policy. The EU is thus a customs union. Goods manufactured in the UK can be sold in any member State of the European Union without having to pay customs duties or tariffs (and vice versa).

Non-tariff barriers, such as slower processing of the papers allowing the importation of goods from one country rather than another are also against EU policy. Within the EU there is a Single Market. This has removed most of the barriers to free movement that previously existed. Work continues to ensure that the remaining barriers are removed.

Imports into the UK from outside the EU enjoy similar privileges after payment of customs duties.

Another area where action has been taken is with regard to parallel imports. For example, a producer of goods can agree to sell his products only to one distributor in Italy but he cannot go further and agree to ensure that no one else will ever import his goods into Italy.

13.4 Anti-dumping Legislation

Dumping occurs when goods are exported to countries at an artificially low price. The EU adopted new anti-dumping regulations in 1994. Regulation 3283/94 gives effect to the EU's obligations under the 1994 GATT agreement.

The EU may impose duties on exports that are causing, or threaten to cause, material injury to a EU industry, and that it is in the EU's interests that such duties be imposed. The object of the duty is to ensure that increasing the price of dumped imports to local levels restores competition.

Where dumping is suspected, investigations are carried out by questionnaires being sent to importers and exporters, together with visits to exporters to verify the answers and statements given in reply to the questionnaires.

Following investigation, the Commission may impose anti-dumping duties. An appeal against the decision can be made to the European Court.

Duty Reliefs

The UK has a large number of reliefs available. Some of these interact and overlap, and careful planning can help minimise the overall amount of duty payable. The following gives an outline of the main reliefs available.

13.5.1 Inward processing relief

This relief applies to goods which are imported into the EU with the intention that the goods they are used to manufacture will then be exported outside the EU. The relief is either given by way of suspension – i.e. the duty due is not collected on import but, if the goods are subsequently retained in the EU, duty will be collected; or by drawback. This involves the deposit with HM Customs & Excise of the duty due on the goods, with this then being repaid when they are later exported.

Authorisation is required in order to benefit from the relief. The authorisations come in two types – a simplified one, which can be used in limited circumstances without special application; and specific authorisation, which has to be obtained prior to import. The relief is a very generous one. If granted, it gives relief from VAT, customs duty, anti-dumping duty and agricultural levies. To qualify, something must be done to the imported goods, but this can be anything from a simple process such as packaging to a complex manufacturing operation.

13.5.2 Outward processing relief

This applies in respect of goods exported from the EU, subjected to a manufacturing process and then re-imported. If certain conditions are met, the goods produced from the items originally exported, known as 'compensating products', can be re-imported with total or partial relief from import duties or agricultural levies. Normally, application for the relief has to be made prior to the goods being exported; the only exception is where goods are being exported for repairs of a non-commercial nature.

13.5.3 Customs warehousing and free zones

Warehousing enables users to defer or even avoid paying customs duties, VAT, agricultural levies and anti-dumping duties. It is an extension of Inward Processing.

Relief (see 13.5.1 above). One of the aims behind the relief is to make the UK the preferred choice for European depots of multi-national companies. There are usually charges payable on the removal of goods from the warehouse, but no UK VAT is due if the goods are not brought into the UK (i.e. they leave for other EU markets); if the goods are exported from the warehouse outside the EU, then no customs duty or VAT will be due.

Many importers who bring goods in from outside the European Union can get substantial cash flow advantages by setting up a customs warehouse. Unfortunately, this possibility is rarely considered.

Goods imported from outside the European Union are generally subject to VAT and duty at their point of entry into the UK. The VAT and duty have to be paid immediately. Importers quite often have a deferment account with Customs and Excise but in practice, all this does is to defer the payment for a couple of weeks – generally to part of the way through the month following importation.

Once VAT and duty have been paid on the goods, or the sums due have been posted to a deferment account, the goods are regarding as being ‘in free circulation’ in the UK and are released by Customs and Excise. This enables the importer then to move them to anywhere else within the European Union without any further restriction.

By setting up a customs warehouse, the importer can defer the point in time when the goods are regarding as being released into free circulation. This can be quite significantly beyond the date of actual importation. Because of this, the time when VAT and duty have to be paid or entered into a deferment account is also delayed. In certain circumstances, such as when the goods are exported beyond the EU, there may be no requirement to pay VAT and duty whatsoever.

Customs have special rules for customs warehouses. There is no requirement for the building to be specially dedicated for use only as a customs warehouse, nor does it have to necessarily subject to complex security arrangements. It is possible for any set of premises, or even a part thereof, to be used. It is possible for the warehouse to consist of nothing more than a decent stock control system.

If a warehouse is to be set up then Customs have to give it their blessing. However, once a warehouse has been approved by Customs, goods can be moved from the port of entry to the authorised premises in a form of limbo where the requirement to pay VAT and duty is suspended.

It is also possible for minor work to be carried out on the goods during this time, such as small repairs and modifications or repackaging into smaller units and the goods can be stored pending sale.

At a time convenient to the importer, which is quite often shortly before the actual resale of goods, the goods are removed from the warehouse regime. Their formal entry into the UK is notified to Customs and Excise and the VAT and duty become payable so that they can be released into free-circulation.

If the goods are to be shipped onto another country within the EU VAT does not need to be accounted for although Duty has to be. If they are going outside the EU then no VAT or Duty is due.

By proper timing and management of a warehouse facility, the cash flow advantages to a business can be quite significant.

To try to encourage trade in some of the UK's older ports, the government has established a number of free zones (see 9.7.5:Free zones). The benefits are broadly similar to customs warehousing.

13.5.4
End-use relief

The relief assists specific industries in the EU by allowing certain goods to be brought in to the EU at a reduced or nil duty rate. Importers have to be authorised by HMRC.

13.5.5
Temporary importation and conditional reliefs

This covers a huge range of individual reliefs, some of which also give relief from VAT. Generally, these reliefs apply to goods placed under Customs-approved arrangements, such as customs warehousing and free zones (see 13.5.3), as well as Internal and External Community Transport Arrangements.

13.6 The Euro

The Euro formally came into existence on 1 January 1999. It is a logical progression from the old European Monetary Union, to which the founder members of the Euro belonged.

13.6.1
Members

The founding members were: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain. The UK is not a current member with business and political opinion divided as to whether it is a good thing or bad.

13.6.2
Impact for UK business

So long as the UK remains outside the Euro, it is simply another foreign currency, so it has little direct impact on most businesses. The real effect will be felt by what is known as the 'creeping Euro'. This is where large suppliers or customers insist on transacting in Euros rather than Sterling. This pushes the exchange rate risk on to the trading partner, and may make accounting for transactions a little more complicated. Businesses will need to ensure that their accounting systems can cope with multiple currencies and that the software used is capable of showing the Euro symbol (€). Older versions of software cannot do this, so there may be a need to upgrade.

13.6.3
The future

As business becomes increasingly international, there will be growing pressure on UK businesses to transact in Euros. Over the next five years or so, even if the UK remains outside the Euro, it is likely that trading with the EU will be done in Euros. Sterling may therefore become an increasingly localised currency in terms of cash transactions, although its use in transactions with non-EU countries is likely to remain unaffected.

14 Legal Matters

14.1 Outline

The English legal system is derived from a combination of common law system based on the recorded judgments of decided cases, and statute law made by Acts of Parliament. The courts still have an interpretative role in deciding what a particular statute means.

England and Wales is the only jurisdiction within the EU to have a common law system (the other EU nations operate a civil law structure), making it the preferred European forum for litigation for US and Commonwealth countries. Furthermore, the justice system in England and Wales is adversarial whereas most of Europe has an inquisitorial system.

The UK court structure comprises civil courts and criminal courts. The civil courts deal with dispute resolution, such as matrimonial matters, contract and employment disputes, property, civil administration and tort (civil wrongs).

The legal profession has historically been split into two distinct branches, namely Solicitors and Barristers. Solicitors are allowed to form partnerships and deal with clients on a day-to-day basis. In the past they have had a limited advocacy role, however the prevalence of specialist solicitor-advocates who have rights of audience in the higher courts has been increasing in recent years. Barristers are sole practitioners instructed by solicitors on specific matters and carry out the bulk of advocacy work. They generally specialise in discrete areas of the law and have limited direct dealings with the general public.

14.2 Civil Proceedings

Civil proceedings may be commenced in either the County Court or the High Court, depending largely on the size and nature of the case. Complex, high value cases tend to go to the High Court, even if they initially start in the County Court. Lower value claims (generally under £25,000), which do not involving complex legal issues are generally dealt with in the County Court.

The way in which cases are conducted is derived from the Civil Procedure Rules. The main thrust of the rules is to attempt to resolve disputes without resorting to court involvement. Generally, claims with a value of less than £25,000 will be dealt with under the ‘fast track’ or ‘small claims track’ procedure, which aims to resolve matters at limited cost and within a six-month time frame. Larger and more complex cases are dealt with on the ‘multi-track’, which has far more flexible arrangements with regard to time and costs.

The High Court is divided into three divisions – Chancery, Queen’s Bench and Family each of which specialises in a particular aspect of civil law. Judges generally sit alone.

The County Court is intended to offer fairly fast and economic dispute resolution. There are over 200 County Courts, with one in most major towns, dealing largely with local matters. They also have a procedure for mediating, at very low cost, on small value claims.

The Magistrates Courts have only limited involvement with civil law, dealing with matters such as liquor licensing, some domestic matters such as adoption proceedings, and claims for recovery of council tax, etc.

Appeals from the County Court and the High Court are heard by the Court of Appeal, Civil Division, which is presided over by the Master of the Rolls, the senior civil judge in England and Wales. Although the Court of Appeal can sit anywhere in the country, it almost always sits in London.

14.3 The Tribunal System

There is also a tribunal system that forms a large part of the national system of administrative justice within the UK. Tribunals are classed as non-departmental public bodies and have developed into a unified system with recognised judicial authority, routes of appeal and regulatory supervision. By way of analogy, the Employment Tribunal framework is the usual route for civil disputes that have arisen between employers and employees where the sums involved are not overly-excessive.

14.4 Alternative Dispute Resolution ("ADR")

English Courts actively encourage parties to a dispute to resolve their differences outside of the Court system through mediation and arbitration and other forms of ADR. By doing so they hope that a quicker and more cost effective resolution can be found.

14.5 Criminal Justice

97% of all criminal proceedings in the UK are completed in the magistrates' court. The magistrates hear all minor criminal offences (those punishable by a fine of up to £5,000 or six months imprisonment) and are usually heard by a panel of 3 magistrates (local, non legally qualified, people) assisted by a legally qualified clerk, although some are heard by a legally qualified District Judge.

In respect of more serious offences, or those that can be tried either by the magistrates or by jury, committal proceedings are conducted in the magistrates' court before being passed to the higher Crown Court.

The Crown Court deals with serious offences such as murder or robbery, of which some will have been referred on appeal from the magistrates' court. In the Crown Court, a jury of 12 determines the defendant's guilt or innocence. Majority decisions of 10:2 or better will result in a conviction.

Appeals from the Crown Court are heard by the Court of Appeal: Criminal Division, and where a further appeal is granted, by the Supreme Court, albeit this is very rare.

15 Regulatory Matters

15.1 Intellectual Property Protection

Intellectual Property is a general term for what results from creative thinking – new products, writing, art, information, designs, etc. The resultant asset is intangible, but can be traded in just the same way as a tangible asset. Intellectual Property Rights in the United Kingdom can be divided into six main categories.

15.1.1 Patents

A patent protects inventions that may be new products or manufacturing processes, improvements to existing products or processes, or new uses of existing products or processes. A patent is intended to protect the principle behind an invention as widely as possible and may be used to protect major innovations as well as smaller technical advances. In the UK, the monopoly provided by a patent lasts for up to 20 years.

Registration of patents is normally carried out via specialist professionals called patent agents or patent attorneys who assess whether a product or process is patentable. Their specialist knowledge can be invaluable in completing the application forms and they can advise on any weaknesses in the application. They can also help to ensure that the patent covers as wide a range of potential uses as is possible. For example, a design for a drip-free coffee pot could be of use for teapot manufacture or other forms of pouring container; if the patent application only covered coffee pots, there would be nothing to prevent another manufacturer applying the design, quite legally, to, for example, teapots.

One area that is of vital importance with regard to patents is to ensure that the idea or process is kept secret until the patent application is filed. A common way of ensuring this happens is to use confidentiality or non-disclosure agreements where matters have to be disclosed to third parties. These need to be carefully drafted to ensure that they will be effective.

If a patent is infringed, redress can be sought through the courts. An injunction – a court order requiring the offender to desist from the wrongdoing – can be sought. Damages may be awarded where there has been infringement, or the offender may be required to account for profits arising from the infringement. Patent disputes can be lengthy and expensive, so it may be worth taking out insurance to cover the legal costs of bringing a lawsuit if a patent might be infringed.

In the UK it is difficult to obtain a patent on software or business methods. These are more properly dealt with by copyright, although it is possible that Europe may follow the US lead and allow such items to become patentable.

Any patent created by an employee during the course of their normal duties will belong to the employer. The employees name will typically appear on the patent specification as the inventor.

UK patent law is governed by the Patents Act 2004. This Act:

- Enables the Patent Office to provide an independent non-binding opinion on patent validity or infringement to settle disputes over patent rights without parties having to resort to expensive litigation;

- Brings UK patent law into line with the revised European Patent Convention to reduce bureaucracy and make it simpler for UK businesses to operate across Europe;
- Modifies existing protection for alleged infringers to encourage out-of-court settlement of disputes whilst still deterring patent owners from making unreasonable allegations of infringement.

15.1.2 Copyright and related rights

Copyright gives automatic protection to the authors and creators of artistic, literary and dramatic works and covers the way ideas are expressed rather than the ideas themselves. There is no central register in the UK for copyright. There is also no need to use the © symbol. The right exists for the author's lifetime plus 70 years from the end of the calendar year in which the author dies. In the case of sound recordings and broadcasts such right expires 50 years from the end of the calendar year in which the work was created or released. There is also a weaker protection given to 'derivative' works, such as screenplays, reflecting the fact that the derivative includes major, copyright-protected elements of an original, previously created first work.

Copyright is infringed where copyrighted material is reproduced in any form without permission. The issue of infringement largely turns on exactly what has been reproduced. For example, if a book has been reprinted in its entirety without consent, then it is quite straightforward to show infringement. However, where only part of the material has been reproduced, matters become more complex. The courts have tended to look at the quality rather than the quantity of the material – if the reproduction is, say, the six great ideas put out in a management book, rather than the 'padding' that went around them, it is likely that the court would uphold a complaint of infringement.

As with patents, where employees produce copyrightable material during the course of their employment, ownership of that material should vest with the employer – and it should be covered by the contract of employment. The flipside of this is that, where a subcontractor produces material, the copyright will normally lie with the subcontractor – if that is not what is wanted, the contract should explicitly deal with the matter by containing a contractual obligation to assign.

A design relates to the appearance of the whole or a part of a product, which can result from its internal or external shape, configuration, features of lines, contours, colours, shape, texture and materials of a product or its ornamentation. There are two types of legal protection for designs – an automatic right, called a Design Right and a Registered Design.

15.1.2.1 Design Right

Design Rights arise automatically, and there is no need for registration, however, the legal protection afforded to Design Rights is weaker than that attaching to a Registered Design, and is rather akin to copyright. A Design Right applies to the internal or external shape or configuration of an original design, but does not give protection to the product itself, or to any of the 2-dimensional aspects of the design, (which should instead be protected by using copyright or registered designs).

The holder of the right does not have a monopoly over the design, but can prevent it being copied without consent. The Right lasts for either 10 years after the first marketing of products that use the design, or 15 years after the creation of the design, whichever is earlier. During the last five years of the term of the design right, the owner must allow third parties to take a license of the design right. Before this period the owner has an absolute discretion as to whether to grant licences to third parties seeking to copy the design.

15.1.2.2
Registered designs

A Registered Design is a monopoly right that lasts for up to 25 years from the filing date, and covers the overall appearance of the design including two-dimensional and three-dimensional articles and ornamentation. For a design to be able to be registered, it must:

- be new - i.e. no identical design has been made available to the public;
- have individual character - i.e. give an appearance of originality;
- not be offensive;
- not make unpermitted use of certain protected flags and international emblems;
- not internal or non-visible component parts of a product; and
- not be a feature of a product that Is dictated by its technical function or which Is necessary in order for the product or a product which is placed next to it to perform its function.

15.1.3
Trade and Service Marks or Names

A Trade Mark is any sign used by a trader to distinguish its goods or services from those of another. A Trade Mark has to be capable of being represented graphically, and includes words, logos, three dimensional designs and, sometimes, sounds or smells.

To be eligible to be registered, a Trade Mark must:

- be distinctive;
- not be deceptive;
- not be offensive or against the law;
- not have become customary in the particular line of trade;
- not conflict with other marks;
- not describe the product or service itself, for example, marks which show the quality, quantity, purpose, value or geographical origin of goods or services will not be able to be registered;
- not be a three dimensional shape;

Application for registration is made to the United Kingdom Intellectual Property Office. Once a Trade Mark has been registered, a certificate is granted confirming this. The current legal framework in the UK is dealt with under the Trade Marks Act 1994.

The registration lasts for ten years initially, but can be renewed at ten-year intervals indefinitely.

In addition to registered Trade Marks, a person who seeks to take advantage of another's reputation in the supply of goods or services by using a similar name or otherwise implying a connection can be prevented from doing so by the law of passing off. However, in any legal action for infringement, it is much easier to prove this where the Trade Mark is registered.

For an action for passing off to be successful, the complainant will have to show that:

- It has established reputation and goodwill in the brand;
- Another undertaking is using a brand which is similar to or the same as the owner's brand;
- The public may be confused into thinking that the other undertaking is associated with the business of the owner of the brand; and
- Actual damage is being caused to the goodwill or business of the owner.

Passing off actions are notoriously difficult to win as evidence has to be collected showing that there is damage being suffered and that confusion is being caused in the minds of the public– that can be very hard and expensive to show.

15.1.4 Confidential information and trade secrets

Confidential information, which for practical purposes should be considered as intellectual property, covers a wide range of matters from technical know-how through trade secrets to a company's list of customers and suppliers. Such information can be valuable and of critical importance to a company. If the company does not understand how to protect its confidential information then it may be lost as an asset.

For there to be grounds for an action for breach of confidence, there normally has to be a duty of confidentiality, either express or implied, and the information must not have been in the public domain before the breach occurred.

One area where confidentiality is particularly important is in employment where trade secrets and know-how can be central to the success of a business. Even where there is no express provision in the employment contract with regard to confidentiality, there is an implied duty of 'mutual trust and confidence' between employers and employees implied into every contract of employment that has been held at common law to include confidentiality. There are however various exceptions, where for example disclosures are made under the whistle blowing regulations or criminal acts are being reported.

This area is governed by case law, and so whether and to what extent information is protected depends on the particular facts and circumstances in question. It is also an area of law that is ever-evolving, so up-to-date advice should be taken in respect of any particular issue.

15.1.5 Database Right

Databases can also be protected by law. Some databases will qualify for copyright protection and some for database right protection as well as copyright. A qualifying database has to have certain characteristics:

- It must be a collection of independent works that are literary works or data (i.e. facts);
- The data must be arranged in a systematic or methodical manner;
- The data must be individually accessible by electronic or other means; and
- Each item may or may not be copyright.

The protection also applies to digitised images (which are classified as literary works). The right is given irrespective of the medium in which the database exists (CD/DVD, manual records, software, etc.).

There are restrictions to gaining copyright. The database gets copyright if, by reason of selection or arrangement, there is an intellectual creation – a conscious effort has been placed in including or excluding images, records, etc. The creativity in putting together the database could be in the metadata i.e. the value added to, for example, digitised images. If there is nothing intellectual or creative, the data collection will qualify for a special 'database right' instead.

There are two types of database:

- Each item in the database has full copyright and the database is creative e.g. newspaper. The database has double protection i.e. from the copyright of the individual items and with the Database copyright protection;
- Each item has copyright, but the database is not creative e.g. a collection of annual reports from all listed businesses in the UK. This work would only get the protection of 'database right'. The individual reports would get full copyright protection;

15.2 Money Laundering Regulations

Money laundering is the term given to the movement of illegally obtained ('dirty') money through the financial system in order to conceal its true nature and origins. This can be done nationally or internationally, and may involve non-financial institutions to give authenticity to a series of asset acquisitions and disposals. Under the legislative provisions of the Money Laundering Regulations 2007, the UK has a strong framework for the identification and reporting of suspicious transactions to the authorities.

Within the UK anti-money laundering regime, any proceeds of a criminal act are reportable, even if the event occurred outside the UK and was not an offence in the original jurisdiction. The test is whether, had the event occurred in the UK, it would have been an offence. If it would, it is covered by the regulations.

The following are criminal offences:

- Providing assistance with money laundering;
- Tipping off any person connected with an investigation or potential investigation;
- Failing to report knowledge or suspicion of money laundering; and
- Failing to comply with the requirements of the regulations.

These offences are punishable by potentially unlimited fines and prison sentences of up to 14 years.

The regulations require regulated businesses to establish and maintain specific policies, procedures and training programmes to prevent their businesses being used to launder money.

Regulated businesses include, but are not limited to most financial and credit businesses such as foreign exchange offices, certain professionals such as legal professionals, accountants, and estate agents, casinos, Trust or Company Service Providers, and dealers in high value goods worth over €15,000. The regulations are designed to enable suspicious transactions and customers to be recognised and reported, and to ensure that businesses have a definite audit trail if there is an investigation.

The main requirements are that:

- Regulated bodies have to ensure that there are adequate policies, procedures and controls in place to deter money laundering, and that there is a central point of contact in the firm, the Money Laundering Reporting Officer, who will be responsible for liaison with the authorities;
- Satisfactory evidence of identity has to be obtained in a timely manner in respect of anyone with whom the firm does business;
- Records must be kept for at least five years after completion of the business;
- Any suspicious transaction must be reported to the firm's Money Laundering Reporting Officer who will then, if appropriate, report matters to the authorities;
- Training has to be given to ensure that all staff are aware of their obligations.

15.3 Environmental Issues

Over the last few years, the UK has seen an increased awareness of environmental issues. Throughout the EU, environmental matters are becoming more important than they were previously. A wide range of areas that have an environmental impact are now regulated, including:

- Keeping, treatment, disposal and deposit of controlled waste;
- Keeping of specified hazardous substances in prescribed quantities in, on or over land;
- Discharge of effluent into controlled waters and sewers;
- Disposal of substances at sea;
- Carrying on of processes or using substances prescribed for integrated pollution control.

Failure to obtain or comply with the relevant permit can significantly impact on the operational capacity of a business; in some cases, it may be a criminal offence. Where there are breaches, any defaulting officer of the company may be liable. The penalties range from modest fines for minor matters, up to unlimited fines and even prison sentences for the most serious offences. Where pollution occurs, the authorities can either require the polluter to correct matters, or they can deal with things themselves and recoup the costs from the polluter.

Businesses using third party contractors to dispose of waste need to satisfy themselves that the contractor will deal with matters properly. If, for example, the contractor dumps waste in an unauthorised area (known as fly tipping), the business using that contractor will be liable for any damage caused, relocating the waste to an authorised location, etc.

The primary regulator is the Environment Agency, which looks after water pollution, waste management and integrated pollution controls. Local authorities retain some responsibilities as regards remediation of contaminated land and the abatement of statutory nuisances, such as smells and noise pollution.

There are various principles that underpin the regulatory regimes; the most important of these are:

- The polluter pays principle: liability attaches to the person who caused – or knowingly allowed – the pollution to occur. In certain circumstances, an owner or occupier who knew nothing of the problem can be liable;
- The precautionary principle: if there is a significant risk to the environment, even where scientific research is inconclusive, regulations will be introduced to prevent pollution 'just in case' if the balance of likely costs and benefits justifies it;
- The proximity principle: potential environmental damage – and its rectification – should be kept as close as possible to the source of the pollution.

Because environmental risks can adversely affect property values, banks and other lending institutions now require, almost as a matter of course, an environmental assessment before any lending is made which would be secured on a particular property. Any potential property transaction should look hard at the environmental issues.

Adequate testing should be carried out, and it may be advisable to ensure that appropriate warranties and indemnities are sought. It is increasingly common for an offer to be made subject to an environmental survey and assessment.

15.4 Financial Services and Investment Business

The UK has in place a comprehensive system of safeguards to protect people who buy shares, securities and other forms of financial services products such as pensions. Broadly speaking, anyone (natural or legal person) who wishes to sell or manage 'investments' must be compliant with the requirements of the Financial Services and Markets Act 2000 and must be properly authorised to do so. The operation of the Act is supervised and regulated by the Financial Services Authority (FSA) which has extensive powers to deal with any offending persons or corporate bodies.

Various products, such as land and antiques are not classified as 'investments' and so vendors do not need authorisation to deal in them. However, shares in a company that deals in land would be classified as investments and would therefore be regulated by the Act.

Certain activities that would otherwise be regulated by the Act are excluded, such as transactions with a person who is authorised in his or her own right. There are also distinctions drawn between 'private' and 'non-private' customers with regards to entitlement to protection and the products that can be promoted to them.

The regulations are complex and any overseas business intending to promote 'investments' in the UK may easily be caught by the requirements of the Act.

Any business contemplating carrying on investment business in the UK, or promoting investments to UK residents, should take advice on this. There are certain circumstances where authorisation is not needed or where unsolicited calls can be made, but equally, there are many instances where doing so would be a breach of the regulations.

15.5 Data Protection

The UK has a prescribed system for dealing with data protection that is designed to ensure that data held in respect of individuals is accurate and open to inspection by the relevant individual. The current legislation governing this area of the law is the Data Protection Act 1998 (DPA).

The DPA affects everybody who holds data about other people, whether or not the data user is registered with the Information Commissioner (the body responsible for enforcement of the DPA) and whether or not the data user has been notified by the Commissioner that it is covered.

Data is construed very widely to mean any recorded processed information and includes written material (electronic or hand written), images, videos and sound recordings. Failure to comply with the requirements of the DPA is a criminal offence and will result in fines being levied.

15.5.1 Principles

The 1998 Act contains eight principles. These apply to all Data Controllers, unless they can claim exemption, irrespective of whether or not they have registered with the Commissioner.

1. Personal data must be processed fairly and lawfully.

This means that the individual either has to be told what the data user will do with the data or the processing has to be necessary – such as processing of medical records or employees' records to comply with statutory obligations and so forth. There are also certain categories of data that are classified as sensitive, such as political beliefs and sexual orientation, which require explicit agreement from the subject before the data can be processed. Consent cannot be assumed from a lack of response to a question – it has to be a positive affirmation that the subject consents.

When information is gathered from an individual, this should be done in an open and honest way, telling the individual why that data are being acquired and what it will be used for. They should also be told if that information is to be passed to third parties.

2. Personal data are obtained only for specified purposes.

Information must not just be obtained for a specified purpose, but must also be processed in a way that is compatible with those purposes.

3. Personal data has to be adequate, relevant and not excessive.

When gathering personal data, the purpose for which data is being collected must be clear so that only sufficient and relevant information is collected.

4. Personal data has to be accurate and up to date.

If the subject informs the data controller that the data held is inaccurate, the data controller must record this and take steps to correct inaccurate data. The data controller also has a legal duty to take reasonable steps to ensure that any data recorded is accurate beyond simply asking the subject to verify this at the point when the data was initially collected. Accordingly, there should be a system in place to review data regularly and to correct errors.

5. Data must not be kept for longer than is necessary.

There is no definition of what constitutes the 'right' timescale, but whatever time period is chosen, it has to be defensible. It will not be acceptable to carry records indefinitely 'just in case' the data are needed in the future, particularly where there has been no contact for some time. There should be a policy in place to ensure that old data are removed after a reasonable time.

6. Data has to be processed in accordance with the rights of the subject.

Subjects cannot be denied access to their data – if a written request is made, it has to be dealt with within 40 days, and a charge of no more than £10 may be made for providing the reply. Staff have to be aware of the right of access so that enquiries can be properly dealt with. If a data subject requests that direct marketing cease, then this request must be complied with, so a suitable mechanism should be in place to facilitate this process.

7. Appropriate technological measures shall be taken.

It is up to the data controller to stop personal data being hacked, lost, damaged, stolen or otherwise misappropriated - this is a legal responsibility. Any data that the data controller creates or captures is its responsibility until it is destroyed. This includes cases where the actual storage is outsourced, or records are held by a third party – in that case, there should be proper contractual arrangements in place to ensure that obligations are complied with.

8. Personal data must not be transferred outside the European Economic Area unless the recipient country provides an adequate level of protection.

This is the single most controversial aspect of the new Act. For example, at present the United States does not offer what could be described as an adequate level of protection. In order to comply with the requirements of the Act, if data is to be exported to countries, such as in the United States, where there are no legal safeguards which would ensure compliance, the only way that compliance with the 1998 Act can be guaranteed will be to ensure that there are adequate contractual arrangements in place; alternatively, data could be exported provided the subject consents.

The European Commission deems that the Safe Harbor Privacy Principles provide adequate protection for personal data transferred from the EU. The scheme is administered by the US Department of Commerce, and companies in the scheme have to provide annual certification to the department. Participating companies also have to publish their privacy policies. There are various other obligations placed on qualifying organisations, and they can either opt to regulate themselves or join an existing safe harbour arrangement. To ensure that EU organisations know that they are dealing with a Safe Harbor organisation, the Department of Commerce has undertaken to publish a list of qualifying organisations, and to keep the list updated regularly. The list can be found at www.export.gov/safeharbor. The site also provides much useful material, such as details on how to join the scheme, checklists, etc.

The European equivalent of the Safe Harbor arrangement between the UK and the US is to be found in the EC approved Binding Corporate Rules (BCR). The BCR has the object of encouraging pan-European company compliance with the data protection rules. To achieve this, a system of certification is utilised to verify the ability of multi-national companies to meet the data protection requirements, even if the countries own regulatory framework does not meet the requisite standard.

For data holders in non-EU countries, the eighth principle may cause problems, particularly if sales or marketing approaches are made to individuals (whether in a company or not) and those details are sent back to a UK-based head office. If an individual can be identified and that information has been transmitted without the data subject's consent, this will fall foul of the DPA. Moreover, where information is held on a server located outside the EEA, data holders should be mindful of compliance issues, particularly where Safe Harbor or the BCR is unavailable.

Definitions

Personal data – any information held in a logical filing system (of any sort, not just electronic). The information may relate to consumers or business contacts – for example, the definition would catch someone who could be identified by job title alone, such as 'sales director' if there is only one such person at the address specified. Email addresses, particularly if they contain real names would also rank as personal data.

Processing – obtaining, recording or holding data, or carrying out any operation, or set of operations, on it, including:

- Retrieval, consultation or use of data (so looking at a card in an old Rolodex would be caught);
- Disclosure of the data by transmission, dissemination or otherwise making it available; and
- Alignment, blocking, erasing or destruction of the data.

Data subject – the names of people in the database.

15.5.2 Practical consideration

From a practical viewpoint, it is likely to be employee data that will be the most sensitive topic, especially as employees have the right to inspect anything which is held on file, whether in paper or electronic form.

15.6 Electronic Communications Act 2000

The Electronic Communications Act 2000 promotes generally the use of electronic communications and electronic data storage. The Act has the following key provisions:

- Definition of an electronic signature;
- Establishment of a voluntary register for the providers of cryptography services;
- Creation of the 'T' Scheme to define the voluntary regulation of trusted service providers; and

- Right for the government to bring in secondary legislation to deal with UK statutes that require amendment to allow for electronic signature and other aspects of electronic commerce.

An electronic signature is defined as anything in electronic form which is incorporated into or logically associated with any electronic communication /data and purports to be so for the purpose of establishing the authenticity or integrity of the communication or data.

One area where changes have taken place is that of company law. Companies are now able to communicate electronically with their members, where there is agreement, and with Companies House.

Shareholders are able to agree to access annual reports (including summary financial statements) and accounts on a website rather than being sent copies through the post. They are also able to appoint proxies by e-mail, and give them voting instructions. It is now possible to incorporate companies electronically at Companies House and also to file most company forms at Companies House electronically.

16 Insolvency Matters

The UK has a highly regulated and advanced system for dealing with insolvencies, both personal and corporate. With very few exceptions, qualified specialists – licensed insolvency practitioners – deal with matters.

16.1 Personal Insolvency

Where an individual faces insolvency – an inability to pay his or her debts – there are several options available. An informal compromise with creditors might be arranged, or it may be necessary to enter into formal insolvency arrangements.

16.1.1 Individual Voluntary Arrangement

An Individual Voluntary Arrangement ('IVA') is a proposal written by a person owing money (a debtor) and presented to his creditors, in which he determines how much money he can repay, over what period of time, and under what circumstances and conditions.

The main stages involved:

- The making of a proposal to creditors. There are a number of items that must be disclosed in the proposal, but otherwise the proposal can be individually tailored to suit every type of situation. The proposal is basically a private contract between a debtor and his creditors;
- The Creditors' Meeting at which creditors can make a decision as to the suitability of the debtor's proposed arrangement. If there is a 75% majority in favour of the proposal, it is approved. The court has to be notified of the outcome of the meeting where an Interim Order has been granted.
- It is possible to apply for an Interim Order which will put a stay (stop) on any bankruptcy proceedings which may have been instigated by a creditor. This is an order from the court, which freezes everything until the proposal can be scrutinised at a creditor's meeting. The Nominee, a licensed insolvency practitioner acting on behalf of the debtor, puts the proposal to the court.

If the proposal is approved, a qualified insolvency practitioner will act as a Supervisor. The Supervisor will abide by the terms of the proposal and normally will work in a number of different ways to assist the debtor in coming to terms with his basic situation. At the successful conclusion of the IVA the Supervisor will issue a Certificate of Compliance. This is filed with the Court and the debtor is then free to go about his normal business without any encumbrances. Where a partnership becomes insolvent, it is possible for a Partnership Voluntary Arrangement to be entered into, covering all the partners, rather than having to have a series of linked IVAs.

16.1.2 Bankruptcy

A bankruptcy petition may be presented to the court by anyone who is owed at least £750, or the debtor can petition for his own bankruptcy. On hearing the petition, the court may issue a bankruptcy order.

Once a bankruptcy order has been made, the Official Receiver, an officer of the Court and a Civil Servant responsible for administering the bankruptcy, will investigate the bankrupt's financial affairs and will report to the court and to creditors. He will also report any criminal offences that occur in connection with any bankruptcy. A Trustee in Bankruptcy may be appointed to deal with matters on a day-to-day basis. The Trustee will be a qualified insolvency practitioner. He will collect in the assets and make distributions to creditors.

If the debtor owns a property (for example, a house) it may have to be sold. The proceeds, after repayment of any outstanding loans secured on it, such as a mortgage, will go towards payment of debts. The sale may not occur for at least a year and alternative housing arrangements will have to be made.

An individual can normally keep the tools of his trade, a vehicle necessary for personal use in self-employment and all necessary clothing, bedding, furniture, etc. All other assets including the assets of a business will be transferred to the control of the Official Receiver or Trustee. He will dispose of these items to pay the creditors.

There are quite significant restrictions placed on a bankrupt: he may not hold public office. He must not carry on business in a different name. He may not be concerned with forming or managing a limited company without the court's permission. It is a criminal offence to obtain credit of more than £500 without disclosing that he is bankrupt.

The bankruptcy ends when the individual is discharged. This is normally, and automatically, after a year. However, if the bankrupt has not cooperated, the court can be asked to delay discharge. Also, where the behaviour of the bankrupt has been such that they are perceived to be unfit, a Bankruptcy Restriction Undertaking may me given, or a Bankruptcy Restriction Order sought from the court that will restrict the bankrupt's ability to be, for example, a company director for up to 15 years.

16.2 Corporate Insolvency

A wide range of options is open to companies (and their creditors) if they get into financial difficulties. As with individuals, it may be possible to arrange an informal compromise. If that cannot be done, some form of formal arrangement is needed. The main options open are detailed below.

16.2.1 Company Voluntary Arrangement

A Company Voluntary Arrangement ('CVA') is a proposal written by the directors of the company and presented to all its creditors. The proposal sets out how much money it can repay, over what period of time and under what circumstances and conditions. It operates very much like an IVA and requires a qualified practitioner to act as Nominee and Supervisor.

Where a secured creditor is involved (e.g. a bank that has a charge over some of the company's assets), that creditor is not bound by the CVA; however, it is common for a secured creditor to accept some compromise in its debt, and the Nominee would normally try to negotiate an arrangement before presenting the proposal to the court and the creditors' meeting.

If the CVA is successful, the Supervisor will issue a certificate of compliance. This is filed with the court, and the company can thereafter go about its normal business. Within 28 days of completion an abstract of the Receipts and Payments must be circulated to all creditors together with a report on the administration of the Arrangement.

16.2.2 Administrative Receivership

A charge holder or debenture holder (usually a bank) who has a fixed and floating charge over the assets of a company may appoint Administrative Receivers over that company if such a power is reserved to it under the charge instrument– this is normally the case. The receivers take control of the company and realise the assets in order to repay the appointer. The receiver has the power to keep the company trading, to dismiss employees, to realise the assets covered by the debenture, and to take independent professional advice. He acts as the company's agent.

An Administrative Receiver must be a Licensed Insolvency Practitioner. He must give notice in the London Gazette (an official government publication) at the earliest opportunity and also notify all known creditors within 28 days of the appointment.

Following appointment, the Administrative Receiver will request the directors of the company to prepare a Statement of Affairs that must be verified by a statement of truth. This must be lodged within 21 days or longer if he permits. Upon appointment of an Administrative Receiver the directors lose their executive powers, but remain responsible for their statutory duties.

The Administrative Receivers owe a general duty of care to all creditors and to deal with preferential creditors, and, unless the company is in liquidation (as well as receivership), they must convene a meeting of creditors within three months.

The Administrative Receiver must pay any preferential creditors from the assets of a floating charge, before repaying capital or interest due to the floating charge holder. Preferential creditors include employees in respect of unpaid wages or holiday pay. A floating charge is a form of security given by a company over various assets that leaves the company free to deal with these assets during the normal course of business. An event may occur which crystallises the debt and enables the lender to enforce his security in order to recoup his debt.

The potential appointer often requires an investigation to be carried out by a firm of insolvency specialists. It is not unusual for that firm of insolvency specialists to be the ones appointed Administrative Receivers. In addition some general liquidity investigations can result in receiverships. The company is usually required to pay for such investigations.

The rules affecting Administrative Receiverships have been significantly overhauled by the Enterprise Act 2002.The Administrative Receivership procedure has now been abolished and replaced by a new Administration procedure. Exceptions to the new legislation are that Administrative Receivers may continue to be appointed by holders of floating charges created prior to implementation the Act itself and also in respect of certain large complex financial transactions in the capital markets area, certain government related fields such as utility companies, public private partnerships, housing associations, project finance and certain financial markets. Additionally, where the relevant charge was executed before the new provisions came into force, the charge holder will still be able to appoint an Administrative Receiver.

16.2.3 Fixed Charge Receivership

A fixed charge receivership is where a receiver is appointed over a real property under the Law of Property Act 1925 (LPA). Fixed charges over other assets may also be possible. Due to the limited nature of statutory duties compared with an Administrative Receivership (or where there is no floating charge) a fixed charge receivership can be a cost-effective solution for a secured creditor.

An LPA receiver may demand and recover rent, give good receipt for income, and insure the property, among other powers, as well as realising the property.

If the charge document is suitably drafted then the receiver may take control of the property as a whole as there may be a business run in the property. The receiver would require indemnification from the appointer.

16.2.4 Administration

The new Administration procedure introduced by the Enterprise Act 2002 streamlined the process for company administration. When it is the intention of the company or its directors to appoint an Administrator out of court, they are required to give five days' written notice to any holders of qualifying floating charges of the proposed appointment, specifying who is intended to act as Administrator.

At this time the charge holder may apply to court to have the Administrator changed to that of the charge holder's choice. In these circumstances the court will be obliged to grant the floating charge holder's application unless it considers refusal is justified on the basis of the facts of the case in question. These new procedures came into effect in September 2003.

16.2.5 Creditors' Voluntary Liquidation

A creditors' voluntary liquidation (CVL) is a much-used form of liquidation. The procedure is used when a company is insolvent or the directors are unwilling to swear a declaration of solvency. The directors will convene a meeting resolve that the company be wound up and then arrange for the other, necessary meetings to be convened. The directors call meetings of members and creditors to appoint a liquidator and, although the members will initially appoint a liquidator, the ultimate decision rests with the creditors. During the period of time between the convening of the shareholders' and creditors' meetings and the holding of these meetings, a Statement of Affairs is prepared. This sets out the assets and the liabilities of the company and gives an indication of the likely deficiency that will be suffered by any fixed charge holders, any floating charge holders, preferential and unsecured creditors. The director(s) must swear it.

A Liquidation Committee of three to five creditors, or their representatives, may be appointed at the Creditors' Meeting. It is their duty to assist the liquidator in any way they can and to sanction the activities of the liquidator.

The liquidator realises the assets of the company and, if a sufficient value of assets can be realised, the liquidator will then distribute them to creditors. The liquidator must carry out certain duties under the legislation and under best practice guidelines and must submit a report to the Department of Trade and Industry under the Company Directors Disqualification Act 1986. The liquidator can provide certain assistance to employees to process their claims under the Employment Protection Act.

16.2.6 Compulsory Liquidation

A compulsory liquidation (compulsory winding-up by the Court) is as a result of a winding-up order made by the Court. A creditor may petition if he can demonstrate that the company is insolvent. This is often by the service of a statutory demand (a formal demand for payment of a stipulated debt; the creditor has between 18 and 21 days to settle the debt). The Court will initially appoint the Official Receiver to act.

The Official Receiver may convene a creditors' meeting to appoint a liquidator. In certain circumstances he may request the Secretary of State to appoint a liquidator.

The Official Receiver will investigate the causes of the company's failure and report to the Department of Trade and Industry. He may also require the former officers of the company to submit a sworn statement of affairs.

A Creditors' Voluntary Liquidation (CVL) is often more cost effective than a compulsory liquidation, but the compulsory liquidation is useful where, for example, the directors have failed to place the company into CVL when insolvent, or when minority shareholders consider that they have been subject to unfairly prejudicial conduct.

Appendix

Useful Contacts

UK Trade and Investment
Kingsgate House,
66-74 Victoria Street,
London SW1E 6SW

Tel: +44 (0)20 7215 8000
https://www.ukti.gov.uk

London and Partners
6th Floor, 2 More London Riverside
London SE1 2RR

Tel: +44 (0) 20 7234 5800
http://www.londonandpartners.com

Department for Work and Pensions
Employment Service,
4th Floor Caxton House
6-12 Tothill Street
London SW1H 9NA

Tel: +44 (0) 20 7340 4425
http://www.dwp.gov.uk/

Thames Valley Chamber of Commerce
467 Malton Avenue
Slough
Berkshire
SL1 4QU

Tel: +44 (0) 1753 870 500
http://www.thamesvalleychamber.co.uk

Health & Safety Executive
Redgrave Court
Merton Road
Bootle, Merseyside
L20 7HS

Tel: No helpline. Please see website.
http://www.hse.gov.uk/

BusinessLink
Tel: +44 (0) 845 600 9 006
http://www.businesslink.gov.uk

Companies House
Crown Way,
Maindy,
Cardiff CF4 3UZ.

Tel: +44 (0) 303 123 4500
http://www.companieshouse.gov.uk/

Advertising Standards Authority
Mid City Place
71 High Holborn
London WC1V 6QT

Tel: +44 (0) 207 492 2222
http://www.asa.org.uk/

Financial Services Authority
25 The North Colonnade,
Canary Wharf,
London E14 5HS

Tel: +44 (0) 20 7066 1000
http://www.fsa.gov.uk/

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

Tel: +44 (0) 300 330 3000
http://www.dft.gov.uk/

The Information Commissioner
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire SK9 5AF

Tel: +44 (0) 303 123 1113
http://www.ico.gov.uk/

HMRC
Tel: +44 (0) 845 010 9000
http://www.hmrc.gov.uk

Some Statistics About the UK

Average gross weekly pay[1], 2011, Great Britain

[1]Full-time employees on adult rates, whose pay was unaffected by absence.

	£
Great Britain	**486.8**
England	494.2
North East	451.8
North West	460.3
Yorkshire and the Humber	465.5
East Midlands	461.3
West Midlands	470.6
East	494.5
London	650.9
South East	528.1
South West	464.5
Wales	454.4
Scotland	488.8

Source: 2011 Annual Survey of Hours and Earnings, Office for National Statistics

Annual average exchange rates

	2007	**2008**	**2009**	**2010**	**2011**
Euro (and ECU) €	1.4619	1.2588	1.1233	1.1664	1.1527
Japanese Yen ¥	235.70	192.36	146.46	135.46	127.74
United States Dollar $	2.00	1.85	1.56	1.54	1.60

Source: Bank of England

Table of Withholding Taxes

The following is a list of withholding taxes on royalties and interest around the world.

Please note : There is no longer any withholding tax on UK dividends to any country in the world, except where the dividend is from Real Estate Investment Trust ('UK-REITs') and Property Authorised Investment Funds ('PAIFs') which pay Property Income Dividends. Please seek guidance as to the withholding tax in this instance.

For more Information on specific territories please see
http://www.hmrc.gov.uk/taxtreaties/dtdigest.pdf

Location of Recipient	Interest %	Royalties %
Treaty:		
Antigua and Barbuda	D	Zero
Argentina	12	3/5/10/15
Armenia	D	D
Australia	10	5
Austria	Zero	10
Azerbaijan	10	5/10
Bahrain	D	D
Bangladesh	7.5/10	10
Barbados	15	0/4.5
Belarus	Zero	Zero
Belgium	0/15	Zero
Belize	D	Zero
Bolivia	15	15
Botswana	10	10
Brunei	D	Zero
Bulgaria	Zero	Zero
Canada	10	10
Chile	5/15	5/10
China	10	7/10
Croatia	10	10
Cyprus	10	5
Czech Republic	Zero	10
Denmark	Zero	Zero
Egypt	15	15
Estonia	10	0/5/10
Ethiopia	D	D
Falkland Islands	Zero	Zero
Faroe Islands	Zero	Zero
Fiji	10	15
Finland	Zero	Zero
France	Zero	Zero
Gambia	15	12.5
Georgia	Zero	Zero
Germany	Zero	Zero
Ghana	12.5	12.5
Greece	Zero	Zero
Grenada	D	Zero
Guyana	15	10/D
Hungary	Zero	Zero
Iceland	Zero	Zero
India	10/15	10/15
Indonesia	10	10/15
Ireland	Zero	Zero
Isle of Man	D	D
Israel	15	0/15
Italy	10	8
Ivory Coast	15	10
Jamaica	12.5	10
Japan	10	Zero
Jordan	10	10
Kazakhstan	10	10
Kenya	15	15
Kiribati	D	Zero
Korea	10	2/10
Kuwait	Zero	10
Latvia	0/10	0/5/10
Lesotho	10	10
Libya	Zero	Zero
Lithuania	0/10	0/5/10
Luxembourg	Zero	0/5
Macedonia	10	Zero
Malawi	0/D	0/D
Malaysia	10	8
Malta	10	10
Mauritius	0/D	15
Mexico	5/10/15	10
Moldova	5	5
Mongolia	7/10	5
Montenegro	10	10
Montserrat	D	Zero
Morocco	10	10
Myanmar	D	0/D
Namibia	10	Zero
The Netherlands	Zero	Zero
New Zealand	10	10
Nigeria	12.5	12.5
Norway	Zero	Zero
Oman	Zero	Zero

Location of Recipient	Interest %	Royalties %
Treaty:		
Pakistan	15	12.5
Papua New Guinea	10	10
Philippines	10/15	15/20
Poland	0/5	0/10
Portugal	0/10	0/5
Qatar	Zero	5
Romania	0/10	0/10/15
Russian Federation	Zero	Zero
Saudi Arabia	Zero	5/8
Serbia	10	10
Sierra Leone	D	Zero
Singapore	10	10
Slovakia	Zero	10
Slovenia	0/5	0/5
Solomon Islands	D	Zero
South Africa	Zero	Zero
Spain	0/12	0/10
Sri Lanka	10	0/10
St Kitts & Nevis	D	Zero
Sudan	15	10
Swaziland	D	Zero
Sweden	Zero	Zero
Switzerland	Zero	Zero
Taiwan	10	10
Tajikistan	Zero	Zero
Thailand	10/20	5/15
Trinidad and Tobago	10	0/10
Tunisia	10/12	15
Turkey	15	10
Turkmenistan	Zero	Zero
Tuvalu	D	Zero
Uganda	15	15
Ukraine	Zero	Zero
United States	Zero	Zero
Uzbekistan	5	5
Venezuela	5	5/7
Vietnam	10	10
Zambia	10	10
Zimbabwe	10	10

Abbreviations:

D = Rates not in effect as yet. Check HMRC site link at top of table.

Index

Index