



## Guide to doing business in the UK

Trowers & Hamlin LLP has prepared this guide as an overview of the legal and business issues for establishing a business in the UK. The guide contains general information only and it will be necessary to seek detailed legal and accounting advice before undertaking business in the UK.

A foreign entity wishing to do business in the UK may do so by establishing a branch or place of business or may wish to form a limited liability company. These are dealt with in more detail below. Please also see the section regarding work permits and personal and corporate tax issues which may also be of interest.

### Establishing a branch or a place of business for an overseas company

Overseas companies that intend to have an establishment within the UK are required to register with Companies House.

An overseas company can have more than one UK establishment. However, most UK businesses would prefer to do business with a UK incorporated company rather than with a UK establishment of a foreign company.

### Registration requirements

An overseas company must register within one month of opening a UK establishment. There is no minimum or maximum level of capitalisation required for a UK establishment. The necessary forms, the constitutional documents of the company, along with a registration fee must be delivered to the Registrar of Companies.

Constitutional documents prepared in a language

other than English must be accompanied by a translation.

Directors of an overseas company with an establishment in the UK can benefit from the same protection of their usual residential address as directors of UK companies.

An overseas company may need to change its trading name if it duplicates a name of another UK-registered company or does not otherwise satisfy the Companies House criteria regarding company names.

### Continuing obligations relating to registration

Overseas companies are required to keep all particulars and documents up to date by notifying the Registrar of any changes within 21 days.

Overseas companies must also register copies of their own company accounts within thirteen months of the company's accounting reference date.

It should be possible to form a separate, non-resident subsidiary company which can then establish a place of business in the UK. This will effectively protect the accounts of the parent company from public inspection in the UK.

### Types of companies that may be established in the UK

The Companies Act 2006 (the 2006 Act) sets out the definitions and requirements in relation to the formation of a UK company. There are four main

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types of company, namely:

- **Private company limited by shares:** where the members' liability is limited to the amount unpaid on shares held by them.
- **Private company limited by guarantee:** members make no contribution to the capital of the company and members limit the amount to which they may be liable on the winding up of the company.
- **Private unlimited company:** where there is no limit to the liability of the members.
- **Public limited company:** the liability of the members is limited to the amount unpaid on the shares each member holds. A public company is the only form of UK company that may offer its shares to the public, and may be quoted on the stock exchange. Far greater regulation exists for public limited companies.

## Public companies

A public company's share capital must be not less than £50,000 (or €57,100) of which at least 25% has been paid up. A public company cannot carry out any business or borrow any capital before it has a trading certificate from Companies House, confirming that it has the minimum allotted share capital. The memorandum and articles of association must also state the company is a public limited company, and the company's name should be suffixed by "public limited company" or "plc".

Unlike private companies, public companies are permitted to raise capital by offering shares and debentures to the public. A public company also has the further option of listing its shares on the public markets. If a public company does wish to list its shares, there are additional regulations that the company must comply with. Public companies may be incorporated with only one member, but must have at least two directors. The 2006 Act also requires public companies to have a company secretary who is suitably qualified, holding recognised professional qualifications or having relevant experience.

## Private companies

The majority of companies in the UK are private companies, which are subject to less regulation than public companies. A private company is often the preferred entity when a foreign enterprise operates in the UK through a subsidiary. Private companies can

commence trading upon registration without the need for a trading certificate

The liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them. This is the most common type of corporate entity and is often used in joint ventures. There are no requirements as to the amount of share capital or the value of each share. Shares can be partly paid but cannot be offered for public subscription. It is possible to form a private company limited by shares with only one member. The company must have at least one director who need not be specifically qualified. A director may be a company itself, but there must be at least one natural person as a director. The 2006 Act now provides that there is no requirement for a private company to have a company secretary. However, as companies still have to fulfil the duties of a secretary i.e. filing annual returns and accounts, many still opt to appoint a secretary.



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It is also possible to establish companies limited by guarantee, 'unlimited' companies and limited liability partnerships although these forms are less likely to be of interest to a foreign investor and are therefore not covered in this note.

## **Procedure for establishing private and public companies in the UK**

It is necessary to check that the name of the company to be incorporated is acceptable to Companies House and that it is not already in use. Companies House is a UK governmental organisation responsible for the registration and administration of companies. Restrictions also apply on the use of certain words which may require evidence of appropriateness, such as those purporting to be of a national or regional identity such as "British" or of a profession such as "Investment". Every company must have a constitution comprising a memorandum and articles of association. Once the name has been checked and approved, the memorandum and articles of association and application forms can be lodged, duly completed, with the Registrar of Companies. Registration usually takes between seven to ten days unless the 'express' service is used which guarantees same-day registration.

Once registered, the company will be obliged to file various documents with Companies House on an ongoing basis. These include an annual report, a set of accounts, and an annual return. The annual return will include particulars of the directors and the company secretary, principal business activities and capital and member details. The level of information required in relation to the accounts will be dependent upon the size, turnover and status of the company. Failure to file accounts and annual returns will incur fines and constitutes a criminal offence.

Every company, whether private or public, is obliged to keep and maintain statutory books at its registered office, or another UK address as notified to Companies House, often the office of a firm of solicitors or accountants. These will contain registers reflecting the current directors, members and company secretary, together with minute books relating to directors and members' meetings, accounting records and a register of mortgages and charges. The public has a right to inspect the register of members (although it is possible for the company to apply to the court for permission to refuse access).

### **"Off the shelf" companies**

For administrative convenience, it is possible to acquire an "off the shelf" company that has been formed and has not yet traded. Such companies enable trading to start immediately and can be obtained from most lawyers and accountants as well as company formation agents.

## **Management of the company**

There are no statutory requirements that a director be a member of the company.

Directors should observe any specific rules relating to the management of the trade in which they are engaged and should at all times conduct themselves in accordance with the duties placed on directors. The main duties of directors are set out in the Companies Act 2006. These include a duty to act within their powers, a duty to promote the success of the company for the benefit of the members as a whole, duties to exercise independent judgment and to exercise reasonable care, skill and diligence, a duty to avoid conflicts of interest, a duty not to accept benefits from third parties and a duty to declare interests in proposed transactions or arrangements.

A company can be appointed as a director of another company as long as there is at least one natural person on the board of directors. The directors are not required by law to reside in the UK and there are no restrictions as to the nationality or residency of the directors of the company.

However, a director must be over 16, must not be an undischarged bankrupt, or be disqualified from being a director.

The company secretary is an officer of the company and is responsible for ensuring that the company complies with its statutory obligations such as filing annual returns and accounts with Companies House. As stated above there is now no statutory requirement for a private company to have a company secretary, although the obligations on the company to fulfil such duties remains.

There is no requirement for a private company to hold members' meetings unless the articles of association specify it should. A public company must hold an annual general meeting (AGM) of members, within six months of its accounting reference date.

### **Special classes of companies**

Special classes of companies (such as banking, insurance or other financial services) that carry out particular activities are subject to regulations beyond those that have already been mentioned above. Specialist legal and accounting advice should be taken before undertaking business such as this in the UK.

## Foreign personnel and work permits

Currently, Tier 2 visas are generally required for UK based employers to employ a worker from outside the European Economic Area (EEA) where that worker does not have either Tier 1 status or some other form of visa that permits them to work in the UK. Tier 2 visas are issued for specific individuals to work in specific jobs. These visas allow employers in the UK to employ people from outside the EEA to fill a vacancy that might otherwise be filled by a resident worker (i.e. a person who is an EEA citizen or is legally settled in the UK) but where there are no suitably qualified or experienced resident workers available. An application for a Tier 2 visa must be made by an individual sponsored by a UK employer.



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The applicant will only succeed if they meet a set points requirement based on qualifications and experience. In order to succeed, applicants will require a certificate of sponsorship from the prospective employer. Employers will only be able to give these if they have already applied for and been accepted onto the Home Office's list of registered sponsors.

Highly skilled individuals may instead apply for authorisation to work in the UK under Tier 1 of the points based system which was introduced in February 2008. Although a higher points threshold is required, Tier 1 status will allow employers to move holders freely between roles, certificates of sponsorship will not be required and nor will the requirement to evidence a recruitment search of the resident labour market that is a condition of the majority of Tier 2 applications.

## Corporation Tax

A UK resident company pays Corporation Tax on the worldwide profits of its business (subject to relief under double taxation treaties).

A company is resident in the UK for Corporation Tax purposes if it is incorporated in the UK, or if it is managed and controlled in the UK.

Companies that are not resident in the UK are only charged Corporation Tax on profits generated through a permanent establishment in the UK.

A company usually pays Corporation Tax by reference to its accounting periods. The rates of Corporation Tax are fixed for each financial year and at present range between 21% and 28% depending on the level of annual profits of the company.

A non-UK resident company which does not have a permanent establishment in the UK, although not liable to Corporation Tax, will be liable to Income Tax on its UK-source income.

## Individuals

The Finance Act 2008 introduced a new 'Residence' test and made a number of other changes to the taxation of non-UK domiciliaries.

The position for non-UK domiciles resident in the UK is very complex. We have a separate guide "Taxation of non-UK domiciles" which we would be very happy to provide.

## Residence

From 6 April 2008, if you visit the UK, you will have to count all days on which you are present in the UK at midnight in calculating possible tax liability.

The UK tax year is the 12 month period beginning on 6 April and ending the following 5 April.

There are several ways in which you can become resident for tax purposes, although you should note that tax residence is distinct from your immigration status.

## 183 day rule

You will always be resident in the UK for tax purposes if you are here for 183 days or more in the tax year. There are no exceptions to this rule. It does not matter if you

come and go several times during the year or if you are here for one stay of 183 days or more.

## 91 day rule

You will also be treated as resident in the UK if you visit the UK regularly and spend an average of 91 days or more a tax year over a rolling four year period. Generally, you will be treated as resident from the fifth year, but you may be treated as resident from the date of your arrival if you intend to spend an average of 91 days or more per year in the UK.

For the purposes of the 91 day rule you can exclude any days spent in the UK for exceptional circumstances beyond your control (e.g. illness of you or a member of your family that prevents you from leaving). Note that if you travel to the UK specifically for medical treatment this still needs to be counted.

## Transit exception

There is an exemption for days spent in the UK when you are in transit between two places outside the UK, even if you happen to be present in the UK at midnight. However, if you undertake any activity in the UK that is unrelated to your passage through the UK (such as, for example, a business meeting, visiting friends or visiting a property which you own in the UK) and you are present in the UK at midnight, that day will count as a relevant day of presence.

## Conclusion

If you are non-UK resident but you spend a significant amount of time in the UK, you should keep a careful count of the number of days you spend in the UK. You should consider retaining documentary evidence (such as aeroplane tickets) to prove when you arrived in and left the UK. However, the number of days you are present in the UK is only one of the factors taken into account when deciding your residence position. For example, if you come to the UK on a regular basis and have a settled lifestyle pattern connecting you to this country, the UK Revenue could still treat you as being resident in the UK.

## Value Added Tax (VAT)

VAT, a type of purchase tax, is charged on most business supplies of goods and services in the UK. It also applies on imported goods. The VAT rate is currently 15% but will increase to 17.5% on 1 January 2010. Compulsory VAT registration with HM Revenue &

Customs is required if the supplier has a historical annual turnover (not profit) of more than £68,000 that is eligible for VAT.



Source: iStockphoto

A supplier is also obliged to register for VAT if he expects his VAT-eligible turnover in the next 30 days to exceed £68,000 or more.

A supplier may also voluntarily register if he has a turnover below £68,000. VAT which is incurred on the cost of goods and services during the course of conducting business is reclaimable from HM Revenue & Customs if the goods and services in question relate to onward VAT charges by the supplier.

## Employment

As an employer within the UK, you will be subject to the statutory regime governing the relationship with your employees. Executive directors will have parallel rights as employees. The Employment Rights Act makes it unlawful to dismiss an employee other than for a restricted number of reasons, and there is a raft of legislation (soon to be considered) dealing with discrimination in the workplace. The Equal Pay Act implies an obligation on an employer to avoid disparity in pay between men and women. There are restrictions upon which can be agreed within a contract of employment, whether by way of express rights or discretionary entitlements, and in relation to notice provisions on termination.

## Employment taxes

If a non-UK resident company has a "place of business" in the UK then it will have employment tax obligations in respect of any employees. A place of business is a wider concept than a permanent establishment and includes the occupation of UK premises for the furtherance of its business (e.g. a UK address). The employment tax obligations on such a business include accounting for any UK income tax and social security

contributions owed by any employees and the company would also have social security contributions to make itself.

### Double-taxation treaty

Taxation liabilities may be modified by the relevant double taxation treaty with the UK.

The UK also provides unilateral relief from double taxation if there is no agreement with a foreign country; and also on taxes of a foreign country which are not included in the agreement with that country.

Unilateral relief may be claimed instead of treaty relief if it is preferred.

### Restrictions on foreign investment

There are no exchange controls or foreign investment legislation in the UK. There are no rules or limitations against the remittances or repatriation of capital from the UK. No major industrial sectors are closed to private enterprises. There are also no general restrictions imposed on foreign investment in relation to ownership of local enterprises and joint ventures, and no requirements for UK participation in a foreign-owned enterprise.

### Finance

Foreign companies are able to list on The London Stock Exchange, Alternative Investment Market (AIM) and PLUS markets (subject to compliance with listing

requirements on which specific advice should be sought). We will be pleased to provide further details on request.

### October 2009

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Ref 05/10

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