

## DOING BUSINESS IN THE UNITED KINGDOM

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Department for  
International Trade

The UK Department for International Trade is delighted to support Burness Paull's *Doing Business in the United Kingdom* guide. As the world's fifth largest economy and the second destination in Europe for FDI, the UK is proud to be a global hub for business with far-reaching connections that offer investors the opportunity for accelerated global growth.

When choosing to invest in the UK, you'll gain access to an innovation and R&D ecosystem that encourages collaboration and supports the commercialisation of new ideas to allow your business to reach its full potential. You'll also find world-class talent and skills, and an education system that is globally respected for producing top tier talent both now and for the lifetime of your investment.

There are a range of investment hubs up and down the country and numerous world-leading centres of excellence for specific industries, so whatever your business, it can thrive here. What's more, the Department for International Trade will help you connect with the right suppliers, customers and contacts, and provide tailored guidance on visas, recruitment and access to funding.

The UK's offer to foreign investors is one of the strongest in the world, and, when combined with our stable business environment and government support; provides a highly attractive commercial proposition. To find out how we can kickstart your investment journey and help you set up in the UK, visit [invest.great.gov.uk](https://invest.great.gov.uk).

**Ian Bowen-Morris**

**Director- Invest in GREAT Britain and Northern Ireland**

**UK Department for International Trade**

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## WHY UK?

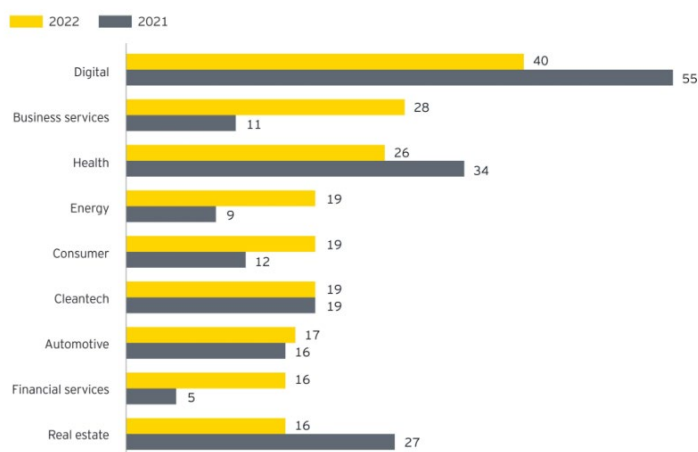
The United Kingdom is a leading business location and boasts the major attraction of London, one of the world's leading financial centres. As Europe's second leading destination for new foreign direct investment projects, the UK is a rich and diverse market in which many businesses choose to set up.

Companies can be established within 24 hours in the UK and it is easy to see why so many choose to locate here. With extensive travel links, including the second-largest ports industry and the largest air transport system in Europe, the UK offers proximity and easy access to customers, suppliers and partners.

The UK not only has a competitive tax system, but also the lowest corporate tax levels in the G20 group, making it a simple and straightforward country in which to do business. According to the Organisation for Economic Co-operation and Development (OECD), the UK is ranked among the top 10 countries with the most highly educated population. In addition, the UK is home to some of the best universities in the world. This presents a diverse and innovative pool of talent for businesses to choose from in order to grow and develop.

As well as providing customs and tax benefits, the UK government offers planning, infrastructure, and innovation assistance through freeports. Eight UK freeports have been established in key strategic areas: East Midlands, East (Felixstowe and Harwich), Humber, Liverpool City Region, Plymouth and South Devon, Solent, Thames, and Teesside.

### Top sectors driving UK investment growth 2022



Source: EY European Investment Monitor (EIM), 2022.

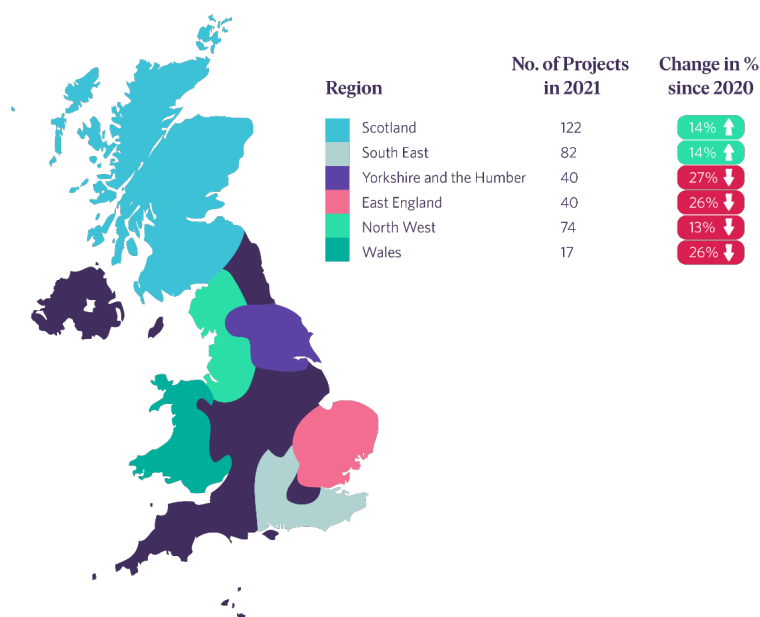
The UK remains the second country in Europe in terms of foreign direct investment and its beating heart is London, a distinguished global business hub and the most attractive European city for foreign investors. The city offers a business-friendly environment and, due to its geographic location, its office hours overlap with those of other countries that together contribute 99% of the world's GDP. Although London is a booming location for business, there are many other cities around the UK which serve as an excellent base for setting up a business including Manchester, Birmingham, Glasgow and Edinburgh.

While the law in the UK differs significantly from other jurisdictions, it is internationally recognised for its flexibility, stability and transparency of outcome. In combination with high-quality practitioners with international expertise, English law is now the most popular choice of law in the world for commercial contracts and it governs about 40% of all global corporate arbitrations.

It is important to note that the UK is comprised of different legal jurisdictions and although there are many similarities, there are different legal and regulatory compliance requirements across Scotland, England, Wales and Northern Ireland. This guide looks at the UK as a whole (not each jurisdiction individually) and unless otherwise stated, covers the requirements in England. For anyone setting up a business operating UK wide, it is important to ensure full compliance across each region.

This guide is aimed at businesses who are looking to expand or invest into the UK. At Burness Paull we are passionate about helping businesses to invest in the UK and we can guide you through the legal and regulatory landscape to make sure your business has the best possible start.

#### FDI projects across the UK regions in 2022 (excluding London)



Source: EY European Investment Monitor (EIM), 2022.



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# FOREIGN INVESTMENT POLICY & REGULATION

Historically, the United Kingdom has recognised foreign investment as one of the key factors in economic growth and the creation of wealth. The regulatory system in the UK is transparent, making it straightforward for companies to do business.

The Companies Act 2006 is the key statute to which all types of companies must adhere, regardless of whether they are registered in Scotland, Northern Ireland, or England and Wales, and is a comprehensive code on company law in the UK.

Another piece of legislation to note is the Enterprise Act 2002 which gives the Department of Business, Energy and Industrial Strategy the power to investigate mergers in certain circumstances, and in limited situations the government is granted the power to intervene.

Foreign investment in the UK is not generally restricted or governed by any particular regulatory framework. However, some sectors (such as advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to government, cryptographic authentication, data infrastructure, defence, energy, military and dual-use items, quantum technologies, satellite and space technologies, suppliers to the emergency services, synthetic biology, and transport) are subject to mandatory pre-screening under the (NSI Act). Investment in the aforementioned sectors will be screened for national security risks under the NSI Act, which has been in force since 4 January 2022. Government officials have stressed that despite its broad scope, most acquisitions won't raise national security concerns, and the NSI Act cannot be used for economic or political purposes. The new regulations are aimed at the smooth operation of markets and above all the protection of customers.

The UK is a world leader for inward investment, with the UK government playing an active role in attracting foreign investment and in cultivating a supportive business environment. Organisations such as The Department for International Trade assist companies looking to establish and grow their business in the UK by offering wide-ranging information and guidance about how to achieve this.



**We'll get you the best seat in the house.**

**Whatever your ambitions, we'll get you to where you want to sit...**

## STRUCTURING YOUR BUSINESS

When making a business commitment to expand to the UK, one of the first issues to be discussed should be how to appropriately structure your business from a commercial, corporate and tax perspective.

There are various ways in which investors may choose to enter the market in the UK, for example:

- trading through a UK incorporated entity;
- establishing a UK branch;
- acquiring an existing business in the UK;
- entering into a joint venture or partnership with another business;
- using a distributor or agent; or
- running your business from another jurisdiction and selling into the UK.

### Incorporating a UK entity

When deciding which business vehicle is the most appropriate UK entity, it is important to consider factors such as the sector and the product or service being supplied. However, in most cases a UK registered entity will be the most favourable in terms of managing international tax issues and can be set up in as little as 24 hours.

In the UK, there are a number of different types of entities, including: a private limited company, a public limited company, a limited liability partnership, a limited partnership and a Scottish limited partnership. We will focus our commentary on the private limited company as this is the most common.

## Private Limited Company

Private companies limited by shares (Limited, Ltd or Ltd) are by far the most common form of registered entity in the UK, benefiting from the limited liability of its shareholders and separate legal personality. It is common to see private limited companies used as a wholly owned subsidiary of an overseas parent. A UK company can be beneficial in terms of demonstrating commitment to the UK and therefore providing additional credibility to third parties looking to trade or do business.

Incorporating a private limited company can be done in as little as a day. It must, as a minimum, have at least one director and at least one shareholder. The shareholders are the ultimate owners of the company but the directors, or board members, manage the company on behalf of its shareholders.

Although the company must have a registered office in the UK and retain its statutory records at its registered office, there is no requirement for either the shareholders or directors to be UK residents or for board meetings to be held in the UK.

A UK private limited company must also have a constitution in the form of articles of association which govern how the company should be operated and places restrictions on what it can and cannot do. Modification to the articles of association can only be made by shareholders passing a special resolution (which requires at least 75% of shareholders to vote in its favour).

A private limited company cannot offer shares to the public or trade its shares on a public market such as the London Stock Exchange. If a private limited company wishes to raise capital, it can do so by issuing more shares "off market" (subject to the provisions in the articles of association) or increase its gearing by taking out a loan. Alternatively, it can convert itself into a public limited company.

## Public Limited Company

A public limited company (PLC, Plc or plc) requires a minimum authorised share capital of £50,000, at least two shareholders and directors and may offer its shares to the public. However, such entities are subject to strict regulation and scrutiny. This guide does not address the intricacies of setting up a PLC but please contact us if you are interested in this type of entity.

## Limited Liability Partnership

Limited liability partnerships (LLPs) also have separate legal existence from their partners (referred to as members) and afford the partners flexibility in how to manage their business affairs. LLPs are tax transparent, meaning that each partner is responsible for their own tax, and are popular with professional services firms. LLPs require the involvement of two or more partners.

## Limited Partnership

In the UK, limited partnerships (LPs) are often used for private equity and property investment fund structures. LPs can be formed under the laws of England and Wales or under Scots law.

Both English and Scottish LPs must have at least one general partner and at least one limited partner. The general partner is liable for the debts and obligations of the partnership. The liability of limited partners is limited to the amount of capital they contribute. However, a limited partner is not allowed to take part in the management of the business of the LP if it is to receive the benefits of limited liability. Both English and Scottish LPs are tax transparent. LPs in some circumstances are not required to disclose details of their accounts.

Unlike English LPs, Scottish limited partnerships (SLPs) have separate legal personality. This means an SLP can hold property, enter into contracts, borrow money in its own name and, most importantly, can be a partner in other LPs. Because of this, SLPs are frequently used in layered structures and are ideal as fund of funds, carried interest, co-invest or feeder/blocker vehicles.

An LP may be designated as a private fund limited partnership. This is a relatively new vehicle, aimed specifically at the needs of private investment funds, including private equity and venture capital funds.

## Bank Accounts

Bank accounts for UK entities can be set up relatively quickly, although this is dependent on the overall structure of the business. Unlike some other European jurisdictions, there is no need to establish a bank account before incorporating your UK entity.

## COMPANY FILING REQUIREMENTS

For companies to remain compliant with the Companies Act, there are certain documents which must be lodged at Companies House, which is a UK-wide company register accessible by the public.

Document	Description	Filing Requirement
<b>Confirmation Statement</b>	This is a statutory statement by the Company that the information held by Companies House relating to the share capital, registered office and People with Significant Control are up to date and accurate. Any changes in the shareholder position are notified on this form.	At least once annually
<b>Accounts</b>	Details of the Company's performance during the previous financial year which, dependent on the size of the Company, must include a profit and loss account, a balance sheet, notes to the accounts, a director's report and, for larger companies, an auditor's report.	Annually

<b>People with Significant Control (PSC)</b>	Details of any PSC must be notified to Companies House on the incorporation of a Company. A person or entity is defined as having “significant control” where they hold, directly or indirectly, more than 25% of the shares in the capital of the Company, and/or more than 25% of the voting rights of the Company, and/or the ability to appoint or remove a majority of those who manage the Company. They may also qualify as a PSC if they have the right to exercise significant influence or control over the decision-making activities of the Company. The Company, as well as every officer of the Company, is liable if the PSC register is not kept or maintained.	Annually and upon any change of PSC
<b>Changes to the Board</b>	Any appointment or resignation of a director from the Company’s board must be notified to Companies House, as well as any appointment or resignation of a named company secretary.	Within 14 days of the appointment or resignation
<b>Change of registered address</b>	You must tell Companies House if you want to change a company’s registered address, as the change will not take effect until Companies House have registered it.	Upon the change of address

## FUNDING YOUR BUSINESS

Restricted cash flow is often the primary barrier to business growth. Any growth strategy therefore is likely to need funding. Generally, the laws governing the lending and recovery of money and the taking and enforcement of security across the UK are considered to facilitate an expansion or acquisition strategy assisted by debt funding.

### Types of Lender

There are a number of lenders currently operating within the UK offering a variety of lending products. These range from banks to a plethora of non-bank lenders. Banks tend to offer cheaper pricing but are usually less risk adverse and can be more inflexible in relation to terms and structuring than non-bank lenders. Non-bank lenders obtain their cash from several sources (private equity, institutional cash, peer-to-peer lenders) and are not subject to certain regulatory capital and liquidity requirements which are imposed on UK banks. For this reason, their facilities can be more expensive than those offered by banks, however they can offer more flexibility, longer terms and slightly looser covenants and usually require less equity contribution. They can also provide mezzanine finance or serve as a bridge to obtaining more traditional, cheaper sources of funding. The majority of non-bank lenders have focused their attention in England, but many are looking for opportunities to lend against assets in Scotland.

### Types of Debt Product

The array of products offered by lenders operating in the UK is equally as diverse. Most bank lenders will offer the full range from the more traditional term and revolving facilities for funding real estate, corporate and leverage opportunities to renewables, invoice and asset finance and leasing and hire purchase. Banks are also most likely to be able to provide clearing and operational banking facilities such as BACs, credit cards and overdrafts. Non-bank lenders tend to specialise in one or two asset classes such as real estate or leverage financing and many are particularly interested in lending against distressed assets where it can be demonstrated that a credible business plan can be implemented to increase value.

## Choosing a Lender/Debt Product

When considering which lender and product is most appropriate for your business it is important to: (a) consider all relevant attributes and determine which are the most important to you; and (b) do your research. The level of margin and up-front fees are often the deciding factor when picking a lender, however it is wise to consider matters such as certainty and speed of execution as well as length of term and extent of commitment. Many lenders will only offer three-year facilities. Some lenders will offer more leverage than others. Often refinancing and equity costs are not taken into account when determining overall cost funding. Sometimes lower cost facilities will be on demand which removes certainty.

Good rapport is fundamental in creating long-term robust lending arrangements. Talking to peers and professional advisers can provide an insight into the culture and approach of different lenders, particularly in distressed situations where collaboration becomes crucial.

Finally, consider what additional advantages can be gained from entering into borrowing arrangements with a particular lender. Identifying and maintaining strong local partnerships and developing good business networks are imperative when entering a new market. Many lenders can assist with sourcing these via worldwide portals, networks and relationships that customers can access. Lenders with international networks can help amalgamate international banking operations.

## Debt Documentation

The type of documentation used to provide finance in the UK will vary depending on the type of debt product and the level of finance required. For real estate, corporate and leveraged loans, if a large facility is required the documentation will be based substantially on that produced by the Loan Market Association (“LMA”). If a mid-sized facility is required, many lenders have produced abbreviated versions of the LMA’s documents, which are often in bilateral form. For smaller facilities, most lenders will have simpler template debt documents that do not allow for much negotiation. Documentation for invoice, leasing and asset finance tends to be template in nature and again does not allow for much negotiation.

Because the law relating to commercial contracts is largely the same, the debt documentation used for lending will be substantially the same regardless of where you intend to borrow within the UK. Often in UK deals, English law will govern a loan agreement regardless of where the assets that are to be secured are located.

## Security Documentation

The type of security documentation used in the UK will depend on the collateral available and intended to be secured, and whether such collateral is located or otherwise governed by the laws of England and Wales or Scotland. In England and Wales, the laws relating to insolvency and taking and enforcing security are the same. In Scotland certain distinctions in such laws require different documentation to be entered into and specific processes to be followed.

Across the UK there are two types of security which can be granted over an asset. The first is fixed security which affords the holder absolute priority in respect of any proceeds of enforcement of the secured asset. The second is floating security which can only be granted by a corporate entity (being a company or a limited liability partnership) and which offers the holder priority over the proceeds of enforcement of the secured assets subject to leakages to appointed insolvency practitioners and certain types of other creditors. The most common form of security granted by a corporate entity is a floating security which extends over all of its assets located in the UK. This type of security can afford the holder with a quicker and cheaper route to enforce its security.

In England, whilst there are separate security documents available which create individual securities where the grantor is an English incorporated corporate entity, it is common for a single security document called a debenture to be entered into which contains fixed and floating charges over all or a number of the assets owned by the chargor.

A floating security contained in a debenture can extend to assets located in or otherwise governed by the laws of Scotland. Where the corporate entity is incorporated in Scotland, however, it is typical for that entity to grant a Scots law governed floating charge.

In Scotland, separate security documents are used depending on what type of security is to be taken. For this reason and because Scots law requires complete control over an asset before fixed security can be created over it, the main types of fixed security created over Scottish assets are security over (a) land and buildings; (b) receivables; (c) rights and (d) shares.

Regardless of where they are situated within the UK it is necessary to register fixed security over certain classes of assets in special registers, in order to create or validate such security. Where the grantor is a corporate entity incorporated in the UK, all security must be registered at Companies House in order to ensure it is recognised by an insolvency practitioner or another creditor of the grantor.



**For us employment is elementary.**

**It's our chemistry with clients that defines us.**

# EMPLOYMENT

There are many important issues to consider when hiring staff in the UK, the first being whether the traditional “employee” model suits your business in the first place or whether engaging self-employed consultants, contractors or agency workers may be more suitable. Employees receive the greatest degree of protection but “workers” also receive some of the rights afforded to employees. The decision as to the best staffing model often comes down to the business requirements and tax considerations.

Post-Brexit changes to UK employment law are currently proposed but as it stands much of UK employment law is derived from European law, and therefore applies throughout the UK, but these laws differ significantly from jurisdictions outside Europe. In the last decade, there has been a move to reduce the burden of employment regulation on UK employers, with notable changes including the increase of the service requirement for unfair dismissal claims to two years and capping compensation for unfair dismissal claims at the lesser of one year’s gross pay or £93,878.

## UK Employment Rights

UK employees have a number of rights that have no equivalent in many other countries. For example:

- **Written contract** - UK employees have a right to receive a written statement of their terms of employment by no later than the date they commence employment, and this contract must contain certain minimum information.
- **Working hours** - Most UK employees cannot be required to work more than an average of 48 hours a week unless they expressly agree otherwise with their employer.
- **Annual leave** - UK full-time employees are entitled to 28 days paid annual leave, which can include public and bank holidays, of which employers generally recognise eight in England.

- **Sickness leave** - There is no statutory limit on the amount of time which employees may take off due to illness or injury. However, their entitlement to statutory sick pay ceases after they have been absent due to sickness for more than 28 weeks.
- **Notice periods** - After one month's service, employees are entitled to notice from their employer of the termination of their employment. The minimum statutory right is one week's notice and, once the employee has two years' service, this rises by one week for each year of service, up to a maximum of 12 weeks. It is common for longer periods of notice to be agreed between employees and employers and this should be taken into account when hiring.
- **Termination** - Once employees have been employed for two continuous years, they may only be dismissed for one of five prescribed reasons, including redundancy, incapability and misconduct. Compensation for unfair dismissal is currently capped at £93,878 or a year's gross salary, whichever is lower. Redundant employees with more than two years' service are entitled to statutory redundancy pay.

UK employers must follow a fair procedure when dismissing an employee. Failure to do so, or terminating employment for a reason other than one of the reasons permitted by law, could lead to a claim for unfair dismissal.

- **Discrimination** - UK employees have the right not to be discriminated against on grounds of age, disability, gender-reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation. Compensation for discrimination is not subject to any cap and there is no minimum period of service required to bring a discrimination claim.
- **Pensions** - UK employers are required to automatically enrol eligible workers in a pension scheme and contribute to it. However, mandatory contributions in the UK are substantially lower than the contributions in other jurisdictions.
- **Business transfer protection** - UK employees are offered protection from dismissal in the event of a transfer of an undertaking or a contracting in or out of services. This means, for example, that when you acquire a business (or part of a business) the employees' contracts of employment will automatically transfer to you and any dismissal connected to such a transfer will be unfair unless it is for an "economic, technical or organisational" reason. Employers also have certain obligations to consult with employees on the sale of a business.
- **Waiving rights** - UK employees can waive almost all of their potential employment claims but this must be done through a formal settlement agreement, for which the employee must receive independent legal advice.
- **Consultations** - UK employees have no freestanding right to collective employee representation but they do have rights to collective consultation in certain circumstances. Examples include proposals to make at least 20 employees redundant, certain types of changes to pension benefits, business transfers and certain health and safety issues. There is generally a spirit of voluntarism when it comes

to trade union recognition, but there are legal provisions entitling a trade union to apply for recognition if they can evidence, broadly speaking, 40% support.

- **Non-competes** - Post-termination, non-competition or non-solicitation obligations can only be enforced in the UK if they are reasonable. Restrictions which may be acceptable in non-European jurisdictions are often too wide in scope and duration to stand up to challenge.

Employers in the UK have statutory duties to take measures to ensure the health, safety and welfare of employees and others affected by work activities. Risks associated with work activities require to be formally assessed and appropriate measures implemented to avoid or control the risks. Where a business employs more than five employees the risk assessments and relevant control measures must be recorded in a written document. Employers are also required to have a written health and safety policy and liability insurance. Failure to comply with health and safety duties is a criminal offence which can lead to serious financial penalties for businesses and imprisonment for individuals.

## International Employees

Employees from within the European Union, the wider EEA and Switzerland now require sponsorship by an employer or a residence permit before being able to work in the UK.

The UK, like many other countries, has been gradually tightening immigration laws in recent years and now the UK has left the EU, the UK government has indicated that any EU workers coming to the UK after January 2021 will need to obtain an appropriate residence permit.

EU workers who were living in the UK before 31 December 2020 need to apply for settled status or a temporary residence permit, depending on how long they have been resident in the UK.

Unless they have indefinite leave to remain in the UK or are otherwise exempt from immigration control (and are therefore not restricted in the work they can carry out), foreign employees from outside the EU, EEA and Switzerland also require a visa which allows them to work in the UK.

The UK has a number of different visa categories that facilitate the attraction of skilled people to the UK for work, study or business. The visa that is required will depend upon the reason for coming to the UK and the intended length of stay. It is possible for employers to formally sponsor skilled employees for work visas or to transfer employees to the UK from overseas offices. The visa rules have various criteria that need to be met in order for employees to qualify for sponsorship and there are also significant concessions for major inward investors to help speed up the visa process.

## IMMIGRATION & VISAS

When doing business in the UK, it is important to ensure that the appropriate visa is in place to enable you to work, invest or live here. Whilst nationals of some countries can enter the UK for business trips without the need to obtain a visa in advance, anyone who is not British or Irish will need a visa in order to live in the UK.

The visa requirements are the same across the UK with no real regional variations. The key to obtaining a visa is preparation and anyone requiring a visa to work, live, study or invest in the UK should consider the various visa requirements at an early stage. Some of the more common visa routes include:

### Start-up visa

This is a new route for those wishing to start their own business in the UK. This route requires endorsement by a Home Office-approved endorsing body. There is no requirement to demonstrate access to investment funds to qualify for this visa. This may make this an attractive option for new entrepreneurs with limited funding. You can stay in the UK for up to two years on a start-up visa, after which time you may be eligible to switch into an Innovator visa which offers a path to settlement in the UK.

### Innovator visa

This is a new route for those seeking to set up or run a business in the UK and who have access to at least £50,000 investment funds. Those who have already established a business which has been endorsed for a previous visa may be eligible to switch into the innovator category without demonstrating access to investment funds. This route also requires endorsement by a Home Office-approved endorsing body. An

initial innovator visa can be granted for up to three years, with an option to extend for a further three years. After three years in the UK, you may be eligible to apply for Indefinite Leave to Remain.

## **Skilled Worker visa**

This route is suitable for individuals who have received an eligible job offer from a UK employer. The UK employer must hold a sponsor licence or is willing to apply for one. There is a minimum salary requirement with the general starting point being £25,600 gross per annum. Permission to work in the UK is broadly tied to the sponsor/ employer. After five years in the UK, you may be eligible to apply for indefinite leave to remain.

## **Global Business Mobility: Senior or Specialist Worker visa**

This route is suited for individuals employed overseas and will be transferred to work for linked entity in the UK by common ownership. The UK entity must hold a sponsor licence or is willing to apply for one. There is a minimum salary requirement with the general starting point being £42,400 gross per annum. The minimum salary requirement increases to £73,900 gross per annum if individuals have been employed by the overseas entity for less than 12 months. The initial visa can be granted for up to five years and, in some circumstances, there is an option to extend it for a further five years.

## **Mobility: UK Expansion Worker visa**

This is a new route which will suit those businesses that are currently trading outside the UK and want to explore opportunities in the UK market. The overseas parent entity will be required to apply for a sponsor licence and will then be able to send up to five senior members of staff to the UK in order to set up a UK branch or wholly owned subsidiary. This route has no criteria around minimum levels of investment funds required. You can stay in the UK for up to two years.

## **Global Business Mobility: Service Supplier visa**

This is for overseas workers who are contractual service suppliers employed by an overseas service providers or self-employed independent professionals based overseas. There must be a need to undertake a temporary assignment in the UK, covered by one of the UK's international trade agreements. There is a minimum salary requirement with the general starting point being £42,400 gross per annum. The initial visa can be granted for up to 12 months depending on the trade agreement.

## Global Business Mobility: Secondment Worker visa

This is suitable for overseas workers temporarily being seconded to the UK as part of a high-value contract for goods or investment by their overseas employer. This must be worth at least £10 million per year and no less than £50 million overall. The initial visa can be granted for up to 12 months, with the possibility of extending for a further 12 months.

## Global Talent visa

Those who are already recognised leaders in their field or who are widely viewed as emerging leaders might consider this route. The visa requires endorsement from a sector-based body and covers the fields of digital technology, engineering, medicine, science, humanities, arts and culture and research. This route enables flexibility with the holder not being tied to a particular business or an employer. Depending on your circumstances, you may be eligible to apply for Indefinite Leave to Remain after three or five years.

## Family Members and Dependants

Almost all of the visa categories allow the main visa holder to bring their spouse or partner to the UK with them, along with any dependent children. Partners need not be formally married and dependent children must usually be 18 years old or younger in order to qualify as dependants.

There are often additional criteria around dependants which require increased levels of funds to be held to demonstrate the main applicant's ability to maintain and accommodate their dependants. The level of maintenance funds required increases with every dependant. Those in the UK with dependant visas are able to work and or study without restriction on dependant visas, even where the main applicant's visa might prohibit employment or restrict it to a certain employer or type of work. Dependants can apply at the same time as the main applicant or at a later stage should, they wish.



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established institution.**

## ENTERING INTO CONTRACTS

**Entering into contracts is an everyday occurrence for most businesses, although some may be regarded as business as usual whilst others are more bespoke and may tie the business into a certain arrangement for a longer period of time.**

UK and European third parties are typically reluctant to contract on the basis of non-UK/European law or jurisdiction but both Scots and English law are commonly accepted. Your existing contract templates may contain terms that cannot be enforced in the UK and we would recommend that these are reviewed and updated at the outset.

There are certain basic requirements for a valid contract to be formed in both Scotland and England. In particular, the parties must have the necessary legal capacity and there must be agreement on the key terms. There are some differences between Scots law and English law to be aware of, however. For example, with Scots law contracts, unlike with English contracts, there is no need for consideration and most contracts do not need to be in writing, although it is advisable to do this in any case so that there is clarity as to the agreed terms. Many contracts can be signed electronically, but advice should always be taken on this and no assumptions made.

### Consumer Contracts

When contracting with UK consumers, there are certain statutory rights which are implied into every contract and "unfair terms" are not binding on the consumer. For example, it is not possible to limit liability for death or injury and terms which allow for the non-consumer to unilaterally terminate the contract on an arbitrary basis or without notice are also deemed unfair.

## Agency

Agents act as intermediaries between the supplier and the customer and can be appointed on a sole, exclusive or non-exclusive basis. There are two main types of agents: a 'sales' agent has the authority to bind a supplier to contracts with third parties and the more common 'marketing' agents, who do not have power to contractually bind the supplier and merely act as a channel of communication.

Using agents can be attractive to suppliers as a means of developing a wide marketing and support network for their products without incurring the overheads associated with employing a full sales team, whilst retaining a measure of control over the destination of those products. However, many agency relationships are closely regulated by UK law to protect agents. For example, qualifying agents have a legal right to commission, a minimum period of notice prior to termination and, in some circumstances, a right to commission on transactions concluded after the agreement has been terminated. In certain circumstances, the agent may even have the right to compensation or indemnity on termination of their agency agreement. This remains the situation following the UK's exit from the EU, but the situation may change in time and this area should be kept under review.

## Distribution

The appointment of a distributor can be an attractive option for a supplier moving into the UK market because the distributor should have a better understanding of the local industry. The distributor will also bear the costs and commercial risks associated with the development of the business. Unlike with agents (at time of writing), there is generally no requirement for the supplier to pay compensation to the distributor on termination of the agreement. However, a supplier has less control over the way in which its goods are marketed.

## Franchising

Franchising can be adopted as a strategy for maximising brand value while retaining a significant degree of control. There is little in the way of formal regulation of the franchising industry in the UK, although certain principles of competition law are applicable to distribution agreements and/or brand and know-how licensing may also apply to franchise agreements, so care should be taken to ensure that a franchise arrangement will not in fact breach the competition rules.

The British Franchise Association also requires its members to comply with certain rules, which should be observed and kept under review.



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# INTELLECTUAL PROPERTY

The law relating to intellectual property rights is UK-wide and is generally similar to those of most major countries. The undernoted intellectual property rights are available throughout the UK.

## Patents

Patents protect new inventions and/or processes. An invention will only be capable of patent protection if it is considered to be new, inventive, capable of industrial application and not specifically excluded from patent protection. A UK-registered patent gives the owner the exclusive right to use the patented invention and to stop others from copying, manufacturing, importing or selling that invention in the UK for a period of up to 20 years.

Registered patent protection can be obtained by making an application to the UK Intellectual Property Office (IPO) before the invention has been made public. The registration process can often take in the region of five years. The patent only protects your invention in the country where the patent is registered. For protection outside the UK you can, for example, file the application with the European Patent Office (EPO), under the Patent Cooperation Treaty or separately in the office of each country where you want the protection.

Legal proceedings for the enforcement of a patent are often technically complex. The owner of a patent may seek orders from the courts including damages or an account of profits. There is also the potential to pursue orders for destruction of infringing material, interdict (the Scottish equivalent of an English injunction) or a declaration that the patent is invalid and should be revoked.

## Trade Marks

A UK registered trade mark may be any sign that can be represented graphically and is capable of distinguishing the goods or services of one undertaking from those of another. Signs that can be protected as trade marks include words, logos, device marks, product packaging, certain types of product shapes and sounds.

A UK-registered trade mark is infringed if, without the trade mark proprietor's consent, an identical or similar sign is used in relation to the goods/services to which the trade mark is registered and which is likely to cause confusion on the part of the public. In the case of infringement, the trade mark owner can seek an interdict (in Scotland) or an injunction (in England) preventing further use of the identical or

similar sign and damages or, as an alternative to damages, an account of profits for infringement together with orders for destruction etc.

Trade mark protection can be obtained in different ways. The applicant can apply to register the trade mark on the UK Trade Marks Register, by filing an application with the UK Intellectual Property Office. It is also possible to obtain registration of a Community Trade Mark through the European Union Intellectual Property Office (EUIPO) or an international trade mark which designates the UK through the World Intellectual Property Organisation (WIPO).

Once a trade mark has been successfully registered, either on the UK, Community or International Trade Marks Registers, it lasts for a period of 10 years from the date of filing the application. Once this 10-year period has expired, it is possible to renew the trade mark registration for subsequent periods of 10 years, subject to the payment of the appropriate trade mark renewal fees and provided that there are no grounds for having the registration cancelled, such as non-use.

## Trade Secrets

Trade secrets laws supplemented the UK common law of confidential information. Trade secrets protection enhances and clarifies the existing rules on confidentiality. Under our trade secrets legislation “trade secret” is defined as meaning confidential information which (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

## Registered and Unregistered Designs

A registered design is a monopoly right for the appearance of the whole or part of a product including features such as lines, contours, colours, shape, texture, materials or ornamentation. A registered design can be obtained in the UK by making an application to the UK Intellectual Property Office and must be new and have individual character in order to be registered. A UK-registered design lasts for a period of up to 25 years but requires to be renewed every five years. It is also possible to register the design with the EUIPO. To establish an infringement of the registered design, the rights holder must demonstrate that the third-party product does not create a different overall impression on the informed user.

Unregistered design rights occur automatically and no formal registration is required. These rights protect the shape and configuration of the product itself. In order to succeed in showing that an unregistered design right has been infringed, the rights holders must be able to prove that the third party has copied

the design and, in doing so, has produced a product which is exactly or substantially the same as the design of the rights holder's product.

UK unregistered design rights last for a period of 15 years from the end of the calendar year in which the design was first recorded or 10 years from the end of the calendar year that the product was first put onto the market, whichever of these is the earliest. You can also attract unregistered EU design right protection.

## Copyright

Unlike trade marks, registered designs and patents, copyright exists on creation and does not require formal registration. The right arises automatically from the date of creation or recording of the work in question. Copyright protects a wide range of original work, including computer programs and software. For the work to attract copyright protection, it must be sufficiently original and therefore not copied. Generally, copyright protection lasts for 70 years from the end of the calendar year in which the author dies.

The copyright owner has a number of exclusive rights in the copyrighted work, including the right to copy, adapt, distribute or perform the work in public. The original author will also have the right to be identified as the creator of the particular work. Copyright will be infringed if the whole, or a substantial part, of the copyright work is used by a third party without permission and the owner will be able to prevent the use of the protected work and obtain damages or, as an alternative to damages, an account of profits for the act of infringement.

## Commissioned Work

UK law differs from other jurisdictions in that if you commission a piece of work then ownership will not automatically transfer to the commissioner. In order to transfer ownership, a written agreement will need to be signed by the parties.

## Intellectual Property Developed by Employees

Generally speaking, any intellectual property rights created by an employee in the course of employment will be owned by the employer. However, under UK patent law, if an employee creates a patented invention that is of "outstanding benefit" to the employer then they may be entitled to additional compensation over and above their salary. Instances of additional compensation being awarded to employees in these circumstances are very rare in the UK.



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# REAL ESTATE

## Owning Real Estate

The separate jurisdictions that comprise the UK (Scotland, England and Wales and Northern Ireland) have different systems of land ownership. Although most of the concepts are similar, there are important distinctions in the detail and terminology.

A legal interest in land in England and Wales will either be freehold, where the land is owned outright, or leasehold, giving the leaseholder the right to occupy and use the land for a specified duration subject to the terms of the lease.

Land is often subject to third-party rights known as easements (such as a legal right of way) and may benefit from easements over adjoining land. Land is often also commonly held subject to covenants, which are legal rights that benefit adjoining or nearby land, and which commonly seek to prohibit certain uses of the land, for example a restriction against constructing buildings above a specified height or an obligation not to use a property for a particular use. Private restrictions such as these are entirely separate to the planning regime, which also imposes restrictions on the use of land.

Title to almost 90% of the land in England and Wales is registered with HM Land Registry: a digital, map-based public record of land ownership. All new qualifying land transactions are required to be registered with the Land Registry, which means that the Land Register provides an accurate and up to date snapshot of the title (including details of rights and encumbrances such as those referred to above, together with details of any mortgages) engendering confidence in land transactions.

## Leasing Property

Leases in England and Wales contain obligations on the part of the tenant which are similar to those in other jurisdictions, relating to repair, alterations, use and alienation (the ability to transfer the lease or

grant a sublease). The rights and obligations of both landlord and tenant are generally governed by the terms of the lease document. England and Wales also have a number of statutory provisions relevant to leasing, which can have important implications, including in certain circumstances a legal right to a new lease on substantially the same terms at the expiry of the term.

## Non-UK Entities

The UK government has recently established a new transparency regime in respect of land ownership in the UK, with a new public register known as the Register of Overseas Entities (“**ROE**”) at its core. All non-UK entities (including trusts) that already own or wish to acquire land in the UK are required to register details of their beneficial owners on the ROE. Failure to comply with these registration requirements is a criminal offence and will prevent registration of property dealings at HM Land Registry.

## Building Safety

The newly in force Building Safety Act 2022 provides for fundamental reform of regulation relating to the design and construction of all buildings and the operation of higher-risk residential buildings. While the focus of the regulatory provisions of the Act is on high-rise residential buildings, it is likely to significantly influence building standards across all types of buildings. Many of the detailed provisions in the Act will be implemented over the coming years through a programme of secondary legislation.

## Land Tax

Stamp Duty Land Tax (SDLT) applies to land and property transactions in England. It is administered by HM Revenue & Customs. Different land taxes apply to other parts of the UK; Scotland has Land and Buildings Transaction Tax (LBTT) and Wales has Land Transaction Tax (LTT).

SDLT is a self-assessed tax payable by the purchaser acquiring property (and by the tenant taking a lease). Whilst the taxpayer’s solicitors will usually deal with administrative requirements around submission of the tax return, the responsibility for the information provided to the tax authorities and timely payment of the tax lies with the taxpayer.

SDLT is a progressive tax in that different rates of tax are charged on the purchase price of property falling within each tax band, with a different basis of charge applying to rent payable under leases. Various SDLT reliefs and exemptions exist, such as group company relief or charities relief which can reduce or eliminate any tax due.

Some other UK taxes may also apply to land and property transactions.



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# DISPUTE RESOLUTION

**There are three separate legal jurisdictions within the United Kingdom: England & Wales, Scotland and Northern Ireland (Northern Ireland is not covered in this note).**

There are certain clear differences between the legal systems of Scotland and England & Wales arising from the distinct ways in which the laws in those jurisdictions developed over time. At their roots, England & Wales has a common law legal system whereas Scotland has a mixed legal system (i.e. partly common law and civil law based).

UK-wide legislation is created by the UK parliament, which sits in London (each of the countries in the United Kingdom also has its own parliament, which can pass laws on devolved matters in their own jurisdictions). The result is that many laws within the UK are common to both Scotland and England & Wales (e.g. pensions, employment and companies law arise from legislation which is common to both jurisdictions). However there remain some areas of clear distinction (e.g. property law). The two jurisdictions also have distinct court systems and different rules on civil procedure.

## Court Structure

### England & Wales

Civil proceedings in England are conducted in either the County Court (for lower value claims – generally those under £100,000) or the High Court, which hears more serious and complex cases. The High Court is further divided into several different divisions, each specialising in different types of claims.

There are also three different levels (or “tracks”) of procedure within the English court’s rules, with the aim being that simpler and lower value cases are dealt with in an easy, efficient manner, whereas complex and high-value cases get the level of attention they require.

Beyond these courts, there are two different levels of appeal – the Appeal Court and the Supreme Court of the United Kingdom, which sits in London.

## Scotland

Civil proceedings in Scotland are conducted in either the appropriate Sheriff Court or the Court of Session in Edinburgh, which is Scotland's "High Court" for civil matters. The Sheriff Courts have, subject to certain exceptions such as intellectual property disputes, exclusive jurisdiction to deal with cases where the sum sued for is £100,000 or less. Notwithstanding that rule, both courts can hear high-value or complex claims, although it tends to be the case that these are dealt with by the Court of Session.

The "Inner House" of the Court of Session is an appeal court – hearing appeals from first instance cases in the "Outer House" of the Court of Session and appeals from the Sheriff Appeal Court. The UK Supreme Court sitting in London is the highest civil appeal court for Scottish cases. Permission to appeal to the Supreme Court must be granted either by the Inner house or by the Supreme Court itself.

## Key differences between litigating in Scotland and England & Wales

There are a number of key differences between litigating in England & Wales as opposed to Scotland, including:

- **Disclosure/ recovery of documentation:** In England & Wales there are rules which require parties to exchange documents connected to their case (good and bad), which can be a significant and costly exercise (although there is currently a mandatory pilot, the aim of which is to try to reduce automatic exchange of large volumes of documentation). A party's disclosure obligations are very strict, and failure to comply can result in court sanctions – in extreme examples, this could amount to contempt of court. By contrast, in Scotland, there are no automatic rules providing for disclosure but a party can apply for specification of documents (a more limited form of disclosure, often in the form of a 'menu' of documents).
- **Cost of litigation and cost budgeting:** Court filing fees in England & Wales are comparatively high compared to other jurisdictions: the cost of filing a substantial claim at court is 5% of the value of the claim, capped at a maximum of £10,000. By contrast, in Scotland, the filing fees are in the hundreds of pounds regardless of the value of the claim. In addition, in England there is automatic cost budgeting for all claims under £10 million – there is no equivalent obligation in Scotland.
- **Pre-action protocols:** The English system has a strong focus on the "pre-action" conduct of parties, with the aim of ensuring that parties properly air their dispute before raising court proceeding. Where a party fails to comply with the pre-action protocol and rules, the court may make an adverse costs award against them. In Scotland, there are not the same broad ranging and fixed pre-action conduct rules (albeit in commercial actions there is now some pre-action conduct expected).

## Remedies

The primary remedies available to parties in litigation in England and Scotland are similar. The main remedy in a commercial dispute will ordinarily be for payment of an amount of money and/or financial damages. Other available remedies include: injunction ('interdict' in Scotland), an order requiring a party to do, or refrain from doing, a particular thing; specific performance ('specific implement' in Scotland), an order that a party must carry out a particular obligation; and declaration ('declarator' in Scotland), confirmation by the court of a particular matter, such as the existence of an obligation.

## Alternative Dispute Resolution

In both England & Wales and Scotland, there are a number of main alternative means of resolving disputes, including:

- **Arbitration:** Parties can agree to refer disputes to arbitration (as opposed to litigation) – which is a confidential disputes resolution process where the parties can also select the rules that apply. The UK courts, save in very limited circumstances, will not intervene in arbitration decisions and support arbitration as an alternative dispute resolution mechanism. In England, arbitration competes with litigation as the main dispute resolution method for large disputes and is governed by the Arbitration Act 1996. Arbitration in Scotland is governed by the Arbitration (Scotland) Act 2010. In Scotland, arbitration is used but not to the same extent as in England.
- **Mediation:** Mediation, a facilitative negotiation process, is popular in both England & Wales and Scotland. It is not a means to a decision in of itself (rather than a possible agreed settlement) therefore it is often used alongside litigation and arbitration.
- **Adjudication:** parties agree that an independent third party can make a decision on particular issues. This is a process that is commonly used in the construction industry, and there is often a further recourse to litigation or arbitration (meaning that the adjudicator's decision, whilst binding in the interim, can be overturned at a later date).
- **Expert Determination:** Expert determination is the final resolution of a dispute by an expert (e.g. a surveyor in a property valuation dispute). Expert determination is used as agreed by the parties and there is no right of appeal.

## Judgments

Judgments arising from UK courts in proceedings commenced before the end of the Brexit transition period, i.e. 31 December 2020, can be enforced in European Union member states under the Brussels Regulation or the newer Brussels Regulation (Recast), depending on the date when proceedings were

commenced. At present there is no agreement between the UK and EU for reciprocal enforcement of judgments arising from proceedings raised after 31 December 2020. UK judgments will be recognised and enforced in European Union member states (and others) under the Hague Convention in certain circumstances. Outside the EU, various reciprocal arrangements allow for international recognition and enforcement of UK judgments in a number of countries.

Arbitration awards from the UK can be enforced internationally under the New York Convention, to which the UK acceded in 1975.



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# TAX

A UK company will be responsible for the following main UK tax matters:

## Corporation Tax on Profits

Profits for tax purposes differ from accounting profits. For example, there is no deduction for depreciation but instead there is a tax-specific deduction system called “capital allowances” for tangible assets.

Registration with the UK tax authority (HMRC) for corporation tax occurs automatically upon incorporation of a UK company and generally tax returns are required to be filed within one year, with corporation tax paid within nine months of the end of the relevant accounting period.

Currently, UK corporation tax is levied at 19% on both income and capital profits. Corporation tax will increase to a standard rate of 25% from April 2023. There will be a small profits rate of 19% for companies with profits of £50,000 or less. Companies with profits between £50,000 and £250,000 will be taxed at the main rate but with “marginal relief”; this means tax is paid at a gradually increasing effective rate.

## VAT

VAT is a type of consumption tax, collected and paid to HMRC by the seller and payable at the point of sale by the buyer to the seller as an element of the sale price. Any business that is registered for VAT and making a supply of taxable goods or services in the UK and in the course of business has a duty to charge VAT on sale.

Any business established in the UK and making annual taxable supplies in the amount of £85,000 or more is required to register for VAT.

VAT is charged on every supply of goods or services that is taxable for VAT purposes and not zero-rated. Businesses pay a VAT element on receipt of supplies from other businesses subject to VAT (input tax) and charge VAT on the sale of their products and services (output tax), and are required to account on a quarterly (sometimes monthly) basis to HMRC for the amount by which output tax exceeds input tax. For VAT purposes, every supply is either taxable or exempt (exempt supplies do not carry an output tax VAT charge and restrict the ability of a business to recover its associated input tax).

Taxable supplies can either be:

- Standard rated (20%) – most taxable supplies will be subject to VAT at standard rate.
- Reduced rated (5%) – for example, domestic fuel and children's car seats.
- Zero rated (0%) – for example, most food, books, newspapers and new houses.

## Payroll Taxes

UK companies are obliged to register as employers and apply payroll withholding for income tax (PAYE) and social security contributions (NICs) on employee remuneration and benefits. The taxes withheld from employees are notified and paid to HMRC on a monthly basis along with associated employer's NICs charges.

The amount of income tax withheld will depend upon the individual employee's PAYE tax coding. Personal income tax rates for employment income of UK residents who are not residents of Scotland range from 20% (basic rate) through 40% (higher rate), to 45% (additional rate). Personal income tax rates for employment income of residents of Scotland are generally 1% higher than rates in the rest of the UK and from April 2023 will be 2% higher for higher rate and additional rate taxpayers. Starting rates of 19% and 20% apply in Scotland and then rates range from a 21% intermediate rate through a 41% (42% from April 2023) higher rate to a 46% (47% from April 2023) top rate. Above a lower threshold of earnings, NICs contributions by employees are charged at 12% of earnings up to an upper earnings level and 2% of earnings above that level, while employers are required to contribute 13.8% of earnings. NICs rates are uniform for residents of Scotland and the rest of the UK.



## DATA PROTECTION

**The Data Protection Act 2018 and the UK GDPR (the General Data Protection Regulation (EU) 2016/679, as retained in UK law following Brexit) set out the legal framework under which the processing (including the obtaining, holding, use and disclosure) of personal data is regulated in the UK. Since Brexit, the UK has more scope to deviate from the GDPR applicable to EU member states and there have been proposals (though, as at the time of writing, no enacted law) to do so. In some cases, the UK data protection regime has extraterritorial effect.** There are seven principles which must be observed by organisations that process personal data. The requirement to process personal data fairly and lawfully, and the requirement to keep it secure, are the two which often have the most practical impact. The data protection legislation also contains a number of rights for individuals, such as rights to access and request erasure of the personal data that is held about them.

Businesses that use personal data for direct marketing purposes or use cookies or similar technologies also need to comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). PECR imposes requirements on the use of fax, telephone, electronic mail, SMS and automated calling systems for direct marketing purposes and in connection with the use of cookies and other technologies, on websites for example.

A controller is the person or entity who determines the purposes for which, and the manner in which, personal data is processed. Unless exemptions apply, controllers are required to pay an annual fee to the Information Commissioner (ICO). ICO has authority to enforce, and issue penalties under, data protection law. It is also important for controllers to ensure they have appropriate privacy policies/notices in place which meet the legal requirements.

A processor is an organisation that processes personal data on behalf of a controller. A processor may not use personal data for its own purposes. Both controllers and processors must comply with statutory duties and written contracts must be put in place between controllers and processors. Having the right contractual arrangements in place with partners and suppliers is key to ensuring data protection compliance.



**With us on your side you won't feel in  
over your head.**

## BRIBERY & CORPORATE CRIME

**The law on bribery and corruption and the way in which it is defined, investigated and prosecuted differs across the UK. Even where legislation is UK-wide there are important practical differences in the way offences, including bribery, are investigated and prosecuted in different jurisdictions within the UK.**

In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) is responsible for prosecution of all crime, including bribery and corruption offences. Where the conduct giving rise to an offence occurs in Scotland or the accused is a Scottish company the offence will be prosecuted in Scotland.

Where the conduct giving rise to the offence occurs elsewhere in the UK or the accused is a company based elsewhere in the UK, the Serious Fraud Office and the Crown Prosecution Service will investigate and prosecute bribery and corruption.

Where the conduct is potentially across the UK, Scottish and English authorities will have concurrent jurisdiction. It will depend on the nature of the offences, including the extent of local involvement as to which authority will take the lead.

The Bribery Act 2010 has provided the UK with some of the toughest anti-bribery legislation in the world. It created four types of offence:

- a general offence of paying a bribe;
- a general offence of accepting a bribe;
- a specific offence prohibiting the bribery of foreign public officials; and
- a corporate offence of failing to prevent bribery.

Some of the provisions have broad international reach and hold a company strictly liable for a corrupt act committed anywhere in the world by someone performing services on its behalf. For example, a UK-based business which is undertaking a contract abroad would be subject to UK bribery legislation.

Certain limited defences apply to the offences of paying and accepting a bribe but there is no exception for facilitation payments. A business will have a defence of the corporate offence of failing to prevent bribery if it can show that it had in place adequate procedures designed to prevent bribery. An international standard has been issued on Anti-Bribery Management Systems (ISO37001).

## Anti-money Laundering and Fraud

### Money Laundering

Under the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TA), there are essentially three "substantive" money laundering offences. A person (including an individual or a firm) commits a money laundering offence if they:

- conceal, disguise, convert or transfer the proceeds of criminal conduct or of terrorist property;
- become concerned in an arrangement to facilitate the acquisition, retention or control of, or to otherwise make available the proceeds of criminal conduct or of terrorist property; or
- acquire, possess, or use property while knowing or suspecting it to be the proceeds of criminal conduct or of terrorist property.

There are three further offences, the first two only apply to those in the "Regulated Sector":

- failure to disclose that a third party has committed one of the above offences;
- tipping off of persons engaged in money laundering or terrorist financing as to any investigation; and
- prejudicing an investigation in relation to money laundering or terrorist financing offences.

The provisions of POCA and the TA apply to all legal persons, individual and corporate, so fines can be imposed not only on corporate entities but also on individual directors, managers and officers, who can also be imprisoned for up to 14 years.

The UK anti-money laundering (AML) regime details a risk-based approach to anti-money laundering compliance with prescriptive requirements around risk assessment and customer due diligence. These requirements were extended further in January 2020 requiring even more scrutiny of a customer's ownership and control structure and enhanced due diligence in certain high-risk transactions.

To assist the investigatory and enforcement processes involved in tackling money laundering and terrorist financing, law enforcement agencies have wide ranging powers, including enforcing disclosure, undertaking account monitoring and powers of seizure, civil recovery and confiscation.

## Fraud

The definition of fraud differs across the UK. In England and Wales criminal fraud is mainly dealt with under the Fraud Act 2006. The main offences are fraud by false representation; fraud by failing to disclose information and fraud by abuse of position. That act does not apply in Scotland where fraud is a common law crime which is committed by the “bringing about of any practical result by false pretences”. The false pretence can be express or implied and may result from either positive actions (such as an outright lie) or a failure to do something (staying silent). There must be an intention to deceive or defraud and the victim must have acted in a way that they would not have otherwise done, without the false pretence, to the benefit or advantage of the person committing the fraud, or to the prejudice of the interests of another person.

There are also a number of different types of statutory fraud including under the Companies Act and Insolvency Act. For example, The Criminal Justice and Licensing (Scotland) Act 2010 also contains two fraud offences:

- a person commits an offence if he has in his possession, or under his control, an article for use in, or connection with, the commission of fraud, and this offence carries a possible sentence of imprisonment of up to five years, or a fine, or both; and
- a person commits an offence if he makes, adapts, supplies or offers to supply an article knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, and this offence carries a possible sentence of imprisonment of up to 10 years, or a fine, or both.

A statute may expressly create criminal liability for businesses, however, the offence of fraud may be committed by a corporate body if any director, manager, secretary or officer acts as a directing mind of the body. Fraud requires that the accused knew that the pretence was false and intended to deceive the other party and it is possible to ascribe to the company the necessary state of mind of a natural person who is the company’s controlling mind and decision-maker, thereby attributing the company with criminal responsibility.

## Concerns for Business - Bribery, Money Laundering and Fraud

As well as potentially heavy fines, damage to reputation and value, it is important to mention that companies in the UK and EU convicted of fraud, bribery, corruption or money laundering may be debarred from tendering for public contracts.

A proactive and effective compliance program can significantly mitigate risks for businesses.

# Peter Lawson

## Chair



## CONTACT US

We hope this guide provides you with a helpful summary of some of the main legal and regulatory compliance requirements for your business needs in the UK. This is a guide to doing business in the UK but is not intended to be taken as legal advice and should not be relied on as such. This guide is up to date as at January 2023. Some matters may be subject to change as the UK's post-Brexit relationship with the EU evolves but these changes have not been addressed in this guide.

Should you require any further information on making a business investment into the UK please get in touch.

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