

DOING BUSINESS
IN
THE UNITED KINGDOM
2009



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1. INTRODUCTION

The United Kingdom of Great Britain and Northern Ireland (“**UK**”) is the number one destination for inward investment in Europe. The establishment of a business here can provide effective access to the European Union (“**EU**”) and beyond. This guide provides an overview of the principal legal requirements to which an overseas entity will need to give consideration and with which it will need to comply when setting up a business in the UK. It also provides an outline of the issues that may affect such an entity when establishing a business.

Whether you are looking to set up in the UK for the first time, expand your existing business, or find a UK company with which to form a partnership or joint venture, Bryan Cave can advise you.

A majority of our work is cross-border and spans many countries. We have four offices in the EU, as well as having strong and integrated relationships with other law firms across the rest of Europe. This enables us to provide a full service to our clients setting up in the UK with multi-jurisdictional remits.

About Bryan Cave

Bryan Cave LLP is a leading business and litigation firm with global reach, a strong reputation and over 135 years of success. We have more than 1,100 lawyers and other professionals practicing in a wide range of disciplines in 26 offices around the world. We advise clients at each step of their business cycle, and work for a wide variety of business, financial, institutional and individual clients, including publicly held multinational corporations, large and mid-sized privately held companies, partnerships and emerging companies. We pride ourselves on our proactive, solution-oriented work.

Contact Us

We welcome the opportunity to discuss any of the issues raised in this guide or any other questions you might have. If you would like to know more, please get in touch with your usual Bryan Cave contact, or any of the Bryan Cave lawyers listed on the back page.

<p>Disclaimer: The information contained in this guidance booklet is correct as of 1 May 2009. The information contained herein is general in nature and is not intended to constitute legal advice with respect to any matter or set of facts. Professional advice should always be obtained before applying any information to particular circumstances.</p>

UK Overview

The UK consists of England, Wales, Scotland and Northern Ireland. Within the UK there are three separate legal jurisdictions: (i) England and Wales, (ii) Scotland and (iii) Northern Ireland. The Republic of Ireland is not a part of the UK, but it is part of the EU. The laws of England and Wales are broadly the same. For the sake of simplicity, therefore, we will refer only to “England” in this guide when referring to both. The official currency of the UK is the pound sterling. The UK has not adopted the Euro.

The UK is governed by a parliamentary system with its seat of central government in the City of Westminster, in the Greater London area. Devolution has led to the transfer of powers in certain areas of government from the Westminster Parliament to separately established Parliaments or Assemblies in Scotland, Wales and Northern Ireland. The extent of devolution is greatest in Scotland.

English law consists of both common law and statute, with an overlay of certain EU legislation. As explained below some EU laws will be automatically applicable in any EU Member State. Other EU laws will have to be implemented into English law by the applicable legislative body.

The Channel Islands (Jersey and Guernsey) and the Isle of Man form part of the British Isles, but are not part of the United Kingdom.

EU Overview

The EU is a union of 27 independent countries (known as the “**Member States**”) founded to enhance political, economic and social cooperation. Various subsequent treaties have considerably amended the original scope, size and constitution of the EU. The European Economic Community, now known as the European Community (“**EC**”), was established in 1957 by the Treaty of Rome (the “**Treaty**”). The European Economic Area (the “**EEA**”) was established on 1 January 1994 among the Member States of the EU, the EC, and Iceland, Lichtenstein and Norway. Membership in the EEA allows Iceland, Lichtenstein and Norway to participate in the European single market and the free movement of goods, services, capital and persons, without joining the EU, but subject to certain requirements. Switzerland is not a member of the EU or the EEA.

The institutions of the EU are not organised along the traditional lines of government: legislative, executive, judicial and administrative. Instead, different functions are shared. The European Commission, the Council of the EU and the European Parliament collectively introduce the policies and laws that apply throughout the EU. The Commission has the sole right to propose new laws, but it is the Parliament and Council that adopt them. Examples of this legislation are: Regulations, Directives, Decisions and Recommendations/Opinions.

- A Regulation is a legislative act which becomes immediately enforceable as law in all Member States simultaneously (subject only to certain derogations sometimes granted to new Member States, for a transitional period). No further action or legislation is required by the individual Member State.

- A Directive is a legislative act which requires Member States to achieve a particular result without dictating how they are to achieve that result. Each Member State implements the Directive through national legislation within a specified timetable. While a Directive indicates the terms that should apply, the implementing national legislation may contain differences among Member States.
- A Decision applies only to the particular addressee of the decision (be it one or more Member States, companies or individuals), e.g., in competition law decisions.
- A Recommendation and Opinion is a non-binding declaration.

Our practice in the UK includes advice on a broad range of UK, EU and U.S. law matters. Our strong capability in Europe, including offices in France, Germany and Italy, and our experience in the UK of managing multi-jurisdictional transactions and dispute resolution has enabled us to provide focused advice to entities seeking to engage in business operations in the UK, elsewhere in the EU, and beyond.

2. BUSINESS ORGANISATIONS

Overseas entities selling goods or providing services to customers in the United Kingdom (or contemplating such activity) should consider whether their activities establish a “presence” in the UK. This could give rise to a liability for UK taxes, or to an obligation to make public filings.

The simple export of goods to the UK, where customers in the UK have been sourced through independent sales representatives or through independent distributors, will not generally result in a “presence” for an overseas entity for tax or company law purposes. However, the establishment of a fixed or permanent base from which to conduct business, including engaging a “dependent” agent with authority to conclude contracts in the UK on its behalf, will constitute a taxable presence or so-called “permanent establishment” for the overseas entity. Whether or not an overseas entity has established a permanent establishment (for UK tax purposes) is a question of fact in each case.

An overseas entity intending to establish what will be a taxable presence in the UK should consider whether it wishes to act through a branch or establish a subsidiary company or other legal entity in the UK. The profits attributable to the branch operation or to the subsidiary or other legal entity will in each case be subject to taxation in the UK.

ESTABLISHING A PLACE OF BUSINESS

As stated above, the mere fact that an overseas entity is conducting business in the UK does not necessarily mean that it will have to comply with UK company law requirements. If an entity has not set up a UK subsidiary, the question will be whether the entity has an “established place of business”. If there is no place of business in the UK, then the overseas entity will not have to register with Companies House or make any filings.

The question of whether or not an overseas entity has an established place of business (for UK company law purposes) is not a straightforward question and has been the subject of some litigation.

It has been held that in order for an entity to have an established place of business, it must not only have some “more or less permanent location”, but must also conduct business from that location with some degree of regularity. It is generally thought that a business conducted through an independent sales agent or representative will not create an established place of business.

REGISTRATION REQUIREMENTS

In the event that a place of business is deemed to have been established, the entity will be required to comply with certain registration requirements under the Companies Act.

There are currently two types of registration for entities which have an established place of business in the UK, but which are not conducting their business through a separate subsidiary. These are: a branch registration or a place of business registration. All entities which have established a place of business will be required to complete a branch registration unless they cannot register as a branch due to the fact that a) they are from within the UK (i.e., Northern Ireland), b) they are not limited companies, or c) their activities are not sufficient to define the company as a branch (i.e., such as internal computer processing, warehousing or by being a representative office). In these circumstances, a place of business registration will be required. The distinction between a place of business registration and a branch registration can be difficult to determine. Whilst not defined by statute, it is accepted that a branch is established where there is a greater degree of permanence for the business.

The registration procedures and ongoing requirements are relatively detailed and are therefore outside the scope of this note. However, for both types of registration, it can be noted that there is no requirement for directors or shareholders of the entity to be resident in the UK. Documents to be filed at Companies House include the audited accounts of the entity (until 1 October 2009 this is required only for branch registrations; thereafter for both types of registrations), and other general information about the company including the company’s constitutional documents. Any documents filed will be a matter of public record. Branches of overseas entities which are not required to publish audited accounts in their home jurisdiction must prepare and file, at a minimum, a balance sheet and profit and loss account for filing at Companies House.

The law relating to the registration of overseas companies is due to change on 1 October 2009 with the implementation of The Overseas Companies Regulations 2008. These regulations seek to introduce a single regime for filing and registration of overseas companies. As of 1 May 2009, the regulations are in draft form.

If the activities of a company that registers a place of business subsequently change, to the extent that it qualifies as a branch (or vice versa), then it must re-register by delivering the applicable form to UK Companies House and paying a registration fee. There may be UK tax consequences associated with any such change.

In many jurisdictions, a branch operation could be useful for an overseas entity or group, since profits and losses of the branch belong to the overseas entity, and any losses could (subject to applicable tax rules in its home jurisdiction) offset profits earned by the overseas entity elsewhere in the world.

Establishing A Company¹

Company law in England and Wales has recently undergone major reform and is currently governed by the Companies Act 1985 (the “**1985 Act**”) and the Companies Act 2006 (the “**2006 Act**”). The latter is a recent statute which sought to codify a number of corporate governance matters (e.g., codifying directors’ duties to the company) and was a major updating of many provisions of company law. As such, company law in the UK is currently in transition from the 1985 Act to the 2006 Act, portions of which are already in effect and supersede the 1985 Act in the relevant areas.

All of the provisions of the 2006 Act will be in force by October 2009, at which time the 1985 Act will be superseded except for a few minor provisions largely relating to company investigations.

In the UK, four main types of companies can be created:

- private company limited by shares – the members’ liability is limited to the amount, if any, unpaid on the shares subscribed by them (“**Limiteds**”);
- private company limited by guarantee – the company does not have a share capital. The members’ liability is limited to the amount that they have agreed to contribute to the company’s assets if it is wound up (normally a nominal amount). This type of company is principally used for charitable organisations and certain members’ clubs;
- private unlimited company – there is no limit to the members’ liability; and
- public limited company – the members’ liability is limited to the amount, if any, unpaid on the shares subscribed by them (“**PLC**”). Only the shares of a PLC can be offered for sale to the general public.

Community Interest Companies (CICs) are a relatively new type of company introduced by the UK government in 2005. They are limited companies with the specific aim of conducting a business or other activity for community benefit, and not for private advantage. The assets and profits of a CIC must be dedicated to the community it is formed to serve. It cannot be a political party, a political campaigning organisation, or a charitable company.

¹ The information referred to in this section relates to English and Welsh entities only, and not to Scottish entities.

Certain key differences between Limiteds and PLCs are as follows:

	Limiteds	PLC
Minimum share capital?	£1	£50,000. A PLC must have at least a quarter of the nominal value of each share paid up before it can start trading.
Share currency restrictions?	No. A company may also have different classes of shares denominated in different currencies.	No. The company must have a minimum of £50,000 issued share capital, or the Euro equivalent. The Euro equivalent is currently set at €65,600. It may also have other classes of shares denominated in other currencies.
Minimum number of shareholders?	1	Currently 2 (but changes under the 2006 Act will reduce this to 1 as of 1st October 2009)
Minimum number of directors?	1 (and at least one must be a natural person)	2 (and at least one must be a natural person)
Requirement for a company secretary?	No. The requirement to have a secretary was abolished as of 6 April 2008.	Yes
What information must be disclosed?	An Annual Return (giving details of directors and shareholders) and audited Annual Accounts must be filed with UK Companies House.	In addition to the filing requirements for Limiteds, if a PLC is listed on an exchange then information which may affect the company's share price must be disclosed.

	Limiteds	PLC
When must financial statements be filed?	The first financial statements must be filed at UK Companies House within 21 months of the date of incorporation. Following this, they must be delivered within nine months of the accounting reference date.	The first financial statements must be filed at Companies House within 18 months of the date of incorporation. Following this, they must be delivered within six months of the accounting reference date.
Dividends Payable	Yes. A Limited can only pay dividends out of distributable profits (realised profits after netting off any earlier realised losses).	Yes. A PLC can also only pay dividends out of distributable profits HOWEVER, a PLC can only pay a dividend if its net assets do not fall below the aggregate of its called up share capital and undistributable reserves.
Requirement to hold Annual meetings?	No, unless required under the company's articles of association.	Yes
Can a company provide financial assistance to a party wishing to purchase shares in it?	Yes. The prohibition was abolished on 1 October 2008 However, directors should be aware that any financial assistance must not breach any of their directors' duties, result in an illegal dividend or in the company becoming insolvent or result in an unlawful reduction of capital.	No

The following are common characteristics of Limiteds and PLCs:

- To form both a Limited and a PLC it is necessary to have a Memorandum of Association setting out the objects of the company and Articles of Association setting out the rules that govern the day to day management of the company. From 1 October 2009 it will no longer be necessary for a company's Memorandum to include an objects clause, and a company's objects may be unrestricted. Any objects included in a Company's pre-existing Memorandum, however, will then be deemed to be included as part of its Articles of Association going forward unless removed. There are also a number of statutory forms that must be filed with the Registrar of Companies. Formation of a new company typically takes three to five days, although expedited service is available. It is also possible to purchase shelf companies from various services.
- There are no residency or nationality requirements for directors of English companies.

- Limiteds and PLCs have a separate legal personality. The directors are not generally liable for the acts of a company unless they have given a personal guarantee, acted whilst disqualified as directors, traded fraudulently or wrongfully (e.g., directors of a company have continued to trade a company past the point where (i) they knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation; and (ii) they did not take every step with a view to minimising the potential loss to the company’s creditors), or acted beyond their personal capacity. Directors are required to act in good faith and to promote the success of the company. Companies may have corporate directors (i.e., other companies acting as its directors, note however, that companies need at least one director who is a natural person).
- Certain decisions will need to be approved at a shareholders’ meeting. This can be done either by ordinary resolution (50% of those entitled to vote in favour to pass the resolutions) or special resolution (requiring 75% or more).
- Written ordinary resolutions (requiring a simple majority) and written special resolutions (requiring 75% or more) can also be used rather than convening a meeting, although certain requirements regarding notice of and timing of these resolutions must be met.

It is possible for a Limited but not a PLC to receive flow-through treatment for U.S. tax purposes, by election under the so-called “check the box” rule.

Establishing A Partnership²

As a result of the introduction of the “limited liability partnership” to English law in 2001 there are now three types of UK partnership available. Such partnerships may now be formed as:

- General Partnerships (“**GP**”) – these are unincorporated partnerships in which the partners have unlimited liability for the debts of the partnership. Partners may agree to indemnify each other in respect of liabilities but this has no impact on outside parties who deal with the partnership. GPs are governed by the Partnership Act 1890.
- Limited Liability Partnerships (“**LLP**”) – these are incorporated partnerships in which each partner’s liability is, in general, limited to his agreed contribution. LLPs are governed by the Limited Liability Partnership Act 2000. The general position is that members of an LLP will not personally be liable for contracts entered into by the LLP or personally liable for any torts by the LLP. As with directors of companies, however, members of an LLP may be personally liable for their own negligence if they have assumed a personal duty of care and have acted in breach of that duty.

Despite the liability of members being limited to the amount contributed, there are, however, special claw-back provisions applied to members of LLPs. Any amounts withdrawn by a member in the two years before the commencement of a winding-up, can be clawed-back if the member making the withdrawal knew or ought to have concluded that, after the withdrawal and any withdrawals in contemplation at that time, there was no reasonable prospect of the LLP being able to avoid an insolvent liquidation. Withdrawals include repayments of loans, profit distributions, interest or transfers of property. Members of an LLP may also be liable to

² The information referred to in this section relates to English entities, not to Scottish entities.

contribute to the assets of the LLP on a winding up if they are guilty of fraudulent or wrongful trading.

- Limited Partnerships (“**LP**”) – these are unincorporated partnerships in which certain partners have limited liability (“**limited partners**”). However, limited partners may not be involved in managing the firm’s affairs. The partnership must have at least one “general partner” whose liability is unlimited (but which may be a company). LPs are governed by the Limited Partnership Act 1907.

Certain key differences between GPs, LLPs and LPs are as follows:

	GP	LLP	LP
Requirements for establishment?	No formal requirements – partnership formed whenever persons carry on business with a view to profit.	Detailed information must be registered with the Registrar of Companies.	More basic information must be registered with the Registrar of Companies.
Separate legal personality?	No	Yes – the partnership itself can own property and employ individuals.	No
What information must be disclosed?	None	The details of the partnership described above must be kept updated and accounts must be filed each year.	Only basic details.

	GP	LLP	LP
Can the partnership be bound by the partners?	Yes	Yes	General partners yes, but limited partners no. Limited partners may lose their limited liability status if they become involved in management of the partnership.

The following are common characteristics of GPs, LLPs and LPs:

- There is no minimum capital requirement for English partnerships. However, any amounts that a partner has agreed to contribute to the partnership can be required to be paid by that partner.
- There are generally no restrictions on who can become a partner, although governing bodies of certain professions may impose their own requirements. Corporations can act as partners.
- It is highly desirable for a partnership to be governed by a written partnership agreement. If there is no written agreement then provisions in the relevant governing Act will apply, but these are often unsatisfactory.
- UK partnerships - general partnerships, limited partnerships or limited liability partnerships – each is treated as transparent for purposes of taxation of income and gains in the UK. Accordingly, the relevant share of a partner’s income and gains will be treated as accruing to, and will be taxed on, each of the individual partners directly. Overseas partnerships will in many cases also be treated as transparent for such tax purposes (or the UK tax authority will be prepared to treat them in such manner), but this needs to be considered in light of the particular contractual or constitutional arrangements under which the partnership is constituted or operates.

Establishing A European Public Company (Societas Europaea (“SE”))

The entities referred to above are subject to English law principles. A new concept, common to Member States of the EEA, was introduced in the UK in 2004 - the SE. So far, the SE has not been widely used.

An SE is a European public limited company and may be created on registration in any one of the Member States of the EEA. Member states must treat an SE as if it were a public limited company formed in accordance with the law of that member state in which it has its registered office. SEs are subject to certain EU-wide laws wherever formed, such as those relating to share capital, internal regulation, accounts and worker participation. They are subject to national corporate laws in many other respects, for example, in relationship to formation, issue and purchase of shares, taxation and insolvency. SEs must have a minimum share capital of

€120,000. Only pre-existing companies with a two-year operating history in different member states are able to incorporate an SE.

There are several ways of forming an SE as follows:

- **Formation by Merger** - Two or more public limited companies or existing SEs may merge to form an SE provided at least two of them are governed by the laws of different Member States. The merger may be conducted by acquisition (with the acquiring company becoming an SE) or by the formation of a new company (with the merging companies ceasing to exist).

- **Formation of a Holding SE** - Two or more private or public limited companies (including existing SEs) formed under the law of a Member State and with a registered office in a Member State may form an SE by promoting the formation of a holding SE.

- **Subsidiary SE formed by an existing SE** - An existing SE may itself form another SE as a subsidiary company, in which it may be the sole shareholder.

- **Formation by transformation of a PLC** - A PLC registered in the UK may transform into an SE registered in the UK provided the PLC has for two years had a subsidiary governed by the laws of another Member State. The PLC cannot simultaneously transform to an SE and move its registered office to another Member State.

A Proposed new European private company

There is currently a consultation paper in the UK which proposes a new European private company called Societas Privata Europaea (“SPE”). The proposal is part of a number of measures under the Small Business Act for Europe. The new European private company would offer an alternative form of incorporation for companies. This is in the hope that SPEs will become more competitive within the EC. An SPE would be a limited liability private company formed by one or more natural persons or legal entities. Where a matter is not governed by regulation or company articles, the national law of the member state where the SPE has its registered office would apply.

3. RESTRICTIONS ON INVESTMENT

The United Kingdom has historically maintained a liberal investment policy and is one of the largest recipients of inbound foreign investment in the world. It has no legal framework designed to monitor direct foreign investments for national security or other public interest reasons. However, the government has the authority, under several laws, to block specific transactions determined to be against national interests.

The Enterprise Act 2002 provides authority to intervene in cases of public interest or special public interest, principally involving mergers or acquisitions in the areas of national security, the media and water industries – even if the thresholds for a relevant merger are not met. Where the European Commission has jurisdiction over a merger under the EC Merger Regulations, member states can intervene in cases involving the defence industry. For further information on mergers, please refer to Section 12 (*Competition Law*) below.

4. CAPITAL MARKET FUNDRAISING IN THE UK

There are three principal markets in the UK, namely the main market of the London Stock Exchange (the “**Main Market**”), AIM (the Alternative Investment Market) and PLUS. A decision to list on any of these markets requires careful planning - choosing the appropriate market being a critical part of the process.

Which Market?

The four primary deciding factors for a company considering an IPO on one of the UK capital markets are as follows:

- **Size.** PLUS and AIM are both targeted at smaller companies wanting to raise not more than £10 million (PLUS) and up to £75-100 million (AIM). The Main Market is only suitable for larger companies.
- **Track record.** To gain entrance to the Main Market a company needs to have been trading for at least three years. It is easier for start-up companies to obtain a listing on PLUS or AIM, subject to certain exceptions.
- **Cost.** The cost of an initial flotation on any of the markets, including lost management time, also needs to be taken into account. Generally, the larger the market the more onerous the ongoing disclosure obligations and the higher the professional fees and costs, both on admission to the market and post admission.
- **Business Objectives.** The differing needs of the business and its shareholders will also need to be taken into account.

Further details are set out below with regards to the Main Market and AIM. More information about PLUS is available from Bryan Cave on request.

AIM

The AIM market is run by the London Stock Exchange and is intended to be accessible by relatively young companies with market capitalisations from £1 million to £100 million. Since its conception, approximately 3,000 companies have listed on AIM, of which approximately 500 have been non-UK companies. AIM is currently home to over 1,450 companies, of which over 288 are non-UK companies.³

AIM companies are not bound by the full Listing Rules of the UK Listing Authority (“**UKLA**”) applicable to the Main Market, and are governed by their own set of rules, known as the AIM Rules. The entry requirements for AIM and continuing obligations after admission, are less stringent than those for the Main Market.

Unlike shares traded on the Main Market, shares traded on AIM are unquoted for tax purposes. This can have tax advantages for investors.

³ figures quoted are accurate as at April 2009.

Application process

To join AIM, a company must appoint a nominated adviser (“**Nomad**”) which will assess whether the company is appropriate for the market. The Nomad will be expected to guide the company through the application process. Briefly, a Nomad will be a firm or company (never an individual) with at least two years’ corporate finance expertise, having acted on a number of relevant transactions in a prescribed period and employing a sufficient number of “qualified executives”.

A company’s Nomad is obliged to confirm to the Stock Exchange that a company is appropriate. It will co-ordinate extensive due diligence to ensure that this is the case and will help the company to produce its admission document. The admission document is the key document that must be produced in accordance with the AIM listing and must contain all information prescribed by the AIM Rules. The directors are ultimately responsible for the accuracy of the admission document and so it is of paramount importance that its contents are accurate and have been verified by the company’s solicitors.

Fast-track to AIM for overseas companies

Companies already listed on one of nine overseas exchanges (Australian Stock Exchange, Euronext, Deutsche Börse, JSE Securities Exchange (South Africa), NASDAQ, NYSE, Stockholmsbörsen, Swiss Exchange and Toronto Stock Exchange) for at least 18 months can use their existing annual report and accounts (along with certain other prescribed information to be released by way of a public announcement) as a basis for a complementary quotation on AIM.

Continuing obligations

Companies admitted to AIM must comply with the AIM Rules which include on-going disclosure requirements (although these are not as onerous as the equivalent requirements for a company with a listing on the Main Market).

The directors of a company are ultimately responsible for a company’s compliance with the AIM Rules. The Nomad, in conjunction with the company’s other professional advisers, will assist in advising the directors on their specific responsibilities and obligations to ensure compliance with the AIM Rules. Bryan Cave have extensive experience with regards to advising the board of directors of a company of their continuing obligations pursuant to the AIM Rules.

Breaches of the AIM Rules can result in a number of sanctions, imposed by the Stock Exchange, which can ultimately culminate in the cancellation of trading in a company’s shares.

It should be noted that, as a general rule, the Disclosure and Transparency Rules (referred to in more detail below) do not apply to companies listed on AIM (save in relation to the dissemination of information relating to the acquisition or disposal of major holdings in shares).

The Main Market of the London Stock Exchange

The costs associated with obtaining a full listing will, almost always, be greater than those for a listing on AIM or PLUS and the process for gaining such a listing on the Main Market is more detailed and involved. For this, and other reasons, it is generally only appropriate for large well-established companies to list on the Main Market.

Application process

In order to gain admission to the Main Market, a company will need to comply with the Listing and Prospectus Rules which are issued by the UKLA along with the admission standards of the London Stock Exchange.

There are two elements to a listing on the Main Market: shares must first be admitted to the Official List by the UKLA; and the shares then need to be admitted to trading by the London Stock Exchange. Generally, both admissions will happen concurrently:

A company proposing to list on the Main Market must appoint a sponsor (usually an investment bank, stockbroker or other financial adviser), who will assist with the listing process, help the company prepare its prospectus, and liaise with the UKLA to confirm that the company has complied with all the relevant Listing and Prospectus Rules.

The most important part of the process will be the preparation of a prospectus. This is the principal information document in connection with the listing and must comply with the Prospectus Rules and the Listing Rules. The prospectus must contain information regarding the assets, liabilities, financial position, profits, losses, and prospects of the company so as to enable a potential investor to make an informed decision as to whether they may wish to acquire shares in the company. It will also assist the UKLA in assessing whether a company is suitable to be admitted to the Main Market. The prospectus will have to be approved by the UKLA.

The admission requirements to the Main Market include:

- an obligation for 25% of the shares to be held in public hands;
- a three year trading record (subject to certain exceptions);
- a minimum market capitalisation of £700,000 (for equity issues); and
- the admission document to be approved by the UKLA.

Continuing obligations

A company that is admitted to the Main Market must observe the continuing obligations under the Listing Rules and Disclosure and Transparency Rules. The underlying principle behind the continuing obligations is the same as for the other markets - fair and timely disclosure of all relevant information and company developments likely to affect the share price of a company to ensure an orderly and fair market.

5. EMPLOYMENT

The main employment law considerations for a company entering the UK market are set out below.

Written contracts of employment

A contract of employment may or may not be put in writing, and the contractual relationship described in any written document may be modified by custom and practice - essentially the way that the employer and employee conduct themselves on a day-to-day basis.

An employer is obliged, however, to provide each of its employees with a written statement of particulars of employment within 13 weeks of the employee's start date. The statement must include certain information, such as terms regarding notice, pay, pension provision, sick pay and holiday.

An employer must also provide the employee with a written statement of any change in the particulars within 30 days of that change.

If a statement or a statement of changes is not provided, the employee may apply to an Employment Tribunal for an order requiring the employer to produce one. If the employee is successful in another employment claim and the employer is in breach of its obligation to provide a written statement of particulars at the time the claim was started, the Employment Tribunal will, unless it is unfair to do so, award two or four weeks' pay to the employee, or increase any award already made by that amount.

Dismissing an employee

English employment law does not allow for termination of an employee's contract of employment "at will" by the employer. An employer who terminates an employee for the wrong reason, in the wrong manner or otherwise unfairly is at risk of, amongst others, the following potential claims:

- unfair dismissal;
- failure to make a statutory redundancy payment; or
- wrongful dismissal, for breach of the employee's contract of employment.

Unfair dismissal

An employee with one year's service has the right not to be unfairly dismissed.

A dismissal will be unfair unless the employer can show:

- that the dismissal was for one of the six potentially fair reasons, which include, reasons relating to conduct and capability, retirement and redundancy; and
- that the employer acted reasonably in dismissing the employee for that reason in the circumstances, including the size and administrative resources of the employer's business.

Automatic unfair dismissal

In a number of circumstances a dismissal will be considered automatically unfair. These include:

- where a dismissal is found to be discriminatory under any of the heads of discrimination under English law (age, disability, sex, sexual orientation, religion or belief, race, ethnicity, nationality or national origin);

- dismissal in relation to lawful trade union activities;
- dismissal for asserting a statutory right, such as a claim to a written statement of terms of employment;
- dismissal of an employee who asserted his or her rights under health and safety legislation; and
- certain dismissals related to the transfer of a business, which cannot be justified based on an economic, technical or organisational reason.

It should be noted that, in relation to the automatically unfair reasons listed above, an employee does not have to have one year's service in order to claim unfair dismissal (except in the cases of dismissal relating to transfer of a business or where the employer has failed to follow the relevant statutory disciplinary or dismissal procedure).

Remedies for unfair dismissal

If an employee is successful in a claim for unfair dismissal, the Employment Tribunal may order reinstatement or reengagement of the employee, although these are rarely ordered. The Tribunal usually awards financial compensation instead: this consists of the basic award, which is calculated based on the employee's age and length of service and is (from February 2009) capped at £10,500, and the compensatory award, which is designed to compensate the employee for losses flowing from the dismissal, (from February 2009) capped at £66,200. These upper limits are reviewed annually.

Redundancy

As noted above, redundancy is a potentially fair reason for dismissal. A redundancy occurs where an employer proposes to cease carrying on a business activity, or to reduce the number of employees carrying out that activity, in a particular area or altogether.

A redundancy dismissal will be unfair unless a genuine redundancy situation, as described above, exists. As well, the employer must act reasonably in determining which employees fall within the pool from which redundant employees will be selected, must employ fair and reasonable criteria in selecting employees for redundancy, and must follow a fair procedure before terminating an employee's employment on grounds of redundancy.

Employers also have a duty to search for alternative employment, and to consult with the employee for at least two weeks prior to dismissal. Enhanced information and consultation requirements must be observed by employers wishing to make 20 redundancies in a period of 90 days or less.

An employee with two or more years' service who is made redundant is entitled to a statutory redundancy payment, calculated by reference to that employee's length of service, age and weekly pay (subject to a statutory cap).

Wrongful dismissal

Wrongful dismissal is a common law claim, which may be pursued either in the civil courts or in an Employment Tribunal. Wrongful dismissal is a claim for damages against an employer where the employee has been dismissed in breach of contract.

A claim for wrongful dismissal typically arises where an employer has dismissed an employee, either expressly or constructively, in breach of that employee's notice provisions, or before the expiry of that employee's fixed term contract.

Minimum notice periods

Employment legislation sets out the minimum notice requirements to which an employee is entitled. An employee who has been employed for less than two years is entitled to one week's notice. An employee who has been employed for two years or more is entitled to one week's notice for each year of continuous service, up to a maximum of 12 weeks. Alternatively, the employee's contract of employment may offer more generous notice provisions.

Discrimination

Discrimination in employment is prohibited in English law on the basis of: race, ethnicity, nationality or national origin; sex; sexual orientation; religion or belief; disability; or age. It is also unlawful to harass individuals on the basis of any of these categories.

As well, it is unlawful for an employer to subject any employee to detrimental treatment as a result of that employee having asserted his or her rights under discrimination legislation: this is known as "victimisation".

Discrimination rights extend not only to employees, but to workers, a broader category which includes freelancers and contactors - essentially any worker who is not providing services on his or her own account.

Any business which contracts with a public body should be aware that public bodies, such as local councils, are under a legal duty to promote equality and eliminate discrimination. This duty has been invoked by public bodies as grounds for refusing to contract with private sector employers who discriminate against their workers.

It should be noted that in addition to discrimination, there is also slightly more limited prohibition on less favourable treatment of part-time workers and workers on fixed-term contracts.

Business sales and outsourcing

As a result of EU directives, corporate transactions involving outsourcing or asset sales are subject to significant employment protection for any employees involved.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") operate to protect employees where there is an acquisition of a business, an outsourcing of an economic activity or a change in the provider of outsourced services.

TUPE provide that when a business transfer, outsourcing or change in service provider occurs, the employees assigned to that business or economic activity transfer as well, and that their terms and conditions of employment remain unchanged following the transfer. The buyer of a business

or third party contractor assuming outsourced work therefore also assumes liability for the employees working in that business as well.

Any dismissal in connection with the transfer or outsourcing is deemed automatically to be unfair, unless it is for an economic, technical or organisational reason.

Before the transfer or outsourcing, there is a duty on the seller or outsourcing entity to inform and consult with elected representatives of all affected employees about the transfer and the effect it would have on the employees. Failure to inform and consult in the manner prescribed in TUPE can result in an order against both employers jointly to pay up to 13 weeks' pay to each affected employee.

Buyers of a business should protect themselves by carrying out the appropriate due diligence, and by including indemnities in the asset sale contract. The seller of any business will also need to consider what indemnification it requires, as TUPE can create ongoing liabilities for the transferor of the business or outsourced activity.

It should be noted that TUPE has broad application - it can apply to outsourcings overseas, for example, as well as to business transfers within subsidiaries of the same holding company.

Restrictive covenants

English employment contracts often contain provisions restricting the employee's activities after employment. Such clauses typically take the form of one or more of the following restrictions: non-poaching or non-solicitation clauses, which prevent the employee from enticing clients, suppliers or employees from the employer following termination; non-dealing clauses, which prevent the employee from doing business with the employer's customers; and non-competition clauses, which prevent the employee from engaging in business which competes with the employer's business.

Restrictive covenants are notoriously difficult to enforce in the English courts. Restraint of trade is only permitted where there is a legitimate interest which the employer is seeking to protect, and where the clause goes no further than what is deemed necessary to protect that interest. Further, courts in England will not rewrite a clause so as to turn an unenforceable clause into an enforceable one.

6. BUSINESS IMMIGRATION

The government is overhauling its policies and procedures relating to immigration, and in particular to economic migration, at the time of publication of this booklet. Separate, up-to-date advice should be sought from Bryan Cave before making any application or decision relating to business immigration, however the following is a general overview of how the system works.

Citizens of countries which are members of the EEA and their spouses, children and dependent family members may live and work in the UK (except citizens of Bulgaria and Romania, on whom certain restrictions are imposed).

For all other non-EEA nationals, it is illegal to work in the UK unless some form of authorisation to do so has been obtained from the Border and Immigration Agency. Working as, or employing, a non-EEA national who does not have authorisation to work is a criminal offence.

One class of migrants, known as Highly Skilled Migrants, may come to the UK to seek employment freely. Highly Skilled Migrant Status is granted on the basis of a point-scoring assessment based on education, income, age, English-language ability and previous UK work or study. This group is a sub-category of what is known as “Tier 1” under the new immigration system.

Certain other classes of migrants may also enter the UK under the Tier 1 category. Under the Tier 1 Entrepreneur subcategory, a candidate will be required to prove that he or she has access to £200,000 (not necessarily his or her own funds) held in a regulated financial institution, and that those funds are disposable in the UK. Under the Tier 1 Investors subcategory, candidates will be required either to have funds of their own amounting to at least £1 million, held in a regulated financial institution, and disposable in the UK, or have funds in this amount by way of a loan from an FSA-regulated institution, as well as net personal assets worth at least £2 million. Investors who wish to remain in the UK for more than the initial period of leave (three years) will also need to show they have invested £750,000 in appropriate investments in the UK within three months of first gaining permission to enter, and will also need to show that they have maintained their investment for the full initial period of leave.

Under Tier 2, an employer may register as a sponsor and obtain a certificate for a non-EEA citizen to work for that employer for a particular amount of time. This system replaced the work permit regime. An employer must prove that it has carried out a search within the UK labour market before it may obtain a work permit for a non-EEA citizen. However, there is no need to carry out any such search if the post is on a government list of shortage occupations. An employer which is registered as a sponsor needs to have strict monitoring systems in place, which may create a significant administrative burden. The government is currently consulting on whether to impose significant restrictions on Tier 2 which would make it considerably more difficult to obtain a visa under this tier.

Separate immigration categories exist in respect of low-skilled workers, students and youth mobility and temporary workers; these are known as Tiers 3, 4 and 5 respectively.

For short-term, temporary business visits, it may be appropriate to obtain a business visitor visa. A person may enter the UK as a business visitor if they are permanently living and working outside the UK and if they have come to the UK to transact business (such as attending

meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). This category of visa carries strict limitations on the activities the visa-holder may undertake. A person seeking leave to enter the UK as a business visitor may be admitted for a period of up to six months, subject to a condition prohibiting employment. At present, applicants from certain countries, including the United States, do not need to apply for a business visitor visa in advance: they may travel to the UK and request such a visa from the immigration officer on arrival.

An employee who enters on a business visitor visa but who is, in reality, required to have authorisation to work, faces exclusion from the UK for up to 10 years. Such an exclusion may also be imposed for other breaches of the Immigration Rules by migrants.

Penalties for employers' non-compliance range from written warnings, sponsorship licence revocation or on-the-spot fines to criminal sanctions, which may include more substantial fines and imprisonment.

7. PENSIONS AND EMPLOYEE BENEFITS

The general availability and extent of employee benefits provided by UK companies will vary according to the industry sector and the seniority or role of the employees concerned. Therefore, it should not be assumed that each of the following benefits is generally available to all employees in the UK. Some are only likely to be provided to senior employees, or be prevalent in particular industries.

Life Insurance

In general, life cover is provided to employees of UK companies. This will usually take the form of a multiple of salary or wage payable in the event of death. The level of cover for senior employees is often higher than for junior employees: typical multiples range between two to four times pensionable salary.

Most companies will pay an annual premium to insure the benefits. Occasionally larger companies will self-fund cover.

The terms and cost of providing life cover can vary between insurers, and companies may wish to employ a consultancy or broker to negotiate premium and policy terms. The ultimate level of benefit is often subject to Her Majesty's Revenue & Customs (HMRC) limits. Insurers will operate a "free cover" limit which means that if the level of benefit payable in the event of a senior employee's death exceeds a given value, then medical evidence of good health is required in advance and/or additional premium payable in respect of the individual concerned.

Permanent Health Insurance (PHI)

PHI is provided by companies to cover employees who are absent from work for long periods due to illness. The benefit usually takes the form of a percentage of pay being provided by an insurer. A typical level of cover is 100% of pay during the first 12 weeks of absence, reduced to 75% thereafter, when state benefits may become available. Lower rates of cover can be provided for junior employees.

Although PHI is an employee benefit it can be regarded as an insurance to cover the employer who has lost an employee due to illness, but is still contracted to pay that employee during their illness.

As with life cover, consultants will often arrange to broker terms and premium levels for companies seeking to provide PHI.

Private Medical Insurance (PMI)

Foreign companies entering the UK market are often initially concerned with the potential cost of medical cover for employees. However, the provision of medical cover by UK companies is very different to some other countries, including the U.S., primarily because of the UK's National Health Service (NHS) which provides almost universal medical cover funded in part by compulsory employer and employee National Insurance Contributions (NICs).

Given that NHS cover is available, PMI is not generally provided by UK companies to all their employees, although senior staff and employees in certain industry sectors will find that this benefit is available to them.

On payment of premiums, normally by the company, various recognised insurers will provide medical cover which will allow relevant employees to undergo private medical treatment. As such they will not be required to rely on the NHS. The perceived advantage is that treatment, including access to specialist medical advice, will be more readily available. The extent of cover provided can range widely and will normally exclude pre-existing medical conditions, or long-term treatments.

As with life cover and PHI, consultants will often negotiate the level of benefits provided and premium costs.

Pension Plans

There is currently no obligation for UK employers to provide a pension plan for their employees, although in certain circumstances the employer must facilitate access to a pension plan known as a stakeholder scheme. The latter does not require any employer contributions.

It is planned that from 2012 eligible workers who are not already in a good quality workplace plan will automatically be enrolled into their employer's plan or a new arrangement known as a personal account scheme. These will require employers to contribute a minimum of 3% (on a band of earnings) to an eligible employee's workplace pension scheme. This will supplement a 4% contribution from the employee and 1% in the form of tax relief.

In general, UK companies do provide some form of pension arrangement for their employees depending on the industry and on employees' levels of seniority.

Plan design is generally a Defined Benefit (DB) or a Defined Contribution (DC) arrangement. These will require employer and employee contributions and are normally registered for tax approval purposes.

It should be noted that UK DC plans are often less flexible than US 401(k) arrangements. UK DC plans are more focused on providing a pension at retirement date than a broad based savings plan.

There are a significant number of DB plans in the UK market, particularly in certain industry sectors such as insurance, banking, engineering, de-nationalised industries etc. Over the past decade 70% of companies have sought to contain their potential costs in this area by stopping any new joiners to their DB plans. Some have even ceased future accrual of benefits for existing employees who are plan members.

These developments have arisen due to the escalating costs associated with DB plans. Companies have been required to address investment and longevity risks along with increasing regulation and disclosure requirements that restrict the capacity to smooth or defer costs. As such most UK DB plans are in deficit and are regarded as problematic from a company perspective. DB plans can also present significant issues in the context of M&A or restructuring projects requiring adequate consideration of the liabilities involved - see Corporate Transactions below.

Employee Share Schemes

There are several forms of employee share schemes operated in the UK. These range from those where the employee pays the full value for the shares to those where shares are free.

In general, however, share schemes can be regarded as either being appropriate for senior executives or for all employees. Schemes designed for the former are normally unapproved by HMRC and so provide no tax incentives. Schemes designed to cover all employees involve limited values of shares, but include tax advantages. U.S. companies seeking to set up business in the UK should recognise that there is less reliance on employee share schemes to remunerate employees than in the U.S.

Schemes for Senior Directors

Discretionary share option schemes, referred to as Company Stock Option Plans (CSOPs), are often provided for senior executives. These provide a right to purchase shares at the market price at the date of grant, provided the executive remains employed with the company. Individuals who are leaving on good terms will usually be allowed to purchase shares for a limited period after leaving. A right to exercise an option is also usually triggered by take-over or reconstruction.

Because of the tax incentives which arise in relation to HMRC-approved share schemes, discretionary schemes are often provided in two parts: an approved part which attracts tax and NIC relief but restricts the level of options available up to a value of £30k for the participant; an unapproved part which provides options in excess of that value, but which is subject to income tax and NIC charges on exercise. U.S. companies with pre-existing U.S. based stock option plans can often seek to attach a UK sub-plan for UK employees that provides options on an approved basis up to the £30k limit and then unapproved grants from the main U.S. plan thereafter.

There are other recognised forms of share schemes for senior employees. These include Long Term Incentive Plans (“**LTIPs**”) which are popular as discretionary schemes for larger companies. LTIPs can be used to provide performance share awards which involve free shares that vest on achieving performance targets after three or more years; deferred shares usually awarded after three years, provided the employee has not left; matching shares involving award of free shares often if deferred shares are held for a specific time; restricted shares providing a

beneficial interest in shares subject to risk of forfeiture or some other factor that might reduce initial market value; and convertible shares providing a beneficial interest which is convertible to more valuable shares.

Share arrangements for senior employees also include Enterprise Management Incentives (“**EMIs**”) in certain circumstances. These are designed to give tax incentives for share options worth up to £100k when granted to executives of high risk companies with potentially high levels of growth.

Share Schemes for all employees

There are a variety of other share schemes that may be provided to the general workforce. These include Share Incentive Plans (“**SIPs**”) which must be made available to all UK resident employees and directors. Grants of free shares worth up to £3k per tax year with income tax relief can be given if retained in trust for three years.

SIPs can also be used to provide partnership shares and matching shares that can be bought or awarded respectively and which are subject to tax relief.

Provision of a Save As You Earn (“**SAYE**”) share option scheme may also be provided to the general workforce. As such, if a company decides to introduce a savings scheme then all UK resident employees and directors must be invited to participate. These schemes are popular and provide participants with a plan to save from £5 to £250 per month, with a recognised financial institution.

Savings can then be used to provide cash plus a tax free bonus, or used to exercise share options discounted by up to 20% on the share market value at the date of grant.

Corporate Transactions, Restructuring

Employment rights are protected on the occasion of an asset sale under TUPE - see the Employment section. However, the notable exception to this protection involves occupational pension scheme rights, which are not presumed to transfer unchanged to a new employer. Instead only those transferring employees who were active members of an occupational pension scheme, or eligible to become so, must be provided with membership of a pension scheme by their new employer. However, the new receiving pension scheme does not need to replicate the transferring employee’s previous pension scheme. A range of options are available including DC or stakeholder schemes with matching employer/employee contributions up to 6% of basic pay. Significantly this means that a new employer would not have to replicate a much higher cost DB pension plan if transferring employees had previously been members of such an arrangement prior to transfer.

Share purchases of UK companies, and re-structuring exercises that involve companies which sponsor a DB pension scheme, require careful consideration. If the DB plan is in deficit, as most are, the purchaser will acquire the company and DB plan subject to that deficit.

During the course of the transaction it may become necessary to include the DB plan trustees and the UK Pension Regulator in negotiations on the financial strength of the new owner and future funding arrangements. Regulatory clearance may be necessary. Because of these and related complications, DB pension plans have caused certain proposed high profile acquisitions in the UK to fail.

Consideration also needs to be given to acquisitions or restructuring exercises where a participating employer in a multi-employer DB plan ceases to participate in the plan due to new ownership. The same considerations also need to be applied when the active plan members of a participating company cease active membership, for example during an internal restructuring exercise.

These circumstances can trigger an exit debt which attaches to the participating company and represents the portion of any deficit attributable to that company. Importantly the amount of debt is calculated as the full buy-out cost of the liabilities. This is often considerably greater than the ongoing deficit as it represents the amount necessary to secure liabilities with an insurance company.

For these and related reasons any company seeking to do business in the UK which involves a UK DB pension plan should carefully assess the immediate and longer term consequences that any such involvement will entail.

8. INTELLECTUAL PROPERTY

In the EU, protection is granted generally for registered and unregistered intellectual property rights, including patents, trademarks and copyright, in a similar manner to the U.S. However there are key differences both as to nature of the intellectual property rights obtained and as to the manner in which they may properly be protected in the EU.

In the UK, intellectual property matters are dealt with by the UK Intellectual Property Office (“**UK IPO**”), which includes the trade mark, registered design and patent registries. Useful information can be obtained from its website at www.ipo.gov.uk

In Europe, patents may be prosecuted through the European Patent Office in Munich, Germany and community trade marks and registered community designs are administered by the Office for Harmonisation of the Internal Market (“**OHIM**”) in Alicante, Spain.

Patents

Whilst patents may be granted via the European Patent Office under the European Patent Convention (“**EPC**”), there is no pan European patent; patents are granted in respect of each jurisdiction and then enforced under the relevant law of that jurisdiction. UK law (contained primarily in the Patents Act 1977) generally follows the requirements of the EPC; it is therefore similar to the law in each jurisdiction which is a signatory to the EPC.

In Europe a patent may be granted for any invention which is new, involves an inventive step and is capable of industrial application. Priority is obtained on a “first to file” basis. Unless any prior invention has been published, “first to invent” will not be relevant.

Patents are granted for a period of 20 years from the date of the filing of the application, but may be extended in connection with agro chemical and pharmaceutical products.

Trade Marks

In the EU, each Member State is required to have in place national laws implementing the requirements of an EU Directive (89/104/EEC) to approximate the laws of the Member States relating to trade marks. Thus, the law relating to trade marks (what is capable of protection, acts of infringement etc.) is essentially similar across the EU, but trade marks are obtained in each national jurisdiction and governed by the national law. In the UK, the law is contained in the Trade Marks Act 1994.

Under the EU Directive, a trade mark is any sign, capable of being represented graphically, which is capable of distinguishing goods and services of one undertaking from those of another. It may include words (including personal names), designs, letters, numerals or the shape of goods or their packaging and may include a smell or sound, if capable of being described in writing.

In addition by EU Regulation (44/94/EEC), the EU established a Community Trade Mark allowing a trade mark to be obtained for the entire EU with one registration at the OHIM. Whilst this is a cheaper alternative to registering in each national registry, it will not take precedence over earlier registered marks in a national registry, and a single indivisible trademark may not be appropriate if separate businesses use the trade mark across the EU.

Trade marks are registered for an initial term of 10 years, but may be renewed for subsequent 10-year terms, with no limit on the number of renewals.

In the UK, the law of “passing off” can provide protection for rights in an unregistered trade mark, tradename or logo where a third party is taking advantage of the goodwill generated in such mark and causing confusion in the market place.

Designs

The UK Registered Designs Act 1949 permits the registration of a design, which is new and has individual character. A design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation. Registration is obtained at the UK IPO. By an EU Regulation (6/2002/EC) a Community Design may be registered at the OHIM, which provides protection for a registered design across all EU Member States in a manner similar to the Community Trade Mark.

Registration in the UK and at the OHIM is for a term of five years and may be renewed for successive five year periods up to a total of 25 years.

In the UK, rights in respect of a Registered Design should be distinguished from “design right” which is an unregistered right and a subset of copyright protection, with up to 15 years protection.

Copyright

The EC has, through a number of Directives, sought to harmonise the national law of Member States concerning copyright. Thus, on material issues (nature of protection, duration of copyright, protection of computer programs, rental and lending rights and issues relating to satellite broadcasting and cable transmission) national law in each Member State is similar. In the UK copyright protection is contained primarily in the Copyright, Designs and Patents Act 1988.

Copyright exists in original literary (which will include a table or compilation or a computer program), dramatic, musical or artistic works, sound recordings and films (or broadcasts) and the typographical arrangement of published editions. Generally, for literary, dramatic, musical or artistic work the duration of copyright protection is for the life of the author plus 70 years. Sound recordings have copyright protection for a shorter period of 50 years from first publication.

UK law also recognises an unregistered design right in an original design (being any aspect of the shape or configuration (whether internal or external) of the whole or part of an article), which expires 15 years from the end of the calendar year in which the design was first recorded in a design document or if earlier, an article was first made to the design.

By the Copyright and Rights in Databases Regulation, implementing the terms of an EU Directive, UK law created and recognised a separate intellectual property right (“Database Right”), where there has been a substantial investment in obtaining, verifying or presenting the contents of a database. Database Right subsists for a period of 15 years from the end of the calendar year in which the database was completed.

Ownership and evidence of IP rights.

Generally under UK law, where IP rights are produced by an employee in the course of his employment, those rights automatically belong to the employer without the need either for any express term in his contract of employment or any assignment document. An employee has limited (rarely used) rights to claim compensation where he is the inventor of any patented invention of outstanding benefit to the employer. Many companies will have internal policies in place to compensate employee inventors.

Generally, where copyright work is produced by an independent third party, copyright will belong to the author. Therefore, any contract should contain express terms as to the ownership of any copyright material to be produced in the performance of the contract. A reference to “work for hire” has no legal consequence in the UK.

No registration of copyright is available in the UK and therefore registration is not required to evidence any copyright work. Copyright exists in a work whether or not any copyright symbol © is used. However, it is good practice to sign and date original work and insert a copyright notice on any publication of the work.

Similarly it is not necessary to use any symbol ® in connection with a registered trade mark in order to protect the rights in that trade mark. Infringement will occur whether or not the infringer is aware of the registration of the mark.

Confidential Information

In the UK, it is possible to protect confidential information provided that the information is truly confidential, has been disclosed in circumstances where the recipient is aware of its confidential nature and the recipient has used it for his own benefit to the detriment of the owner. It is usual for a non disclosure or confidentiality agreement to be entered into before disclosure, to assist in showing the elements necessary to bring a claim to protect any such confidential information.

9. DATA PROTECTION

The EU Data Protection Directive (95/46/EC) required Member States of the EU to put in place national legislation providing protection as to the manner in which information about individuals is obtained, held or used. The UK Data Protection Act 1998 (“**DPA**”) imposes obligations and potential criminal liabilities on companies that do not comply with its provisions.

The Act applies to data about a living individual – *a data subject* – from which an individual can be identified. Information which is *processed* by automatic means or that forms a part of a non-automated system organised by reference to individuals or to some criteria that relates to individuals, falls within the definition of data to which the Act applies.

A *data controller* is a person who determines the purpose for which and the manner in which any *personal data* is, or is to be processed. Generally compliance is the responsibility of a data controller. A *data processor* is a person who simply processes data on behalf of a data controller and generally has no obligations under the Act, but owes obligations to the data controller.

Each data controller is required to *Notify* the UK *Information Commissioner* (who oversees and enforces the provisions of the DPA) of the processing of personal data.

The DPA sets out eight principles that govern the processing of personal data:

- personal data must be processed fairly and lawfully.
- personal data must be obtained only for specified and lawful purposes and may not be processed in a manner incompatible with those purposes.
- personal data must be adequate, relevant and not excessive in relation to the purposes for which it is processed.
- personal data must be accurate and, where necessary, kept up to date.
- personal data must be kept for no longer than is necessary for the purposes for which it is processed.
- Personal data must be processed in accordance with the rights of the data subjects.
- Personal data must be subject to appropriate technical and organisation measures to protect against unauthorised or unlawful processing and accidental loss, destruction or damage.
- Personal data must not be transferred to a country or territory outside the EEA unless that country or territory ensures an adequate level of data protection.

It should be noted that currently the U.S. is not recognised by the European Commission as having an adequate level of data protection.

There are additional restrictions on the processing of *sensitive personal data*, which would include data on ethnic or racial origin, political opinions, religious beliefs, trade union membership, physical or mental health, sex life or the commission of any criminal offence.

Data subjects have a right of access to their personal information, the right to require that processing cease where it is likely to cause substantial unwarranted damage or distress to them and the right to call for information to be removed if it is inaccurate.

Any entity processing personal data within the UK (or elsewhere in the EU) is required to comply with relevant national laws implementing the Data Protection Directive. In particular, a Data Controller needs to consider carefully and if appropriate put in place contractual arrangements, to the extent to which it intends transferring any personal data (whether for data processing or otherwise) outside the EEA to any country that has not been recognised by the European Commission as having in place adequate arrangements for the protection of personal data.

10. TAXATION

Basic rules and rates of UK taxation

Companies

Companies resident in the UK, and non-UK resident companies carrying on a trade in the UK through a “permanent establishment”, will in general be liable to corporation tax on their profits. UK resident companies pay corporation tax on their worldwide profits. In the case of a non-UK resident company, the profits taxable in the UK will be those attributable to the permanent establishment.

Corporation tax is currently charged at effective rates between 21% and 28%. The lower rate applies when the company’s annual profits do not exceed £300,000, and the higher rate applies when such profits exceed £1,500,000. These rates and thresholds apply during the UK’s financial year for companies which runs from 1 April 2009, the 21% rate is due to increase to 22% from 1 April 2010. If the company has associated companies, the threshold figures are reduced according to the relevant number of associated companies. These threshold rules can sometimes encourage the establishment of a UK branch operation, rather than a separate UK subsidiary company.

Where profits earned outside the UK by a UK resident company are subject to taxation in another jurisdiction, the UK will normally give credit for such tax against any UK corporation tax liability on the same profit. In the case of profits of a non-UK resident subsidiary of a UK parent which are repatriated to the parent by way of dividend, the credit in respect of the overseas tax incurred by the subsidiary on its profits will be applied against the corporation tax which would otherwise be payable by the parent on those dividends. Credit will also be available to the extent that overseas tax is withheld by the subsidiary on paying the dividend. A new “dividend exemption” is, however, to be introduced from 1 July 2009, which will exempt most dividends received by a UK resident company from UK taxation.

Individuals

Individuals who are resident in the UK are generally liable to UK taxation on their worldwide income and gains. “Residence” is a question of fact, and there is detailed guidance published by the UK tax authority, HM Revenue & Customs, describing the basis on which they will regard an individual as being resident in the UK for a tax year, or for a part of a tax year. Special rules apply to resident but non-UK domiciled individuals - see below.

Non-resident individuals will generally only incur UK taxation on income and gains relating to a trade carried on in the UK, or, in the case of income from employment, to the extent such income is attributable to duties of the employment performed in the UK. As regards income from investments, tax will only be charged (if at all) to the extent that tax is collected via deductions or withholdings made from payments of such income.

The top rate of income tax is currently 40%, payable on taxable income for the income tax year in excess of approximately £44,000. It has been announced (but not yet enacted) that the top rate of income tax will increase to 50%, on taxable income in a tax year in excess of £150,000, such increase effective from 6 April 2010.

Employees and employers also pay social security charges (known as “national insurance contributions”). The employee’s contributions are deducted from salary along with the income tax due. The employer’s contributions are currently charged at the rate of 12.8% (rising to 13.3% from 6 April 2011) on, broadly, the employee’s total gross pay.

Capital gains tax (“CGT”) on asset disposals is, broadly, payable by individuals who are UK resident in the year of disposal of the relevant asset, and is currently charged at a flat rate of 18% of the taxable gain. Disposals of a limited category of asset may qualify for “Entrepreneurs’ Relief”, which can reduce the CGT rate to an effective 10% on £1 million of qualifying gains (this is a lifetime limit).

The UK also has an Inheritance tax regime, whereby most gifts of assets during lifetime (unless the donor survives seven years from the date of gift) or on death are subject to inheritance tax at rates up to 40%. Where chargeable gifts (or cumulative chargeable gifts if more than one, including those made on death) do not exceed a threshold figure, currently £325,000, tax is charged at a nil rate, only the excess above that threshold being charged at 40%. Gifts of assets between spouses or civil partners are, in most cases, exempt from inheritance tax. In addition, certain business assets, including shares in many trading companies, can enjoy 100% relief from inheritance tax in certain circumstances.

For individuals who are not “domiciled” in the UK (domicile being a different concept from residence, concerned with where your true or ultimate home is or will be), the UK offers an attractive tax regime. Non-UK domiciled individuals are, generally, only liable to income tax and capital gains tax on their income and gains from overseas investments and assets to the extent such income or gains are “remitted” to (i.e., brought back into, or otherwise enjoyed in) the UK. However, for non-UK domiciled individuals who are long-term residents of the UK (resident for at least seven out of the nine previous tax years) this remittance basis of taxation, in the case of overseas assets, is now only available for any tax year if the individual elects to pay, for that year, a £30,000 additional tax charge.

Non-UK domiciled individuals are only liable to UK inheritance tax on gifts of assets which are situated in the UK. However, there is a rule, for inheritance tax purposes only, that a non-UK domiciled individual who has been resident for at least 17 out of the last 20 tax years, will thereafter be deemed to be UK domiciled (and hence subject to inheritance tax on his worldwide assets).

Partnerships

Partnerships, including the LLP available since 2001 under the Limited Liability Partnerships Act 2000, are generally treated as transparent for UK purposes, so far as taxes on income and gains are concerned. Accordingly, where the member of a partnership is a company or an individual, he will be taxed on his share of the profits as if they accrued to him directly (and so in the manner above described).

It should be noted that the U.S. Limited Liability Company (“**LLC**”) is not regarded as transparent for UK tax purposes, but is regarded as a corporate entity. Accordingly, distributions received from a LLC by any UK resident members are taxed as the receipt of a dividend or distribution from the LLC.

Double Tax Treaties

It is important to consider the impact of any applicable Double Tax Treaty. Such a treaty may cut across the basic rules above, for example to enable a resident of another country coming to the UK on a short-term work assignment not exceeding six months, to be exempt from UK employment taxes.

Where a person (whether a company or an individual) is resident in the UK (under UK rules) and in his home country (under local rules), and there is a Double Tax Treaty between the two countries, that treaty will normally have a residence “tie-breaker” provision. This will determine in which country the person is to be treated as resident for the purposes of allocating taxing rights between the two countries under the treaty.

Whilst as mentioned above, the UK regards a LLC as opaque, nevertheless the UK/U.S. Double Tax Treaty does contain provision to allow U.S. resident members of a LLC to access treaty benefits with respect to UK source income of the LLC, in certain circumstances.

Some specific matters

Employment Income

In certain circumstances, individuals who come to live and work in the UK for a period of time, but not to settle permanently:

- may be able, notwithstanding technically “resident” in the UK, to avoid UK income tax on that part of their earnings from employment (if any) which are attributable to duties of the employment performed outside the UK;
- may be able to avoid being drawn into the UK’s social security regime, under which the employee contributes, by deduction out of salary, national insurance contributions and the employer pays separate employer’s national insurance contributions.

Companies subject to Corporation Tax

There is a degree of competition between corporate tax regimes in Europe, and one of the pressures on Governments is to enhance their own country’s competitive position. Historically, tax factors which have been regarded as “positive”, so far as the UK is concerned, include:

- a relatively competitive top rate of corporation tax, currently 28%;
- generous rules as to deductibility of interest expense;
- no withholding tax on dividends paid out to shareholders;
- an exemption from tax on capital gains on the disposal of trading subsidiaries and certain minority interests in trading companies (known as the “Substantial Shareholdings Exemption”);
- a wide network of double tax treaties and a comprehensive tax credit regime, to avoid double taxation of profits earned overseas and brought back to the UK;
- an attractive tax regime for non-UK individuals (i.e., not UK domiciled) coming to base themselves in the UK.

Two important changes are to be introduced. A new “dividend tax exemption” will operate from 1 July 2009. This will largely exempt from UK taxation dividends received by UK companies from non-UK resident companies. The Government also intends to amend the UK’s interest deduction rules with effect from January 2010 so as to introduce a “worldwide debt cap” for international groups of companies. This is designed to restrict the tax relief available to UK members of a worldwide group on their finance expense where, broadly, such finance expense exceeds the external consolidated finance costs incurred by the group as a whole. This is an important exemption for the financial services sector.

This new regime for corporates will sit alongside both the UK’s existing transfer pricing/thin capitalisation regime, and the Controlled Foreign Companies (“**CFC**”) legislation which itself is currently under further review.

Valued Added Tax

The UK, as a member of the EU, operates the Value Added Tax system (“**VAT**”). In broad terms, a sale of goods or a supply of services by a business, for a consideration, may be – and where vendor and purchaser are UK businesses normally will be – subject to VAT. In certain industries, including financial services, insurance, gaming and healthcare, such sales or supplies are normally “exempt” from VAT. Some goods and services, including certain categories of foods, books and clothing, are “zero-rated”.

The current “standard rate” of VAT is 15% from 1 December 2008 (this is a temporary reduction from the long-standing standard rate of 17.5%, which rate will resume again from 1 January 2010). It is the vendor’s responsibility to account to the tax authority for VAT which arises on a transaction. Accordingly, a vendor must ensure his sale price reflects this, or is expressed to be “exclusive of VAT”.

A business is obliged to register for VAT, and then charge VAT on its sales, if the value of its taxable turnover in the last 12 months has exceeded the registration threshold, currently £68,000, or if the expected value of its taxable turnover in the immediately following 30 days will exceed such threshold. Businesses may register for VAT on a voluntary basis, if their turnover is below the threshold, and it may often be advantageous to do so.

The vendor has to pass the VAT on its sales to the tax authority; the purchaser is then normally in a position to recover an amount equal to such VAT, either by way of repayment from the tax authority or by set-off against the VAT for which the purchaser has to account on his own sales to customers. However, in those industries (see above) where sales to customers are “exempt” from VAT, the right to recover VAT incurred on purchases is restricted or prohibited.

In a cross-border context, UK VAT:

- is charged on most imports of goods into the UK (and for imports of goods from outside the EU, VAT, together with other Customs or Excise duties or tariffs, is generally paid at the point of import);
- is charged on the purchase of certain services by a UK business from businesses either in other EU countries or outside the EU – it is the UK business which has to account for such VAT under a special “reverse charge” rule;
- is normally “zero rated” on the export of goods to business (but not private) customers in the EU, or to any customer in a destination outside the EU;
- is not charged on the supply of certain services by UK businesses to business customers in other EU countries or to customers generally who are outside the EU.

11. IMPORTS, EXPORT CONTROLS AND SANCTIONS

Imports

There is a unified Customs law in the EC. The EC is a customs union, which is a single trading area where all goods (subject to very narrow exceptions such as certain limited health and safety exceptions and military items) circulate freely, whether made in an EC member state or imported from outside. As a customs union, internal customs duties, fees and barriers are removed within the EC, although member state customs authorities retain the right to check goods at the border. There is a common external customs tariff for products imported from outside the EC. That tariff is levied on an *ad valorem* basis and is intended to be applied and interpreted uniformly by all the member states, although there are differences in interpretation and administration.

The EC has adopted a Community Customs Code, which sets out the general rules and all the customs procedures applicable to goods traded between the EC and non-EC countries, including in respect of import relief in the form of dumping and countervailing duties and quotas. In addition, the EC has adopted a more detailed implementing regulation. As EC regulations, the EC Customs Code and the EC Customs Regulation are directly applicable in the member states and are administered and enforced by member state customs authorities. In the UK, the national customs authority is HM Revenue & Customs. The UK also has its own legislation that deals with certain aspects of importing and that impose penalties for violations of EC and national law.

In some cases, imports may require a national license or an EC license. These can include Common Agricultural Policy licenses for certain foodstuffs, licenses for the importation of certain other foodstuffs, livestock, blood, plant life, and other items subject to health and safety controls.

Export Controls and Sanctions

Exports of dual-use goods, technology and software from the EC, and certain intra-EC transfers of such items, are controlled under an EC Regulation, which is directly applicable in the EC member states. Individual member states have implemented legislation to exercise options under the EC Regulation, and to establish administrative procedures and penalties with respect to violations, details of which legislation may vary from state to state. In general, the competent authority of the member state in which the exporter is established is the relevant licensing and enforcement authority with respect to the EC Regulation, even though the items to be exported may be located in another member state. In addition, member states are also permitted under the EC Regulation to establish national licensing requirements for reasons of public security or human rights considerations for dual-use items not controlled under the EC Regulation.

The EC Regulation imposes licensing requirements for exports to destinations outside the EC of items listed on the EC Control List. The EC Control List and the UK's national control list is available at the following website:

<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/control-lists/page40521.html>

In addition, the EC Regulation imposes licensing or notification requirements if the exporter is informed, is aware or (where countries such as the UK have elected) has grounds for suspecting that items may be intended for use in connection with certain nuclear, chemical or biological weapons or missile activities (“weapons of mass destruction” or “**WMD**” activities) or for certain military end-uses.

Exports of military items are controlled by each individual member state.

In the UK, export licensing of dual-use and military items is administered by the Department for Business Enterprise & Regulatory Reform (“**BERR**”). Where licenses are required, in addition to individual licenses, the UK has also established general licenses for exports of certain items to certain destinations. In addition, the EC Regulation establishes a Community General Export Authorization (“**CGEA**”) for exports of many EC Control List items to certain “friendly” nations. Member states are permitted to establish registration requirements as prerequisites for the use of the CGEA and other general licenses, and the UK has done so.

Note that exports may be subject to controls under legislation other than that relating to dual-use items that may be administered by different agencies. For example, in the UK, there are separate controls relating to precursor chemicals and reagents used in drug manufacture and certain dangerous drugs. In addition, certain chemicals (mainly pesticides) may require consent before exportation, and prescription drugs and medicines may be subject to separate controls.

Enforcement of export controls is handled by HM Revenue & Customs.

The EU and its member states also participate in various economic sanctions and arms embargo regimes pursuant to UN, EU and OSCE (Organization for Security and Cooperation in Europe) initiatives. These include financial sanctions relating to terrorists, the Taliban, Al Qaeda, Burma, Liberia, Iran and other persons and destinations. They may affect the ability to export as well.

In the UK, HM Treasury administers and enforces financial sanctions and maintains a consolidated list of persons subject to financial sanctions designated by the UN, the EU and the UK.

12. COMPETITION LAW

Both UK and EU competition law are potentially applicable to persons and entities doing business in the UK. In general, where anti-competitive behaviour would have an “appreciable” effect on trade between EC member states, Article 81 or 82 of the EC Treaty would apply. Where anti-competitive behaviour would have an “appreciable” effect within the UK, Chapter I or II of the UK’s Competition Act 1998, would apply.

As a result of the EC Modernisation Regulation on the implementation of the rules of competition laid down in Articles 81 and 82, the European Commission shares the competence to apply Articles 81 and 82 with UK competition authorities and UK courts, which also have responsibility for domestic UK competition law.

The UK and EC competition authorities have very broad powers of investigation, including the power to enter and search professional and private premises and effect “dawn raids”.

Anti-competitive agreements and concerted practices

Article 81 of the EC Treaty and Chapter I of the UK Competition Act 1998 prohibit agreements between undertakings⁴ decisions by associations of undertakings and concerted practices that may appreciably affect trade within a relevant market and have the object or effect of preventing, restricting or distorting competition in this market.

These prohibitions can affect agreements and concerted practices between competitors (horizontal transactions) as well as between undertakings or groups of undertakings acting at different levels of a market (vertical transactions). An agreement or concerted practice that falls within Article 81 or Chapter I is not necessarily illegal. Both EC and UK legislation provide for certain exemptions from the prohibition with respect to certain restrictive agreements and concerted practices.

The parties must (except in rare circumstances) self-assess whether an agreement meets the requirements for an exemption (which are subject, of course, to the ultimate determination of the courts).

The EC has established certain “block exemptions” under the EC Treaty for certain categories of agreements. Although the UK authorities can adopt their own block exemptions, for the most part that has not happened. The Competition Act provides for mirror block exemptions for agreements covered by an EC block exemption.

Where an agreement does not come under a block exemption, it may still be individually exempted provided the requirements for exemption are met. However, hard-core restraints in agreements such as those involving price fixing (both horizontal and vertical) and export bans partitioning national markets, which are contrary to the goal of single market integration in the Community, will generally not be exemptible and may attract heavy penalties.

⁴ i.e., companies, partnerships, sole traders and self-employed professionals that carry out economic or commercial activities

The UK has introduced two provisions specifically targeted at individuals to ensure compliance with competition law. First, there is a criminal cartel offence for individuals who dishonestly agree with one or more other persons that undertakings will engage in horizontal cartel activities, including price fixing, limitation of supply or production, market-sharing or bid-rigging. In addition, UK law provides for disqualification of company directors who knew or ought to have known that their company was guilty of an infringement of EC or UK competition law.

Abuse of a dominant position

Article 82 of the EC Treaty and Chapter II of the UK Competition Act 1998 are aimed at unilateral conduct of dominant firms which abuse their dominant position within a relevant market in the EC or the UK. To have a dominant position is not prohibited, but its abuse is. A dominant position is generally one in which an undertaking (or a group of undertakings) has the economic strength to prevent effective competition being maintained on a relevant market such that the dominant firm has the power to behave independently of its competitors, customer and consumers. While there is no level of market share that is conclusive to determining dominance, generally a market share of 50% or more will give rise to a presumption of dominance, although, depending on the circumstances, undertakings with a lower market share may have sufficient market power to be viewed as dominant.

Issues under Article 82 and Chapter II have arisen in the context of single branding arrangements (such as exclusive purchasing, requirement contracts, non-compete obligations), tying arrangements, and refusals to supply involving dominant firms. In addition, certain pricing practices by dominant firms can raise issues, such as loyalty rebates, bundling, predatory and excessive pricing, and price discrimination.

MERGER CONTROL

Concentrations involving UK businesses where certain turnover thresholds are met, such that the concentration has a “Community dimension” are subject to the exclusive jurisdiction of the European Commission under the EC Merger Regulation (subject to certain “referral back” provisions). The EC Merger Regulation imposes mandatory pre-merger filing requirements in respect of such transactions and generally requires suspension of the transaction until approval is received. The exclusive jurisdiction of the European Commission operates as a “one stop shop” and approvals obtained in this manner are valid with regard to all EU Member States.

Where the EC Merger Regulation does not apply, acquisitions or mergers (whether in the form of an acquisition of shares or assets, a joint venture or similar transaction) will qualify for investigation by the UK merger authorities under the Enterprise Act 2002 if certain tests are met. A relevant merger situation will arise for such purposes if two or more enterprises have ceased to be or will cease to be distinct enterprises (i.e., are brought under common ownership or common control) and either:

- the UK turnover of the business to be acquired exceeds £70 million (the “turnover” test); or
- the enterprises involved supply or acquire goods or services of any description and, as a result of the transaction, together will supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or a substantial part of it (the “share of supply” test).

Unlike under the EC Merger Regulation and pre-merger filing requirements in many other jurisdictions, pre-merger filing in the UK is voluntary. Where there are significant competition concerns, parties will often decide to notify. In the absence of a notification, the UK's Office of Fair Trading ("**OFT**") can start an investigation on its own if a transaction meets the jurisdictional thresholds and make a referral to the UK's Competition Commission within four months after the transaction is completed or becomes public, whichever is later.

Notification to the OFT does not prevent the merger from being completed during a preliminary investigation, although the OFT can impose "hold separate" orders or accept undertakings in lieu of an order. If a merger is referred to the UK Competition Commission, the purchaser is not permitted to acquire more shares; and if the merger is already completed, the purchaser must obtain consent before integrating the businesses further. Special rules apply to concentrations and mergers involving listed companies.

Depending on the method of notification, the time for decision can range from 20 to 40 working days (although the OFT has certain "stop the clock" powers if information is not forthcoming). A range of fees, depending on UK turnover, are payable to the OFT in connection with merger reviews.

The OFT has an obligation to make a referral to the UK Competition Commission for detailed investigation if it has a reasonable belief, objectively justified by relevant facts, that there is a realistic prospect that the merger will result in a "substantial lessening of competition". The OFT may accept undertakings for the purpose of remedying or preventing adverse effects that would otherwise require a referral. In the case of a referral, the Competition Commission undertakes a full investigation and must determine whether the merger is expected to result in a "substantial lessening of competition". Depending on the circumstances, the Competition may clear a referred merger, clear it with undertakings or prohibit it.

Certain public interest cases may arise in which the Secretary of State for the BERR (formerly the Department of Trade and Industry) may intervene.

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