VedderPrice

Corporate

Doing Business in the United Kingdom:

A Brief Guide for U.S. Corporations

For More Information

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Introduction

The United Kingdom is one of the favored locations for U.S. businesses to set up their first base in Europe. As a result of its history, the UK has maintained strong trade links with most countries in the world; it is geographically located in Europe but also serves as a midpoint between the U.S. and Asian time zones. The World Bank report "Doing Business 2016" ranks the UK the 2nd easiest place to set up and run a business in the European Union (after Denmark), and the 7th easiest jurisdiction globally. This is largely due to its highly developed but modern system of laws, stable political climate and practical approach to business regulation.

There are a variety of ways of structuring an operation in the UK. The aim of this guide is to highlight some of the key areas that a U.S. corporation will need to address before it begins to operate a new business in the UK. This guide should not be considered to be an all-inclusive guide, and specific UK legal advice should always be sought before setting up and running a business in the UK.

It should be noted that the United Kingdom is composed of separate jurisdictions: England and Wales, Scotland and Northern Ireland. In most areas, the same or very similar laws will apply in each of these jurisdictions. However, there are differences between the jurisdictions, particularly in relation to local government regulation, the transfer of property and their judicial structures. Additional local advice will be needed if the intention is to operate in Scotland or Northern Ireland. This guide focuses on the jurisdictions of England and Wales.

The Business Environment

Parliamentary sovereignty is a principle of the UK constitution. It makes Parliament the supreme legal authority in the UK, able to create or end any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change. The role of the UK courts is to interpret the laws made by Parliament through their application to the specific cases brought before them. When researching a piece of legislation it is therefore necessary to look at the underlying law as well as the decisions made by the courts in cases relevant to that law.

Much UK law also now derives from the European Union (EU). There are a number of examples of significant pieces of UK legislation being replaced by new EU laws having "direct effect." If the relevant provision of EU law does not have "direct effect" the national court will have a discretion to interpret existing national legislation to comply with the EU provision. If the national court cannot interpret the national law to satisfy the requirements of an EU law that does not have "direct effect" then the national law will prevail. The recent Brexit vote is unlikely to affect the relationship between English and EU law in the immediate future. Once the exit negotiations have been conducted and

the UK has formally left the EU then at that point it is possible that UK and EU laws will begin to diverge over time, but it is also likely that they will always remain close in most key areas.

The Department for Business, Energy and Industrial Strategy (BEIS) is a governmental organization set up to help ensure the UK's business success. Its role is to boost productivity and keep the UK competitive and an attractive place to do business, especially in challenging economic times, as well as to help companies succeed overseas and to bring foreign investment to the UK. The UK has very limited legislation governing investments into the country from other jurisdictions, and generally no consents or approvals are required for the flow of funds into or out of the jurisdiction.

BEIS works with consumers, employees, investors, small and medium-sized enterprises, large corporates and representative bodies. It is also the "voice for business in Government" representing the arguments for business success in both the UK Government and the European Parliament. One of its aims is to achieve business and trade regulation which is simple and proportionate to the outcome it is trying to achieve. A predecessor department of BEIS was heavily involved in revising the UK's company law framework, resulting in the enactment of the Companies Act 2006. The Companies Act 2006 minimized the regulatory complexity surrounding the operation of companies, in particular private companies. It also seeks to enhance shareholder engagement and a long-term investment culture.

The UK has achieved global recognition as one of the most developed legal systems available for the litigation of disputes between commercial parties. A key principle of the English judicial system is that judges exercise impartial judgment based on the evidence available to them, free from any political interference. This gives parties the confidence that they will receive a fair hearing and as a result, multinational parties often choose the UK as the appropriate forum to determine a dispute.

Forming a Company

A U.S. business that wishes to commence operations in the UK will often want to form a subsidiary company as a vehicle for conducting its affairs. Most subsidiaries are formed as private companies and can be converted into public companies at a later date if the need arises. It is also possible to establish a limited liability partnership as an entity distinct from its members. An English company is required to have an address in England or Wales, known as the registered office, at which valid service of documents on the company may be made.

Private companies cannot offer their shares for sale to members of the public. Public companies may offer their shares to the public and may apply to be admitted to the Official List of the UK Listing Authority and admitted to trading on the Main Market of the London Stock Exchange or AIM . However, public companies are subject to greater rules and regulation as a result, and unless a public share offer is anticipated, it is advisable for most companies to be incorporated as private companies.

A subsidiary will be a distinct legal entity able to own assets and employ workers in its own right. It will also be subject to UK taxation. The rules relating to the operation and regulation of companies are set out in the Companies Act 2006. The key features of English companies include:

Limited Liability: The liability of the shareholders is limited to the amount due to be paid to the company for their shares.

Constitution: The articles of association set out the rules by which the company is operated, including the appointment and removal of directors and the procedures for

holding board and shareholder meetings.

Issuing Shares: Commonly the directors have authority to issue new shares in the company to any party, subject to any limitations on their authority in the articles and any pre-emption rights that may apply in favor of the existing shareholders.

Statutory Filings: A company is required to make certain filings with the Registrar of Companies. Accounts, details of directors and shareholders, the registered address, charges granted over the company's assets and certain key beneficial owners are all a matter of public record.

Directors: At present, a company must have at least one director who is a natural person, although a ban on the use of corporate directors (companies acting as directors) is due to come into force in 2017. Once this ban takes effect, subject to very limited exceptions, all directors must be natural persons. Directors are not required to be resident in the UK.

To form a company it is necessary to file a statutory form with the Registrar of Companies. The form must have attached to it certain required information (such as details of the company's articles of association and its founding shareholders and directors) and a relatively small filing fee must be paid.

Through VP Secretarial Limited, which provides bespoke company secretarial and compliance services, Vedder Price can incorporate UK companies, act as registered office and company secretary, provide an address for the services of process in the UK and maintain client UK companies in good standing. Please contact us for further details.

Beneficial Ownership

Under the Small Business, Enterprise and Employment Act 2015, as from April 2016 all UK companies and limited liability partnerships (LLPs) have been required to maintain a register of their 'persons with significant control' (PSCs – essentially key beneficial owners). The information in this register must be notified to Companies House. It is not possible to incorporate new UK companies or LLPs without first providing the PSC information to the Registrar of Companies. The PSC register needs to record:

- information on individuals who ultimately own or control more than 25 percent of a UK company's shares or voting rights, or who otherwise exercise control over the company or its management;
- similar information on UK companies or LLPs which ultimately own or control more than 25 percent of a UK company's shares or voting rights, or who otherwise exercise control over the company or its management (know as 'relevant legal entities' or RLEs); and
- where a qualifying beneficial interest is held through a trust arrangement, information on the trustees or any other natural persons exercising control over the activities of the trust.

The rules "look through" nominee arrangements as they focus on the beneficial ownership, and not the registered ownership, of the shares. Where there is a chain of UK companies in a group structure, each UK company is only required to disclose the next UK company above it in the chain in its PSC register.

UK companies that are subject to Rule 5 of the Disclosure and Transparency Rules (e.g., companies listed on the Main Market of the London Stock Exchange or AIM), and companies listed on certain other specified regulated global markets, are exempt from

the requirement to keep a PSC register as they are considered to already be subject to equivalent disclosure requirements. A subsidiary of such an exempt company will only be required to identify the relevant exempt company as the subsidiary's beneficial owner – it will not be necessary to provide details on the owners of the exempt company. The obligation to disclose the information is placed both on the company and on the PSCs:

- A UK company is required to take reasonable steps to discover the relevant information for inclusion in a PSC register and to give notice demanding information to any person who may reasonably be a PSC. The UK company's directors may be liable to fines and imprisonment for failing to discharge this duty.

- A PSC is required to comply with any notice for information served on it by the UK company. If a PSC fails to do so then the UK company may follow a procedure to suspend the rights attaching to the shares controlled by the suspected PSC and to prevent their transfer. While this procedure is optional, the UK company directors may feel obliged to follow this procedure or face their own sanctions noted above.

The information required to be made available includes the PSC's full name, date of birth, nationality, country or state of usual residence, residential address, service address, date on which they acquired the beneficial interest in the company and details of that beneficial interest and how it is held. All of this information will be publicly available except for the PSC's residential address. In exceptional circumstances it will be possible to make an application to the Registrar of Companies to protect certain beneficial owner information.

In addition, UK incorporated companies are no longer allowed to issue new bearer shares (i.e., shares owned by the holder of the share certificate and for which no register of shareholders is maintained). The rights attaching to any remaining bearer shares that have not already been converted into registered shares are now automatically suspended, and these shares are now incapable of transfer.

These measures are part of a package of reforms aimed at increasing the transparency of the ownership and control of companies and combatting tax evasion and money laundering. They are intended to implement recommendations made by the Financial Action Task Force that were discussed and agreed to by the G8 members at the UK's request. The EU is, via the Fourth Money Laundering Directive, in the process of following the UK's lead and implementing similar rules in all EU member states.

Financing a Company

An English company may be financed either by a subscription for share capital and/or by loans or loan capital. In each case the financing can be provided by a parent company and/or third-party lenders. There is no English tax or duty payable by a UK company issuing, or by a shareholder being allotted, new shares.

There is no prescribed minimum issued share capital or loan capital for a private company. Public companies are required to have an issued share capital of £50,000 (or a prescribed Euro equivalent), which must be paid up as to one quarter of the nominal value and the whole amount of any premium due on each share. There are certain regulated sectors in which other rules apply (e.g., in relation to banks and companies dealing in securities). The ratio of loan capital to equity capital may, if the UK subsidiary is heavily "geared", cause the application of UK "transfer pricing" rules which would tax any excessive tax advantage gained by the subsidiary.

The Companies Act 2006 restricts the ability of a company to buy back its shares from shareholders in the event that the company does not have sufficient distributable

reserves. As a result, it will often be easier for a lender to a UK company to unwind its investment if the finance has been supplied by way of loans rather than share capital.

The UK has no restrictions on investments into the country from other jurisdictions and no consents or approvals are required for the flow of funds into or out of the UK. However, as in most other jurisdictions, there are strict controls on money laundering, which generally require banks, lawyers and other professional bodies to identify clients and their sources of funding and to report suspicious transactions.

Opening a Branch Office

A U.S. company may wish to establish a place of business in the UK without forming a new subsidiary company. Such an establishment (often referred to as a branch office) is treated as an extension of the U.S. company. The U.S. company is directly responsible for all liabilities incurred by the UK establishment.

The Companies Act 2006 requires that any foreign company operating in the UK must, within one month of opening a UK establishment, register prescribed particulars of both the foreign company and its UK establishment with the Registrar of Companies, including, for example:

- certified copies of the foreign company's constitutional documents together with a certified translation if they are not in English;
- details of the officers of the foreign company and the extent of their powers to bind it;
- details of the proposed business of the UK establishment; and
- details of the authorized representatives of the UK establishment and of the persons resident in the UK who are authorized to accept service of documents on its and the foreign company's behalf.

A U.S. company that is required to file appropriate accounts (ie that are deemed to be in an appropriate format and sufficiently detailed) under its local law must file those accounts with the Registrar of Companies within three months of the filing deadline imposed by the local law. A U.S. company that is not required to file appropriate accounts under its local law must instead prepare and file accounts with the Registrar of Companies on an annual basis in an approved format – these accounts must cover the entire business of the U.S. company, not just the business of the UK establishment. As U.S. companies are generally required to pay UK corporation tax on the profits of their UK establishment, it is advisable for UK establishments to maintain their own accounting records.

The UK establishment is not a legal entity in its own right and therefore cannot enter into legal documents or hire employees. Any legal documents that need to be entered into will be signed by the U.S. company operating through its UK establishment and any employees will be employees of the U.S. company.

Please note that filings of accounts in the UK are made public (via Companies House) and may be accessed by any person for the requisite fee.

Opening a Bank Account

Where a UK bank account is required it will be necessary for a direct approach to be made to the appropriate bank by the account beneficiary (i.e., the relevant individual or the directors of the relevant company). Most UK banks now require direct contact to be made with the account beneficiary and will not pass information to agents or professional advisers acting on behalf of the beneficiary.

To comply with the UK's strict anti-money laundering legislation, all UK banks will carry

out identity checks on the account beneficiary. Where the beneficiary is an individual this will involve obtaining certified copies of the individual's passport and proof of residential address. Where the beneficiary is a company this will involve obtaining copies of the company's constitutional documents and details of its directors and shareholders. Where a company is owned by a chain of companies, then similar details may be required for each company in the chain up to the individual who is the ultimate beneficial owner of the group.

Each bank will have its own account opening procedure to follow. This will generally include providing details of the purpose of the account, its anticipated activity level and details of the authorized signatories.

Utilizing Office Space

Property may either be owned outright (freehold property) or rented from a landlord (leasehold property). U.S. multinational companies may often acquire freehold property and construct their own office space. Equally, small family businesses based outside cities or towns may own the property from which the business is conducted. However, particularly in cities such as London, most small or medium-sized businesses will rent office space from a landlord.

Most leases will run for a relatively lengthy period of time (e.g., 10 or 20 years) but will contain an option to terminate the lease part way through the term (a "break clause"). Rent is usually expressed as an annual sum to be paid in four quarterly installments. In longer leases the amount of the rent is often reviewed every five years. Before granting a lease a landlord may require some form of security from the tenant to protect against any default by the tenant in meeting its obligations under the lease. This may take the form of a guarantee from a third party or a sum of money to be placed on deposit with the landlord and held during the term of the lease.

The consent of the landlord is usually required before a lease may be assigned (i.e. transferred) to a third party during its term. Landlords will commonly only agree to an assignment once they are comfortable as to the new tenant's ability to meet its obligations. Where the outgoing tenant has granted security to the landlord then the landlord may require the new tenant to enter into similar security arrangements.

Under the Landlord and Tenant Act 1954, tenants leasing business premises for a term of more than six months have a right to automatically renew their leases on substantially the same terms (known as "security of tenure"). Exercising this right requires a specified procedure to be followed. This right can be excluded in the lease, and landlords will commonly seek to do this.

There is an increasing number of providers of "serviced offices" in the UK. A serviced office can be rented for a relatively short time period, often weeks or months rather than years, and is usually equipped with the basics needed to operate a business such as a receptionist, telephones, Internet connections and office furniture. The greater flexibility provided by serviced offices is attractive to new business start-ups and U.S. companies that may be unsure whether they need to establish a more permanent base in the UK. Commonly a license to occupy a serviced office is granted by the owner. Such a license will be a simple contractual arrangement and will not grant the occupier any security of tenure or other protective rights granted by law to tenants under a lease.

Immigration Controls

Control over the employment of persons subject to UK immigration control (which generally means people who are not British or EEA citizens or Commonwealth citizens with a right of abode in the UK and which will not include U.S. citizens) is exercised by virtue of the Immigration, Asylum and Nationality Act 2006. The Immigration Act 2016

contains measures to combat illegal working.

The UK immigration system is currently based on a tiered points-based system with five tiers corresponding to different categories of workers and self-employed individuals. Tier 1 includes high-value immigrants such as investors and entrepreneurs who invest or establish a new business in the UK. Other tiers range from highly skilled workers to temporary workers. With the exception of Tier 1, in order to be granted leave to work in the UK a person must: (a) except for most EEA nationals, be sponsored by a named and licensed employer; and (b) show that they are in a position to support themselves and any dependents in the UK.

To obtain a visa to work, most non-EEA workers must pass a points-based assessment and be sponsored by a UK employer. Generally, the UK Government takes a more flexible attitude towards issuing permits to highly skilled and highly paid personnel, including those who are already employed by the employer, or its group, outside the UK. There is a cap for numbers of permits issued in each tier, generally set month-by-month, within an annual limit.

Generally, European nationals do not need permission to enter the UK or to work in the UK Non-European nationals, including U.S. citizens, must apply to the UK Home Office (UK Visas and Immigration department) which replaced the UK Border Agency or UKBA in 2013 for permission to work in the UK, permission to live in the UK and, in some cases, to visit the UK.

The UK's withdrawal from the EU is likely to have immigration implications.

Key Employment Laws

UK employment law is based on the common law as supplemented by legislation and regulations, much of which has been influenced by EU law. Important differences between UK and U.S. employment law are that the concept of "employment at-will" is not recognized in the UK, and in the UK every worker is entitled to a written contract of employment.

An employee's employment rights may arise from his/her contract of employment (including both express and implied terms), from statute, from collective agreements made between a trade union and an employer or from the law of the EU.

Equal Treatment

The UK has a number of rules aimed at the fair treatment of all workers. The main legislation in this regard is the Equality Act 2010, which is aimed at preventing discrimination on the basis of certain protected characteristics including age, disability, race, religion, sex and sexual orientation. Men and women have the right to receive equal pay for equal work. Part time workers and fixed term employees are also protected from less favorable treatment.

Employees have the right not to be refused employment because of membership or non-membership in a trade union and the right not to be dismissed from their employment because of their membership, non-membership or participation in the activities of an independent trade union at appropriate times. If an employer prevents the exercise of these rights, the employee may be awarded compensation.

Transfers of Undertakings

Where the whole or part of a business is sold or otherwise transferred to a buyer (as opposed to the sale of shares in a company), by operation of law, the buyer takes over the employment of those employees assigned to the transferring business. Both the seller and buyer are under an obligation to provide information to, and to consult with,

the representatives of their respective affected employees. This may include employees who are not part of the transfer, but who are nevertheless affected by the transfer.

Where employees are members of a recognized trade union, the employer will need to conduct negotiations with the trade union. If there is no relevant trade union then the employees must elect their own representatives. Certain specified information relating to the transfer must be provided to the relevant employees in writing long enough before the proposed transfer to allow meaningful consultation to take place.

An employment tribunal may award up to 90 days' uncapped pay in respect of each employee where there has been a failure to inform and consult.

The regulations on transfers of undertakings also apply to employees dedicated to the performance of a contract for services (e.g.. an outsourcing contract) when such contracts are assigned or renewed in favor of a new service provider.

Termination of Employment

If an employer dismisses an employee, and in so doing breaches the employer's contractual or statutory obligations to give the employee notice of termination, an employee is entitled to receive compensation for "wrongful dismissal". Such compensation is based on the loss which an employee suffers as a result of the early termination of his/her contract and will be reduced where the employee fails to mitigate his/her loss by taking reasonable steps to find a new job. This is usually limited to pay and benefits in respect of the employee's notice period.

An employee who has been in continuous employment for at least two years is entitled, by statute, not to be unfairly dismissed. For a dismissal to be fair it must be for one of the five potentially fair reasons (conduct, capability, redundancy, breach of a statutory restriction or "some other substantial reason"), and the employer must have acted reasonably in treating that reason as sufficient to justify dismissing the employee. The employer must follow a fair procedure and the decision to dismiss must be within the range of reasonable responses open to an employer under the circumstances. If the employer cannot show this, an employment tribunal may order the employer to take the employee back into its employment (either to the same or a different job) and/or to award compensation.

Compensation is the most common remedy and usually consists of a basic award, (calculated by taking into account a week's pay (currently capped at £479), the employee's age and length of continuous service), and a compensatory award. The amount of the compensatory award will, subject to a statutory cap (currently the lower of £78,962 or 52 weeks of gross pay), be such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the employee because of the dismissal insofar as that loss is attributable to the employer's action. In discrimination or whistleblowing cases, the compensatory award is not capped.

An employee who has been continuously employed for at least two years is entitled to a statutory redundancy payment if the employee is dismissed because the employer has:

- ceased doing business of the kind that the employee was employed to perform;
- ceased doing business at the location where the employee is employed; or
- a reduced need for the work of the kind performed by the employee.

The redundancy payment is calculated by taking into account a week's pay (again, currently capped at £479), the employee's age and length of continuous service.

Pay

Minimum hourly rates of pay are set by the UK Government which apply, with some exceptions, to all employees. There are different rates for different categories of worker (usually categorized by age). All employers are under an obligation to pay at least the relevant minimum wage. For persons aged 25 and over, the current rate is £7.20 per hour.

Working Time

Employees are entitled to a minimum of 5.6 weeks of paid annual leave (including bank holidays) each year. In addition, an employee's average working hours must not exceed 48 hours per week unless the employee has signed an opt-out from these provisions.

Contracting with Third Parties

There are a number of general contracting principles in the UK. The key principles are as follows:

Principle	Guidance
Freedom of Contract	Generally, parties have the freedom to contract as they see fit. The main exception is in respect of contracts between businesses and consumers, where unfair terms may be unenforceable. Terms are implied into contracts only by common law or by statute in exceptional cases. The main consideration when drafting a contract is that the terms are certain (see below).
Certainty of Terms	In order for a contract to exist and be enforceable, the terms of the contract must be certain. The contracting parties should make sure that the terms of the contract are not vague or ambiguous in their intentions and that all terms are complete. The UK courts are reluctant to attempt to determine for themselves how the parties may have intended a contract term to be interpreted. If the court decides that a term is unclear in its interpretation then it will generally find the term to be unenforceable, irrespective of the parties' intentions or objectives.
Authority	A contract may be unenforceable if it is made by a person who lacks authority. The authority of a contracting party should always be checked, particularly where they are contracting on behalf of another person or entity. In the UK, a person is entitled to assume that the directors of a company that are on record at Companies House have authority to bind that company, unless there is evidence to the contrary.
Capacity	A person's or entity's capacity to enter into a contract may be limited by common law, statute or its own internal policies or constitutional documents. The capacity of the relevant signatory should always be checked.
Formation	Contracts may be written, oral or a mixture of both. Certain contracts are required to be written or by deed to be legally enforceable. A party may struggle to prove the terms of an oral contract if such terms are disputed, and it is therefore

recommended that in the UK all contracts are written and signed by each relevant party.

Implied Terms

A limited number of terms can be implied into a contract, regardless of whether they have been expressly agreed by the parties and set out in the contract. Terms may be implied into a contract by the courts if the courts feel that such a term is necessary to assist with the proper interpretation of the contract. However, it should be noted that the courts are generally reluctant to imply terms into a contract in this way unless it is absolutely necessary. Instead, the courts often rule that the relevant provision of the contract is unenforceable due to uncertainty.

Terms may also be implied into contracts by statute. The most common example of this can be seen with contracts for the sale of goods. The Sale of Goods Act 1979 states that all business to business agreements for the sale of goods in the UK will contain certain warranties given by the seller (for example, that the seller is entitled to sell the goods and that the goods are of satisfactory quality) irrespective of whether those warranties have been set out in the sale agreement. Other examples include business to business contracts for the supply of services (under the Supply of Goods and Services Act 1982) and for the provision of commercial agency services (under the Commercial Agents (Council Directive) Regulations 1993).

Equivalent terms are also implied into contracts for the supply of goods and services to consumers by the Consumer Rights Act 2015. In general consumers will have greater protections granted to them than businesses and will have greater abilities to terminate or unwind contracts and to seek compensation from sellers/suppliers.

Penalty Clauses

A penalty clause is a provision in a contract which provides for a fixed or pre-determined amount to be payable by a party, in place of damages to be assessed by a court, in the event that a party breaches a term of a contract. Penalty clauses generally are not enforceable under UK law and are avoided. As a result, if a payment is deemed to be a penalty, the court is entitled to reduce the payment to an amount that reflects the actual losses incurred by the injured party. A common example of a penalty would be an excessive rate of interest charged on the late payment of a specified amount. It is often possible to structure such payments so that they are construed as the parties' genuine pre-estimate of likely losses (or "liquidated damages") rather than as a penalty.

Limitations of Liability

Contracting parties usually have differing objectives when negotiating limitations of liability. Liability may be limited in several ways, the most common of which are:

limitations on the time a party has for bringing a claim;

- caps on the amount of liability;
- restricting the types of loss recoverable for a breach of contract (i.e., indirect loss, consequential loss, loss of profit, loss of chance, etc.); and
- exclusions of certain types of liability.

Consumer Rights Act

Much of the UK consumer protection law relating to the supply of goods or services to consumers (including the relevant parts of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982) has been repealed and replaced by the Consumer Rights Act 2015 (the CRA).

The new legislation harmonizes and simplifies the UK's consumer protection laws (for

example, by introducing a single definition of consumer) and to update the application of the protections to digital content and online services.

The CRA includes limits on the extent to which liability for breach of contract, negligence or other breaches of duty can be avoided by way of contractual provisions such as exclusion clauses in contracts made in the UK between a consumer and a person acting in the course of a trade, profession or business. The CRA also prevents parties from excluding or limiting liability for death or personal injury arising from negligence. Certain other exclusions are subject to a test of reasonableness. Terms of a contract that breach the protections set out in the CRA are unenforceable.

It is important for a business to seek advice on the terms of any contracts that are intended for use with UK consumers to ensure that none of the terms are in breach of any relevant consumer protection legislation.

Taxation Overview

A UK resident company will be subject to corporation tax on its worldwide profits, including capital gains. A U.S. company carrying on a trade in the UK through a branch will be liable to corporation tax on all income profits directly or indirectly attributable to the branch and on any gains realized from the disposal of chargeable assets used or held for the purposes of the branch. Subject to the provisions of the UK/U.S. tax treaty, a branch will not normally be subject to UK tax on any profits of the U.S. company which are not attributable to the branch. From April 1, 2016 until March 31, 2017 the rate of corporation tax per annum for a stand-alone trading entity is 20 percent. The UK was one of the first countries in the OECD to revise its taxation rules to deal with e-commerce activities. Since any charge under these rules are not strictly a 'tax' they are not subject to any deductions in double-taxation treaties.

Where a branch's only activities consist of providing administrative or liaison services to its U.S. head office or associated companies it may, in certain cases, be possible to obtain the agreement of HM Revenue & Customs that its activities do not constitute any form of trading within the UK. and should therefore not be subject to UK tax. Such an agreement will not be possible if the UK branch/subsidiary is going to buy and sell products.

In addition to corporation tax, the main taxes payable by companies in the UK are:

- Stamp Duty/Stamp Duty Reserve Tax/Stamp Duty Land Tax: This is a tax payable on certain types of documents, primarily on transfers (but not issues) of shares and the sale and leasing of real estate. Stamp duty on transfers of shares is calculated as 0.5 percent of the price paid for the shares. The tax payable on the consideration received for transfers of commercial real estate is as follows:
  - 0% on the first £150,000;
  - 2% on the next £100,000; and
  - 5% on any excess amount of the consideration.

- Value Added Tax (VAT): This is charged on a supply of goods or services made in the UK and on goods and certain services imported into the UK. The current rate of VAT is 20 percent, with reduced rates of 5 percent and 0 percent for certain supplies. VAT is payable if:
  - at the end of any month, the value of a person's or company's taxable supplies of goods or services in the UK for the period of 12 months then ending has exceeded £83,000; or
  - at any time, there are reasonable grounds for believing that the value of a

person's or company's taxable supplies of goods or services in the UK in the next 30 days will exceed £83,000.

The liability to register may arise whether the trading company is resident in the UK or merely carries on its trade through a UK branch.

- Business Rates: These are taxes payable on commercial (and certain other real estate) to the local authority area in which the premises are located.

A UK employer is required to deduct income tax on behalf of its employees from their salary (PAYE) and National Insurance Contributions (NIC) and to pay this money to HM Revenue & Customs. The employer must itself also pay an additional amount of NIC to HM Revenue & Customs in respect of each employee (currently at up to 13.8 percent of gross salary, uncapped).

Individuals resident in the UK will be subject to UK income tax on their earnings. The UK will tax income earned between April 6, 2016 and April 5, 2017 at rates of 20 percent up to £32,000, 40 percent between £32,000 and £150,000 and 45 percent over £150,000. Taxpayers earning less than £100,000 per annum are entitled to a personal allowance (currently £11,000) on which no income tax is paid. Capital gains tax is payable on any profits made on the disposal of assets by UK resident individuals at a basic rate of 18 percent and a higher rate (applicable to individuals earning over £32,000) of 28 percent. Disposals of shares in companies or other business assets can attract an effective 10 percent capital gains tax rate, subject to certain conditions being satisfied for entrepreneurs' relief to apply.

The UK has taken steps to increase its attractiveness as a location to set up an international holding company, which include removing the following:

- withholding tax on dividends to non-resident shareholders;
- tax charged on the profits of a UK company's non-UK branch office; and
- in certain circumstances, tax charged on gains made on the sale of subsidiary company shares.

Regulatory Compliance

Companies House Filings

Companies are required to notify changes to their governance structures (e.g., changes to directors or new issues of shares) to the Registrar of Companies. Generally, such filings require the completion of statutory forms which can be obtained by writing to one of the Companies House offices or by telephoning the Companies House contact center. There are also a number of electronic services on the Companies House website which offer online access to forms and electronic filing options. In all cases, the delivery of statutory forms must meet the requirements set out by the Registrar of Companies as to the format of the document and the way in which it is delivered and signed. VP Secretarial Limited provides a filing service to client companies.

Bribery and Corruption

Under the Bribery Act 2010 a person is guilty of an offense if:

- he/she offers, promises or gives a financial advantage to another person with the intention of causing that other person to improperly perform, or rewarding that other person for improperly performing, a public or commercial function in any jurisdiction; and
- there is an expectation that the relevant function is carried out in good faith or where the person performing it is in a position of trust.

It does not matter whether the recipient of the bribe is the same as the person who is to perform, or has performed, the relevant function. It is an offense for a person to request, agree to receive or accept (either directly or through any other party) a financial or other advantage in connection with the improper performance of a relevant function.

The legislation is sufficiently wide so as to apply to acts of bribery carried out anywhere in the world by any entity or person within a group with a connection to the UK. The establishment of a UK subsidiary company or branch office of the U.S. parent will be sufficient for the U.S. group to be deemed to have a connection to the UK for these purposes.

A company or partnership incorporated or operating in the UK may be guilty of any of these offenses if a person associated with that organization (for example an employee or agent) takes the offending action. It will be a defense if the commercial organization can show that it had adequate procedures in place designed to prevent such offenses from being committed. Senior officers of the organization may also have personal liability if an offense is committed.

Merger Control

A U.S. company may establish itself in the UK through the acquisition of an English company. Certain very large mergers or acquisitions that constitute a “concentration with a Community dimension” must, unless they are “repatriated” to the national competition authority, be notified to, and cleared by, the European Commission prior to their implementation.

A concentration has an “Community dimension” where:

EITHER:

(a) the combined aggregate worldwide turnover of all undertakings concerned exceeds EUR 5,000 million; and

(b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned exceeds EUR 250 million.

Even if a transaction satisfies both conditions it does not have an ‘EU dimension’ if each of the undertakings realises more than two thirds of its aggregate Community-wide turnover within one and the same Member State.

OR:

(a) the combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 2,500 million; and

(b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned exceeds EUR 100 million;

(c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned exceeds EUR 25 million; and

(d) the aggregate Community-wide turnover of at least two of the undertakings concerned exceeds EUR 100 million;

unless each of the undertakings concerned achieves more than two thirds of its aggregate Community-wide turnover within one and the same Member State.

Turnover for these purposes roughly equates to the total worldwide sales figures for the group of undertakings in the preceding year less any turnover taxes or value added taxes.

A UK merger falling outside these thresholds may still “qualify for investigation” under the Enterprise Act 2002 (as amended by the Enterprise and Regulatory Reform Act 2013). The Competition and Markets Authority (CMA) is responsible for enforcing competition law in the UK It will examine mergers that are notified to it, or which come to its attention through its monitoring of the press or complaints by third parties. There is no obligation to notify in the UK, but failure to do so can result in a post-completion investigation and, ultimately, remedies aimed at unwinding the transaction. Specific merger control legislation applies to certain sectors (such as mergers of newspapers or water companies).

If the CMA believes that a merger has resulted or may be expected to result in a substantial lessening of competition in a UK market then it will conduct an in-depth review and decide on the appropriate remedies. The CMA’s decisions are published.

The CMA will intervene if companies engage in restrictive practices such as price fixing or if they seek to abuse a dominant market position.

Brexit may possibly affect merger control in the UK if it leads to a decoupling of UK competition law from that of the EU and the end of the “one-stop-shop,” at least in relation to larger mergers involving UK companies.

Takeovers

Although acquisitions of private companies and business assets are generally unregulated and take place by contractual agreements, acquisitions of public companies, the shares of which are listed on a UK market, are subject to the City Code on Takeovers and Mergers, administered by the UK Takeover Panel. This code sets rules in respect of the launching and administration of a takeover, including stake-building and disclosures of interests in shares, “concert parties” and their obligations, public announcements of takeover offers, the content and timing of offer documents, the control of frustrating action and mandatory bids where a stake of 30 percent or more of the target’s shares is acquired. The overriding principles are to maintain a “level playing field” amongst shareholders, to require the target’s board to act in the best interests of the company as a whole and to avoid the creation of a false market.

Financial Conduct Authority

Companies that wish to carry on regulated investment activities in the UK need to apply to the Financial Conduct Authority (FCA) for authorization. Generally, regulated activities include dealing in investments as principal or agent and managing, safeguarding, administering and advising on investments. Persons seeking to gain control of a UK-regulated entity will need to be approved by the FCA as “fit and proper” persons to do so.

The Prudential Regulation Authority (PRA) is a subsidiary of the Bank of England and is responsible for the regulation of all deposit-takers, including banks, as well as insurers and major investment firms.

The FCA, through the UK Listing Authority, also regulates the conduct of companies whose shares are admitted to trading on a UK market. Relevant rules include those determining when the publication of an approved prospectus is required, rules preventing market abuse and insider trading, rules relating to the disclosure of interests in shares and continuing reporting obligations of listed companies.

Data Protection

In the UK, the collection and use of personal data is principally governed by the Data Protection Act 1998 (DPA). The Information Commissioner is responsible for enforcing

and overseeing the DPA. The DPA applies to the “processing” of “personal data”. Personal data can be almost any information that relates to an individual. For example, information on employees such as names, ages and social security numbers will be considered to be personal data. Processing personal data covers any activity involving the use of personal data including obtaining, recording, holding, using, disclosing or erasing data.

Virtually every business that operates in the UK (whether through a subsidiary company or a branch office) will be affected by the DPA in some way. When a company outsources the payment of its employees to a payroll provider it must consider its obligations to ensure the safety of that information under the DPA.

There also are restrictions on the ability of an entity holding personal data to export that data outside the European Economic Area (e.g., to the United States) unless the destination country ensures an adequate level of protection for the rights of the data subject in relation to the processing of personal data. Until recently US corporations or their subsidiaries or branch offices based in the UK which exported data out of the UK to the US benefited from the US-EU Safe Harbor Agreement. However, in October 2015 in the case of Schrems v Facebook, the European Court of Justice, the EU’s highest court, suspended the Safe Harbor Agreement driven in part by fears of mass surveillance of information by the U.S. government. The European Commission, the relevant EU rule-making body, agreed a new framework for data protection with the U.S. Department of Commerce in July 2016. U.S. companies can join the new program (called the ‘Privacy Shield’) by making certain self-certifications. Other entities wishing to transfer personal data from the UK to the US have the following alternatives:

- intragroup agreements — often known as “binding corporate rules” — under which a US entity contractually agrees to protect its EU affiliates’ employee, client, or customer personal data as if the data remained in the EU; or

- consent protocols, under which individual data subjects give their consent to such transfers or where EU Commission-approved Standard Contractual Clauses are used.

Contraventions of data protection laws can result in both criminal and civil liability, as well as negative publicity as rulings of the Information Commissioner are a matter of public record and often reported in the press.

The DPA contains a number of principles which outline the rules regarding personal data. These cover matters such as the circumstances in which data may be obtained and retained, the permitted uses for any collected data and the amount of time for which data may be retained.

Before processing personal data, controllers of the data are required to notify the Information Commissioner’s Office (ICO). At present, notification cannot be effected online, although the forms that are required to complete a notification are available from the ICO website. A fee is required to be paid when making the initial application, and further annual fees are required to maintain a registration. It is not possible for a parent company to complete a registration on behalf of all companies within its group that are using personal data; instead, each data controller within a corporate group must separately register with the ICO. It is a criminal offense to fail to update register entries within 28 days of any changes occurring to the notified details.

It is worth noting that the EU’s General Data Protection Regulation will take effect on May 25 2018 and the UK has indicated it will adopt the regulation, notwithstanding Brexit. The new regulation strengthens data protection laws, increases the penalties for their infringement and applies to organisations located outside the EU which process personal data in the course of selling to or monitoring EU residents.

Protecting Key Assets and Employees

Intellectual Property

There are a number of intellectual property rights that may apply under English law. These rights generally seek to provide protection to the creator or owner of the underlying intellectual property. Some of these rights require prior registration in order to be effective, but others will apply automatically. A summary of the key rights is provided in the following table.

Right	Registration Required?	Brief Description
Patent	Yes	Protects a novel invention that involves a non-obvious inventive step that is capable of industrial application. A patent generally lasts for 20 years from the date of filing the application. Note that, unlike in the United States, software is not patentable in Europe.
Trademark	Yes	Protects a distinctive sign or mark that is capable of being represented graphically and that is not confusingly similar to another mark. A trademark initially lasts for 10 years from the date of filing the application, although this can be extended.
Copyright	No	Arises automatically to protect the owner of a published work (which can include musical, artistic, literary and dramatic works) from its unauthorized copying or use. Copyright generally lasts for 70 years from the end of the year in which the author dies, although other time periods may also apply.
Registered Design Right	Yes	Protects a novel design that is not similar to any existing design and that does not simply contain features that are required by the product’s technical application. A registered design right initially lasts for 5 years from the date of filing the application, although this can be extended up to a maximum of 25 years.
Unregistered Design Right	No	Arises automatically to protect an original design for the shape or configuration of an item that has been recorded in a design document or physically made. An unregistered design right lasts for the lesser of 15 years from when the design was first recorded or made or 10 years from when the item incorporating the design was first marketed.

In many cases there are similar rights that may apply under EU laws that will apply to protect intellectual property alongside the UK regime.

Restrictive Covenants

It is common for employers to seek to place restrictions on the ability of employees to engage in activities that may be competitive with the employer’s business for a period of time after the relevant employee has stopped being employed by that employer. Such

restrictions also have the effect of making it more difficult for competitors to solicit key employees from an employer. The acquirer of a business (whether via the acquisition of shares in a company or via the direct acquisition of the relevant business and its assets) will also often seek to place similar restrictions on the seller of the business.

Generally, any such restrictions are enforceable in the UK, but will be enforced only if they are seen to be reasonable in the circumstances. Key considerations will be the length of time for which any restrictions apply and the geographical area that they cover but a court will look also at the legitimacy of the interest that the restriction is being sought to protect. The approach of the courts to the definition of what is reasonable will differ depending on the circumstances in which the restrictions are being sought to be enforced.

Where the restrictions are being sought in the context of a business sale for which the seller will be receiving consideration from the buyer, then the courts adopt a more lenient approach to the enforcement of the restrictions. However, where the restrictions are being placed on an employee then the courts will take a much stricter approach as they are reluctant to allow any restrictive covenants to unfairly interfere with a person's ability to find work. For example, restrictions on a seller of a business should generally be held to be reasonable in time if they last for a period of three years or less, but the same restrictions on an employee would generally be held to be unreasonable if they last for more than one year.

We have produced a booklet for clients titled "An Overview of UK Company Law and of Key European Union Legislation," which is taken from the LexisNexis publication Company Law in Europe. This outlines UK and EU company and financial services law in greater detail than this brief guide. For a copy, please ask anyone at Vedder Price and we will send one to you free of charge.

Useful Resources

Companies House: www.gov.uk/government/organisations/companies-house

Competition and Markets Authority:

www.gov.uk/government/organisations/competition-and-markets-authority

Confederation of British Industry: www.cbi.org.uk

Department of Business, Energy & Industrial Strategy: www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

Directgov (public service information website): www.directgov.co.uk

Financial Conduct Authority: www.fca.org.uk

Foreign and Commonwealth Office: www.gov.uk/government/organisations/foreign-commonwealth-office

HM Revenue & Customs: www.gov.uk/government/organisations/hm-revenue-customs

Home Office: www.gov.uk/government/organisations/home-office

Information Commissioner's Office: www.ico.org.uk

Law Society: www.lawsociety.org.uk

London Stock Exchange: www.londonstockexchange.com

Office of Public Sector Information: www.legislation.gov.uk

Parliament: www.parliament.uk

Prudential Regulation Authority: www.bankofengland.co.uk/pra

Takeover Panel: www.thetakeoverpanel.org.uk