

Establishing a business in the UK (England and Wales)

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UK (ENGLAND AND WALES) LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

The United Kingdom (UK) comprises four nations: England, Scotland, Wales and Northern Ireland.

England and Wales

England and Wales form a single legal jurisdiction. Its legal system is known as English law and is based on common law.

The Welsh Assembly has delegated powers to pass legislation on a limited number of matters. This legislation forms part of English law but only applies in Wales. Delegated matters include, among others:

- Agriculture.
- Culture.
- Education.
- Environment.
- Food and health.
- Housing.
- Social welfare.
- Town and country planning.
- Welsh language.

Scotland

Scotland is a separate legal jurisdiction from England. Scottish law is a hybrid system of common law and civil law. Although there are some similarities between Scottish and English law, the two systems are quite distinct. The Scottish Parliament also has certain delegated law-making powers.

See *Establishing a business in the UK (Scotland)*.

Northern Ireland

Northern Ireland is a separate legal jurisdiction. Its law is based on English common law but differs slightly. The Northern Ireland Assembly has delegated powers to pass legislation on a limited number of matters, including:

- Health.
- Social services.
- Education.
- Employment.

- Social security.
- Pensions.
- Environment.
- Transport.

Channel Islands and Isle of Man

The Channel Islands (Jersey, Guernsey and other islands) and the Isle of Man are not part of the UK. These have separate and different legal systems (especially the Channel Islands) that are often used as "tax havens".

It is essential to seek local legal advice when establishing a business presence in Scotland, Northern Ireland, Man or the Channel Islands.

The UK Parliament can pass new laws that apply in all parts of the UK (except in areas where responsibility is delegated to the Scottish Parliament, or the Welsh or Northern Ireland Assemblies). In many respects, therefore, the same laws apply throughout the UK.

This article deals only with English law.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

Public or private companies limited by shares

Public companies are subject to greater regulation than private companies. Public companies can raise capital by offering shares to the public, but private companies cannot. Otherwise, the two types of company are similar. (For more details on public companies, see *Question 25* below.)

Private companies are by far the most common form of business vehicle used.

The main advantages of a limited company are that:

- Shareholders have no liability for the company's debts above the amount payable to the company when the shares are issued (nominal value).
- Transfer of ownership is easily effected by sale of shares.
- Investors are usually more willing to invest in companies because of their familiar capital structure and legal framework.

The main disadvantages are as follows:

- Strict disclosure requirements, including filing accounts and details of directors and shareholders at a public registry. There are proposals to extend this requirement to persons with significant control over the company (see *Question 33*).



- Rigid capital structure and inability to return capital to shareholders without specific procedures.
- Companies pay tax on their profits, and individuals generally pay tax on dividends, resulting in a double tax charge.

Limited liability partnership (LLP)

LLPs are commonly used for professional advisory businesses and joint ventures. Each member is an agent and can bind the LLP. There must be at least two members of an LLP. Where there is only one member left, the LLP can be compulsorily wound up or struck off the register. After six months, the sole member becomes jointly liable with the LLP for any subsequent debts incurred by the LLP.

The main advantages are as follows:

- Members have no liability for the LLP's debts above the amount of capital they agreed to contribute (which can be zero).
- Very flexible structure, particularly when distributing capital and profits.
- LLPs are normally tax-transparent, so members can generally avoid a double tax charge (*see above, Public or private companies limited by shares*).

The main disadvantages include:

- Strict disclosure requirements, including filing accounts and details of members at a public registry.
- Transferring ownership involves:
 - selling the LLP's business; or
 - replacing the members through an agreement between the new member, the old member and the LLP.

General partnership

General partnerships are often used for professional advisory businesses. Each partner is as agent of the partnership and can bind all the other partners. There must be at least two partners at all times. If there are no longer two or more partners, the partnership will automatically cease to exist.

The main advantages are:

- No registration or public disclosure requirements (although some partnerships must file accounts).
- Very flexible structure, particularly when distributing capital and profits.
- Partnerships are tax-transparent, so partners can avoid a double tax charge.

The main disadvantages are:

- The partners have potentially unlimited liability to creditors for the partnership's debts, and one partner can incur debts on behalf of the others.
- Transferring ownership is more complicated and involves selling the partnership's business or replacing the partners.

Other vehicles

Other, less common vehicles (not covered in this article) include:

- Company limited by guarantee (common in not-for-profit businesses).
- Unlimited company (normally used only in certain circumstances to avoid the disclosure of financial information).
- Limited partnership (commonly used for investment funds).
- Open-ended investment company (OEIC) (used for investment funds).
- European company (*societas europaea*) (very rarely used).

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

The various options available for foreign companies to establish a business presence in England and Wales are outlined below. The most common approach is to establish a subsidiary or joint venture, as local customers, suppliers and lenders will be familiar with the structure and the overseas company can retain a higher degree of control.

Establishing a subsidiary

A subsidiary is usually a private company. It is possible to set up a new subsidiary company or acquire an existing shelf company. The subsidiary is a separate legal entity from the overseas company.

The main advantages are:

- The overseas company has complete ownership and ultimate control of the subsidiary business.
- Local businesses and lenders are familiar with the business format.

The main disadvantages are:

- Substantial up-front costs if acquiring an existing company or business.
- Decisions must be taken by the board of the subsidiary, which can add an extra layer of bureaucracy.

Establishing a branch

A branch is also called a representative office or a UK establishment. It is not a separate legal entity, but is simply an office or presence of the overseas company in the UK.

The main advantages are that:

- It is relatively easy and inexpensive to establish, with minimal registration requirements.
- The overseas company has complete ownership and control of the local business and can take decisions through its own board of directors.

The main disadvantages are that:

- The branch does not have a separate legal personality and, as a result, the parent company is liable for the debts and obligations of the branch.
- Local businesses and lenders may be more hesitant to do business because:
 - they may not understand the overseas company's structure; and/or
 - there may be few assets in the UK to provide as security/collateral.
- Major decisions may have to be referred to overseas management, which can take time and result in the loss of opportunities.
- Disclosure requirements are the same as for private companies, including accounts (but *see Question 4*).

Entering into a joint venture

A venture with a local partner can be structured through a company or partnership, or simply as a contract with no specific business vehicle.

The main advantages are that:

- The local partner is likely to have good market knowledge and existing contacts with customers, suppliers and lenders, making entry into the UK market easier.
- Local businesses and lenders are familiar with the business format.

The main disadvantages are that:

- The overseas company must hand over a potentially significant degree of control to the local partner.
- There are usually substantial up-front advisory costs (legal, tax, accounting) to set up the joint venture.
- Financing, management, profit-share and exit can involve lengthy negotiations with the joint venture partners.

Appointing a local agent, distributor or franchisee

An agent acts on behalf and can bind the overseas company. A distributor merely buys products from the overseas company and sells them in the UK. A franchisee normally acts like a distributor but uses the overseas company's name and logos.

The main advantages are that:

- These structures are likely to involve less up-front advisory costs than a joint venture.
- There is generally no requirement to publish accounts or other corporate details.
- The overseas company can use the partner's local knowledge and reputation.

The main disadvantages are that:

- The overseas company relies heavily on the local agent, distributor or franchisee and has no direct control.
- The arrangement is purely contractual. The only way of influencing the arrangement is by enforcing the agency/distribution/franchise contract.
- European law provides certain protective rights for commercial agents that may override the express provisions of the contract.

4. How can an overseas company trade directly in your jurisdiction?

Overseas companies can trade directly through a branch or representative office, or indirectly through an agent, distributor or franchisee (see *Question 3*). There are generally no licensing requirements, except as set out in *Question 19*.

A branch or representative office must be registered as a UK establishment. A fee is payable. Disclosure requirements for UK establishments are broadly equivalent to those for UK companies. The overseas company must file publicly, among other things:

- A copy of its constitution (and any changes to it).
- Details of its directors.
- Details of any persons authorised to represent it in the UK.
- Certain details of the proposed UK establishment, including its name, address and local representatives.

However, the overseas company does not have to disclose details of its shareholders.

In addition, the overseas company must file annual accounts that comply with minimum UK requirements (even if it is not required to disclose accounts in its home country). The accounts must relate to the entire overseas company and not just the UK establishment. The only exception is that an overseas company incorporated in the European Economic Area (EEA) and not required to deliver

accounts by its parent law does not have to file accounts in the UK. Special rules apply to credit and financial institutions.

Once registered, the UK establishment can enter into contracts on behalf of the overseas company if it has the authority to do so.

In addition, English law applies to the UK establishment's operations in relation to matters such as employment, health and safety, owning real estate, consumer protection and environmental protection. Tax is a complex area on which advice should be sought.

5. What are the formalities for setting up a partnership?

General partnership

There are no specific formalities for setting up a general partnership. A general partnership arises automatically when two or more persons carry on business in common with a view to a profit (even if there is no contract). As partners have unlimited liability, organisations often clarify in their contracts that they do not intend to create a partnership (although this is not conclusive).

Generally, the persons seeking to create a partnership enter into a partnership deed that sets out the precise terms of the partnership. Any matters not covered in that deed is governed by the Partnership Act 1890. The Act contains strict provisions on various matters (for example, changing partners, the partnership's name and when the partnership ends), so it is advisable to enter into a specific partnership deed. This can be a simple deed but inevitably requires negotiation by the partners.

A general partnership is a contractual structure and does not have a separate legal personality. Every partner has unlimited, individual liability to the partnership's creditors. Partnership assets are owned by the partners in their respective partnership shares (although, in practice, assets are often held in service companies).

Tax is charged on each partner's individual profit share.

Limited partnership

Limited partnerships are a special kind of partnership commonly used for private equity, investment and real estate investment funds. They do not arise automatically and must be registered. They are not covered further in this article.

Limited liability partnership (LLP)

An LLP is a corporate entity that acts in some respects like a private company and in others like a partnership (see *Question 2, Limited Liability partnership (LLP)*). The formalities for setting up an LLP are the same as for a private company (see *Question 8*).

6. What are the formalities for setting up a joint venture?

The formalities for setting up a joint venture depend on the structure of the joint venture (JV).

The most common structure involves the JV partners holding shares in a private company limited by shares. In this case, the requirements for setting up a private company apply (see *Question 8*).

The parties need to agree on the specific terms of the JV, including important matters such as decision-making and management, financing, profit-sharing, minority rights, exits and anti-dilution. These matters are usually set out both in the company's constitution and in a separate JV agreement (or shareholders' agreement). As a company's constitution is on a public record, any particularly confidential or sensitive matters are normally set out only in the JV agreement.

It is increasingly common to use an LLP as a JV structure. Generally, the formalities for setting an LLP are the same as for a private company (see *Question 8*). The main difference is that the terms of the JV are set out in a single agreement (LLP agreement) that is not a public document and so affords a greater degree of secrecy. However, LLPs also have specific disadvantages (see *Question 2, Limited liability partnership (LLP)*).

JVs are very common between commercial partners. JVs can consist of contractual arrangements only, without involving the formation of a JV vehicle. It is also not unusual for central and local government authorities to enter into JVs. However, it is important to seek legal advice when setting up a JV, as the JV terms are usually heavily negotiated.

7. Are trusts available in your jurisdiction?

Trusts are a core concept of English law and used in a variety of circumstances. These include:

- Holding assets belonging to pension funds and employee benefit schemes.
- Holding certain assets (such as real estate and shares in companies) on behalf of more than four people (for example, a partnership, club or other association).
- Private wealth management, such as estate planning.
- As a means of concealing the identity of the real owner of a company or property by recording only the name of the trustee in the relevant public register. However, there are currently proposals to require disclosure of beneficial owners and ultimate controllers of UK companies in the future.

The trustees hold the title to the trust's assets. However, the economic benefit of those assets belongs to the beneficiaries. The trustees must be involved for selling and dealing with the trust assets.

There are various types of trust in English law, such as bare trusts (where named beneficiaries have an immediate interest in the trust property) and discretionary trusts (where the trustees can decide which beneficiaries can benefit from the trust property).

Trustees must comply with statutory duties regarding investing and managing the trust's assets. There are several organisations that provide professional trustee services.

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory framework

Private companies are governed by the Companies Act 2006.

The Registrar of Companies maintains various details of companies through a public register held at Companies House. These include:

- Current and previous names, registered number and address, principal business and financial year-end date.
- Copies of constitutional documents and certain shareholder resolutions.
- Details of directors and company secretary (if any).
- Details of share capital, including any historic changes.
- Copies of all security and collateral granted by the company

- Details of any insolvency proceedings.

For more information on the Registrar of Companies, see box: *The regulatory authorities*.

Companies in certain specific sectors (such as financial institutions and charities) are subject to specific governance and compliance requirements and must make filings at other public registries (see *Question 19*).

In addition, companies whose shares are publicly traded on a UK securities exchange are subject to additional disclosure, compliance and corporate governance requirements set out in securities exchange rules (such as the Listing Rules, the AIM Rules and the Disclosure and Transparency Rules) and may be expected to comply with the UK Corporate Governance Code and other industry-led guidance. This is not immediately relevant when setting up a private company.

Tailor-made or 'shelf company'

Companies can be acquired by buying a "shelf company". These are companies with no trading history. All major law firms and corporate service providers carry a stock of shelf companies. This was quicker and cheaper than setting up a new company. However, the formation process was streamlined and the formation of a new company is the preferred route in most cases.

If a more bespoke company is needed, it is possible to incorporate a new company.

Formation process

To form a new company, the following must be sent to Companies House:

- Form IN01. This sets out the proposed name, type of company, registered office address, type of constitution (see *below, Constitution*), directors and secretary, share capital and initial shareholders.
- Memorandum of association. This is a short standard-form document confirming that the subscribers want to incorporate the company.
- Articles of association. These constitute the core of the company's constitution and bye-laws. The company can adopt a standard or modified form of constitution called the model articles (see *below, Constitution*).
- The appropriate fee. To date, fees are as follows:
 - GB£40 for a standard incorporation or GB£13 if the correct software is used (processed within ten days);
 - GB£100 for a "same-day" incorporation or GB£30 if the correct software is used (processed that day or the next day if the application is received after around 3pm); or
 - GB£15 for an online incorporation (processed within two days).

If the application is submitted properly, Companies House issues a certificate of incorporation stating the company's name and registered number. The company comes into existence when this certificate is issued.

There are extensive restrictions on company names.

A private limited company's name must end with the word "Limited" or "Ltd" (or, for Welsh companies, "cyfyngedig" or "cyf"). Similar restrictions apply to other types of companies. Alternative endings found in other jurisdictions (such as "Corp.", "Inc.", and "LLC") are not available.

Two companies cannot have the same name at the same time. In determining this, Companies House disregards upper and lower case, blank spaces, punctuation, plurals, designated endings (for example, "Limited" and "plc") and certain other words. Companies

House also regards certain symbols and their word equivalents as the same (for example "+" and "plus").

For example, the following names would all be regarded as "the same":

- H and S Limited.
- Hands cyfyngedig.
- H & S Services plc.
- www.H-and-S.co.uk Ltd.

There are also restrictions on using certain words and expressions that suggest a certain kind of business. These include "bank", "association", "fund", "society", "trust" and "Britain" (or any home nation's name), and references to certain professions (but see *Question 33*). There are also restrictions on names that might cause offence or suggest an association with a government authority.

For full details, see the Companies House guidance at www.companies-house.gov.uk.

Company constitution

A company's main constitutional document is its articles of association. These set out its internal management rules and shareholders' rights. A company can adopt a standard form of articles (model articles), a modified form of the model articles, or its own bespoke articles.

The model articles are a good starting point but do not cover all matters that a private company may want to deal with (particularly in relation to board meetings). For this reason, private companies often adopt the model articles with certain modifications.

Companies formed before 1 October 2009 had a different form of constitution. This is not relevant when forming a new company.

The articles must be filed on the public register. If the shareholders of a company want to keep certain matters private, they can enter into a separate shareholders' agreement (or joint venture (JV) agreement, see *Question 6*) which does not need to be filed publicly (except in rare situations). However, certain matters (such as voting and dividend rights) must be contained in the company's articles.

First board meeting

After incorporation of the company, the directors typically hold an "incorporation board meeting" to note the company's incorporation and deal with the following matters:

- Adopting a business name (if different from the company's registered name).
- Appointing a chairman (if any).
- Approving the directors' service contracts (this will require the shareholders' approval if the contract is for longer than two years).
- Appointing auditors, bankers and solicitors.
- Issuing share certificates to the first shareholder(s).

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

UK companies

All private limited companies, however large and whether or not trading, must keep accounting records. In addition, private companies must file annual accounts at the public registry within nine months of the relevant financial year-end.

The accounts must give a true and fair view of the company's affairs and include:

- Balance sheet.
- Profit and loss account.
- Directors' report.
- Strategic review.

Medium-sized and small companies and micro-entities can file abbreviated accounts. Dormant subsidiaries can be exempt from accounting requirements. Large companies in the extractive and logging industries must also disclose details of all payments made to governments.

Classification as large, medium-sized, small or micro is determined by reference to profit, turnover and number of employees. The relevant thresholds change often, so it is advisable to verify these thresholds for any given financial year. These are set out in the Companies Act 2006, UK companies legislation and EU legislation.

In addition, parent companies must prepare and file consolidated group accounts for their entire group (that is, themselves and all of their subsidiaries).

Accounts can be prepared in accordance with UK Generally Accepted Accounting Practice (GAAP) or International Financial Reporting Standards (IFRS). Generally, subsidiaries must adopt the same accounting standards as its parent.

Companies must have their accounts audited by a professional auditor. In certain circumstances, small and dormant private companies can opt to be exempt from this requirement. However, this exemption applies only to the smallest companies.

Public companies and groups comprising public companies are subject to more stringent financial reporting requirements (see *Question 25, Public companies*).

Overseas companies

Overseas companies with a UK establishment must file accounts at the public registry (see *Question 4*).

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

A company must display a sign with its registered name at:

- Its registered office.
- Any place at which its records can be inspected.
- Any place at which it carries on business (except primarily used as living accommodation).

It must also include its registered name in all business communications (hard copy and electronic) and on its websites.

Business letters, order forms and websites must show additional details, including:

- Where in the UK the company is registered (that is, England and Wales, Wales, Scotland or Northern Ireland).
- The company's registered number.
- The company's registered office address

More detail on accounting and disclosure requirements can be found at www.companies-house.gov.uk.

11. How do companies execute contracts or deeds?

Contracts

A private company can execute a contract either:

- In writing and under the company's seal.
- Where a person with express or implied authority enters into a contract on behalf of the company.

A company's directors have automatic authority to execute contracts on its behalf. In addition, employees may have authority under the principle of ostensible authority (that is, because of their position or previous dealings with third parties).

A contract does not have to be in writing; it can be made orally or by mere conduct or behaviour. Therefore, companies can enter into contracts even where terms are not agreed in writing.

Deeds

There are various reasons to use a deed instead of a simple contract. For example, certain documents (such as powers of attorney) must take the form of a deed. A private company can execute a deed if:

- The company's seal is affixed (the articles usually require a director to counter-sign). It is very rare for companies to use or keep a seal.
- Two directors, or a director and the company secretary, sign the document.
- One director signs the document in the presence of a witness who attests that signature. This is the most common method as only one director's signature is required.

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

There are no restrictions on the minimum and maximum number of members. Any company (public or private) can have only one member.

Single-member private companies are very common in group structures. They can elect to follow less stringent procedural requirements.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

There is no minimum investment amount or minimum share capital requirements for company formation. Private limited companies with shares merely need a share capital greater than zero.

For public companies, see *Question 25*.

14. Are there restrictions on the transfer of shares in private companies?

Transfer of shares

There are generally no restrictions on the transfer of shares in private companies. The only legal requirement is to complete the transfer using a prescribed stock transfer form. In addition,

depending on the price, the transferee may need to pay stamp duty at the rate of 0.5% (rounded up to the nearest £5) (see *Question 26, Stamp duty and stamp duty land tax*).

However, a company's articles of association can impose restrictions. It is common to restrict transfers of shares that are not fully paid up or if the transferor owes monies to the company. Private companies' articles also frequently allow the directors to refuse a transfer without giving a reason, but this right is rarely exercised.

In a joint venture (JV) or a company with investors and shareholder-managers, it is common to include specific pre-emption rights or right of first offer provisions in the articles and/or a JV or shareholders' agreement. These commonly require a person to offer its shares to the other shareholders before selling them to a third party.

In addition, a subsidiary cannot hold shares in its parent company (except in extremely limited circumstances).

Issue of shares

There are statutory pre-emption rights when a company issues new shares that are designed to prevent dilution. These require the company to offer the new shares proportionately to all of the existing shareholders first.

A company's shareholders can disapply these pre-emption rights by passing a special resolution, which require a vote of 75% of the shareholders.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

The main protections for minority shareholders are outlined below.

Pre-emption rights

Shareholders are protected from dilution by statutory pre-emption rights, unless these are disapplied by shareholders (see *Question 14*). These rights apply to all shareholders, not just minority shareholders.

Unfair prejudice and derivative claims

Minority shareholders can apply to the court for relief if the company's affairs are being conducted in a manner that is "unfairly prejudicial" to the interests of:

- Members generally.
- Some part of the members, which must include the applicants.

Alternatively, shareholders can bring an action in the name of the company (derivative claim) against directors that do not comply with their duties. However, as this is a claim by the company, any damages are awarded to the company, not the shareholder.

Other protections

Unfair prejudice petitions and derivative claims (see *above, Unfair prejudice and derivative claims*) are costly exercises with uncertain outcomes. Therefore, articles and private contracts (joint venture (JV) and shareholders' agreements) often contain minority rights. Minority rights can be entrenched in a company's articles so that the majority cannot amend or remove them.

Rights in a JV or shareholders' agreement provide only contractual remedies (normally monetary damages), whereas breach of a right contained in the articles can be reversed if it is outside the company's powers.

Limited liability

All shareholders in limited companies have the protection of limited liability. Once they have paid the full amount due on their shares (including any premium over the nominal value), they have no further liability for the company's debts and obligations, even if the company becomes insolvent.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?

There are very few restrictions on quorum and voting requirements at shareholder meetings. Those that exist are mainly designed to prevent "self-dealing". For example, a director that is also a shareholder cannot vote on a resolution to ratify its own misconduct.

For a company with only one shareholder, the quorum is one. Otherwise, most companies' articles require a quorum of two shareholders, although articles can require a higher number of shareholders to form a quorum. Although this is unclear, this probably means that two persons must be physically present at the meeting. Therefore, a meeting may not be valid if only one person representing two different shareholders attends (see, among others, *Sharp v Dawes* [1876] 2 QB 26).

Voting at a general meeting can be done on a show of hands or on a poll. Private companies can also pass written resolutions. On a show of hands, each shareholder has one vote. On a poll or a written resolution, each share usually carries one vote. Written resolutions appear to be the current preferred option for most private companies.

However, a company's articles can vary voting rights by, for example, giving some shares more votes, making them non-voting or requiring approval from different classes of shareholders. Quorum requirements usually reflect these variations.

For example, in a joint venture (JV), each investor may hold different classes of shares. The articles can require certain resolutions to be passed by a majority of each share class. The provisions on quorum can also require a shareholder from each share class to attend.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

The following common corporate actions require the approval of the shareholders by a special resolution (a 75% majority vote):

- Amending the company's articles of association.
- Changing the company's name.
- Reregistering the company as public or private (or limited if it was unlimited).
- Disapplying statutory pre-emption rights on issuing shares (see *Question 14, Issue of shares*).
- Reducing the company's share capital.
- Redeeming or repurchasing the company's shares out of capital (only available to private companies).

The following common corporate actions require the approval of the shareholders by an ordinary resolution (a simple majority vote):

- Removing a director or the company's auditor.

- Appointing a director (although this is governed by the articles, which usually allow the existing directors to appoint a new director).
- Approving certain types of transactions with and payments to directors, such as:
 - substantial property transactions;
 - loans; and
 - service contracts for a term exceeding two years.
- Ratifying a breach of a director's duties.
- Authorising the directors to allot shares (subject to some exceptions).
- Sub-dividing, consolidating, converting and redenominating shares.
- Repurchasing the company's shares out of distributable profits.
- Paying a non-cash dividend (although this is governed by the articles and a resolution may not always be required).

For publicly traded companies, certain matters that ordinarily require an ordinary resolution or no shareholders' resolution at all require a special resolution.

A company's articles can provide that other matters require a special resolution. Articles can also increase the statutory majority for a given matter (for example by requiring a special resolution instead of an ordinary resolution or unanimous consent). However, articles cannot lower the statutory majority for a matter.

Certain very specific matters require a different majority. For example, reregistering a limited company as an unlimited company requires unanimous shareholder approval.

The threshold of a two-thirds majority that applies in some jurisdictions does not exist in English law, unless specifically required by the articles. In addition, the concept of authorised share capital, which still exists in some common law jurisdictions, has been abolished in English law.

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Voting majorities required by law can be disapplied. Varying the rights of a particular class of share or category of member requires the consent of the holders of 75% of the affected class or 75% of the affected category. The company's articles can require a higher percentage. This is in addition to any other majority that is required, depending on the matter in question (for example a special resolution, if amending the company's articles) (see *Question 17*).

Weighted voting rights can be given to a particular share class. This is common in a joint venture (JV) or where the company has obtained third-party equity financing. The articles sometimes give enhanced voting rights to any shares held by a director where a resolution to remove that director from office is proposed.

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

There are very few restrictions on establishing a business in the UK. However, both UK and overseas companies require authorisation to operate in regulated sectors, such as:

- Banking and financial services (including insurance).
- Defence (also subject to strict export-licensing rules).
- Media, broadcasting and telecommunications.
- Energy and water.

To do business in one of these sectors, a company may need to register with the appropriate authority. For example, financial services businesses must register with the Financial Conduct Authority and, possibly, the Prudential Regulation Authority.

Other business sectors are regulated by licensing or permitting regimes (again, both for UK and overseas owners). These include gambling, life sciences, pharmaceuticals, food and drink production, the sale of alcoholic products, consumer credit, road transport, waste disposal and professional advisory businesses.

In certain regulated sectors (including those listed above), consent may be required from a government department or a national authority before shares in, or control over, a company can be acquired. The decision to give consent is usually based on the suitability of the proposed shareholder. In some cases, the national or public interests can be taken into account (for example, in relation to national security, media plurality and the stability of the UK financial system). These considerations apply to any proposed shareholder, whether foreign or UK.

There are also detailed EU rules in relation to anti-competitive practices (anti-trust laws) and procurement of goods/services by central and local government authorities.

In addition, if a business is to process personal data (that is, information that can be used to identify individuals, such as name, address and job title), it may need to register with the Information Commissioner's Office and will be subject to strict data protection regulations on using and disclosing that data.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

There are no statutory restrictions on companies having foreign shareholders.

In certain regulated sectors, the acquisition of shares in, or control over, a company require consent from a government department or a national authority (see *Question 19*).

21. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations in the UK.

The UK imposes some financial and trade sanctions that prohibit funding or dealing with the assets of certain individuals and entities. Some sanctions apply to specific territories or governments, while others relate to specific individuals or organisations.

There are also strict anti-money laundering and counter-terrorism rules designed to prevent terrorists and other criminals from obtaining access to funding. These apply principally to businesses that hold or handle client funds, such as banks and other financial services businesses and professional advisory businesses.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There are no such restrictions (but see *Question 21*).

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

The minimum age for a director is 16. There is no maximum age limit.

Corporate bodies (such as companies and LLPs) can serve as directors of a company (corporate directors), provided that at least one director is a natural person. However, under current proposals for legislation, corporate directors will be prohibited unless an exception applies. It is expected that these provisions will be enacted in October 2015 through regulations made under the Small Business, Enterprise and Employment Bill, which is currently in the final stages of debate in Parliament.

A person can be disqualified by the court from being a director for a period of two to 15 years. A director who is made bankrupt is automatically disqualified until discharged from bankruptcy. Disqualification orders are also made where directors commit serious or persistent breaches of company or other relevant law.

The UK Government's web page relating to setting up a business in the UK states that a company needs "at least one director in the UK" (see www.gov.uk/set-up-business-uk/overview). This may reflect practical needs, but there are in fact no statutory nationality or residence requirements.

There is no maximum number of directorships that one person can hold. However, a person with numerous directorships may have difficulty in properly discharging the necessary duties to each company and can encounter conflicts of interest.

The following details of every director must be filed on the public register:

- Full name (and all former names).
- Service address in the UK.
- Country of residence.
- Nationality.
- Business occupation (if any).
- Date of birth (which will be replaced by month and year of birth if and when the relevant provisions of the Small Business, Enterprise and Employment Bill come into force).

In addition, the director's residential address must be provided, although this does not appear on the public register. Additional particulars are required for corporate directors, including their:

- Registered number.
- Place of registration.
- Legal form (for non-EEA entities).

If the company wishes to use Companies House's electronic filing system, additional personal details of directors must be given for later security validation. These include eye colour, mother's maiden name, father's first name, and telephone and social security numbers. This is optional and used only as a security measure. These details are not disclosed to the public.

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

Structure

Unlike in some jurisdictions, UK company boards are unitary. Two-tier or multi-tier boards are occasionally used (for example in complex joint ventures or for large publicly traded companies) and major decisions referred to a higher level. However, these are purely internal and do not alter the position that directors are ultimately responsible for management decisions.

Number of directors or members

A public company must have at least two directors. A private company must have at least one director. There is no maximum limit in either case.

A public company must also have a qualified company secretary, who is not a board member but is an officer of the company (see *Question 25, Other requirements*). A private company can have a secretary, but this is not mandatory, and the secretary need not be qualified.

Every company must have at least one director who is a natural person (see *Question 23*).

Employees' representation

Employees have no statutory right to representation on the board of a UK company. However, directors must "have regard" to the interests of the company's employees (among other things).

RE-REGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to re-register as a public company?

In the UK, a public company is a form of legal entity distinct from a private company. The term public company is often used erroneously to mean a company whose shares are traded on a securities or stock exchange. However, the designation public company does not automatically mean that the company's shares are publicly traded. A more accurate term in this case is quoted company or, if the company's shares are traded on a regulated market (such as the Main Market), listed company.

Membership

There is no maximum number of members for a public company.

Like private companies, a public company needs only one member. However, this changes if the company's shares are listed on a regulated securities exchange, as at least 25% of its shares must be in public hands (see *below, Share capital*).

Share capital

A public company must have a minimum share capital of GB£50,000 (or the euro equivalent, currently fixed at EUR57,100). At least a quarter of the nominal value of these shares (that is, GB£12,500) and all of the premium must have been paid to the company. This applies both when creating a new public company and when reregistering a private company as a public company.

When these requirements are satisfied, the company is issued with a trading certificate. A public company must not do business without a trading certificate.

A company wishing to list its shares on a regulated securities exchange (such as the Main Market of the London Stock Exchange), at least 25% of its issued shares must be in public

hands following the listing. This minimum does not apply to non-regulated exchanges (such as AIM).

For more details on the available markets, see www.londonstockexchange.com/companies-and-advisors/companies/companiesandadvisors.htm.

Other requirements

Public companies (both quoted and unquoted) differ from private companies in several respects. In particular, a public company:

- Must have at least two directors.
- Must have an appropriately qualified company secretary.
- Cannot do business without a trading certificate (see *above*).
- Must pass shareholder resolutions in general meeting.
- Can redeem or repurchase shares using profits but not capital funds.
- Cannot give financial assistance to someone to acquire shares in it or its parent company.
- Cannot file abbreviated accounts.
- Must have their accounts audited.
- Have six months to file their accounts after year end.
- Must obtain shareholders' approval to issue new shares.
- Must obtain an independent valuation to issue shares in exchange for non-cash assets.
- Must obtain a court order to reduce share capital.
- Must hold an annual general meeting (AGM) to lay its accounts before its shareholders.

UK quoted companies are subject to additional regulation under the:

- Rules of the securities exchange on which their shares are traded.
- Listing Rules (if listed on a regulated market, such as the Main Market).
- Disclosure and Transparency Rules.
- UK Corporate Governance Code (which is not mandatory but which companies listed on a regulated exchange are expected to adopt).

In addition, the City Code on Takeovers and Mergers usually applies to a proposed takeover of a UK public company, and the Prospectus Rules apply where a public company offers shares to the public, whether or not the company is quoted. However, in practice, given the nature of equity capital markets, these apply principally to quoted companies.

TAX

26. What main taxes are businesses subject to in your jurisdiction?

Special tax rules apply to companies in certain sectors, such as oil and gas and financial services. Subject to that, the main taxes are as follows.

Corporation tax on profits

A UK tax resident company is subject to corporation tax on its worldwide profits (wherever they have arisen), although relief from double taxation should normally be available via a double taxation treaty or a unilateral credit. In addition, provided certain stringent conditions are met, a UK tax resident company can elect to operate

an exemption from UK tax for all its foreign permanent establishments (branches). Taxable profits include profits derived from income and gains from capital transactions.

An overseas company with a UK permanent establishment (including, but not limited to, a branch) is subject to UK corporation tax on all profits derived from any trade carried on through that permanent establishment. These profits may also be subject to corporate income tax in the company's jurisdiction of residence, although credit may be available in that jurisdiction for the UK corporation tax paid on these profits.

For details of corporation tax rates, see www.hmrc.gov.uk/rates/corp.htm.

The UK government is currently holding a consultation on the introduction of a new "diverted profits" tax. This tax would be due on the diverted profits of non-UK residents which are related to UK activity, whether or not they have a UK permanent establishment (see *Question 33, Tax*).

Value added tax (VAT)

VAT is a sales tax chargeable in accordance with EC legislation and certain UK implementing measures. A branch or subsidiary of an overseas business which has a place of belonging (broadly, a physical presence) in the UK must register in the UK with HMRC for VAT purposes, unless its turnover is less than the prescribed minimum (that is, GB£81,000 to date).

Overseas businesses with no place of belonging in the UK that make supplies in the UK to consumers ("non-established taxable persons") must also register with HMRC. There is no threshold to this requirement (see *above*).

VAT is charged, very broadly, on all supplies of goods and services that are made (or deemed to be made) in the UK by a taxable person (a supplier required to register for VAT) in the course of its business. Where the customer is registered for VAT and uses the supplies for business purposes, they may receive credit for this VAT. This means that, for many businesses through a supply chain, the impact of VAT is largely neutral, as the business can recover the VAT that it pays on supplies. The extent to which that VAT can be recovered largely depends on the nature of the supplies that the business itself makes.

VAT is also chargeable on the importation of goods into the UK from outside the EU. Special rules apply for supplies within the EU.

There are three main categories of supply for UK VAT purposes:

- Standard-rated (20%).
- Zero-rated (0%).
- Exempt (outside the scope of VAT).

Most supplies are standard-rated.

From 1 January 2015, new rules apply to the supply of digital services by persons outside the UK to consumers in the UK. The rules apply across the EU and provide that the place of supply for VAT purposes is the consumer's country. For example, a non-EU business selling apps to consumers in more than one EU member states must decide to either:

- Register in each member state and charge VAT accordingly at local rates.
- Adopt a simplified procedure (with a single registration and single VAT rate) under the "mini one-stop shop" or "MOSS" rules.

See www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers/vat-businesses-supplying-digital-services-to-private-consumers.

Payroll taxes

A branch or subsidiary of an overseas business which employs individuals to work in the UK will be required to deduct income tax under the pay as you earn system (PAYE) from all payments of salary and bonuses made to those individuals.

Subject as described below, social security payments (known as National Insurance Contributions (NICs)) are also payable both by the employee and the employer. The employer deducts the employee's contribution (at a rate of 12% or 2%, depending on level of earnings) from payments of salary when made to the employee. The employer's contribution is made in addition to the employee's and cannot be recovered from the employee (and so is an additional cost for the employer). Currently employer's NICs are charged at the rate of 13.8% of the gross salary paid to the employee.

If employees come to work in the UK from another country of the European Economic Area (EEA) and they hold certain certificates issued in that country, then UK national insurance will not be payable in respect of those individuals until expiry of that certificate. Similar exemptions may apply for workers coming from other jurisdictions.

As soon as a branch or subsidiary of an overseas business employs any individuals, it should inform HMRC and establish a payroll system. This can be outsourced to a payroll services provider.

Stamp duty and stamp duty land tax

Subject to certain exceptions, stamp duty is payable at the rate of 0.5% on instruments effecting transfers (but not new issues) of company shares, marketable securities and some transfers of interests in partnerships.

Stamp duty land tax is payable at a range of rates on transactions involving the transfer or creation of an interest in UK land or real estate and on transfers of interests in property-investment partnerships. For details of the relevant rates, see www.hmrc.gov.uk/sdlt/rates-tables.htm.

Business rates are payable on non-domestic premises to the local government authority responsible for the area in which the premises are located. Business rates are used to provide services such as street lighting and cleaning and other amenities. They are normally deductible when calculating taxable profits. Reductions in business rates are available for small businesses.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

As soon as an overseas company carries on business in the UK, it will be subject to UK corporation tax on profits, either as a result of trading through a permanent establishment (for example, a branch) in the UK or through a UK subsidiary (*but see Question 33, Tax*).

A UK tax resident subsidiary is subject to UK corporation tax on its worldwide profits. A non-resident company carrying on a UK trade through a UK permanent establishment pays UK corporation tax only on profits attributable to that permanent establishment.

Tax resident

A company is tax resident in the UK if it is incorporated in the UK or centrally managed and controlled from the UK. Where a company is both resident in the UK and in another country under the domestic law of a country with which the UK has an applicable double tax treaty, its residence will be determined by reference to the relevant "tie-breaker" provisions of that treaty.

Non-tax resident

Non-tax resident companies with a permanent establishment in the UK are liable for UK corporation tax on income profits of that

establishment and gains from the disposal of assets situated in the UK and used in the trade of the establishment.

Non-tax resident companies not trading through a permanent establishment are generally subject to UK income tax on income with a UK source (including rents from UK property), subject to the terms of any relevant double tax treaty (*but see Question 33, Tax*).

28. What is the tax position when profits are remitted abroad?

Repatriating profits from a subsidiary is most commonly done by way of dividend. Dividends can only be paid out of accumulated realised profits, after deducting any relevant losses.

A dividend paid by a UK resident company is made out of post-tax profits (and is therefore not deductible in calculating taxable profits).

There is no requirement for a UK resident company to withhold on account of tax from a dividend paid to a non-tax resident corporate shareholder.

Profits earned by a branch can be repatriated to the parent company at any time; there is no branch profits tax to be withheld.

The UK has double tax treaties with around 110 countries worldwide, including most of Europe and the US.

29. What thin-capitalisation rules and transfer pricing rules apply?

Thin capitalisation rules apply broadly where a company borrows money from an affiliate on terms that would not be available in the market (for example, where the borrowing company would have been unable to secure those terms in the market due to inadequate interest cover or a high debt-equity ratio).

If a UK tax resident company is thinly capitalised, the ability to deduct interest payments is restricted. The UK thin capitalisation rules operate as part of the UK general transfer pricing rules, which apply the arm's-length principle in determining the extent to which interest payments are deductible. There are no "safe harbours" that can be applied to give certainty on the deductibility of interest expenses. However, it is possible to agree matters in advance with the UK tax authorities under an advanced pricing agreement.

Transfer pricing rules apply (broadly) where:

- A transaction (or series of transactions) takes place between two persons.
- One person directly or indirectly participates in the management of the other, or the same person (or persons) directly or indirectly participates in the management of both affected persons.
- The terms of the transaction (or series) differ from those that would have been agreed between independent parties (arm's-length terms).
- The actual terms of the transaction (or series) confer an advantage in relation to UK tax on either or both parties.

The rules provide that the relevant transaction(s) (whether between UK companies or between UK and foreign affiliates) must be taxed on the arm's-length value of the transaction. The value of the transaction(s) must therefore be recalculated for tax purposes to cancel out the tax advantage obtained from departing from arm's-length terms.

In certain cases, the transfer pricing rules do not apply to small and medium-sized enterprises.

For more details, see www.hmrc.gov.uk/manuals/intmanual/INTM571015.htm and www.hmrc.gov.uk/international/transferpricing.htm.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

Limited funding is available, both to UK and overseas companies operating in the UK. Funding is focused mainly on supporting research and development (R&D) in high-technology sectors, such as life sciences and digital communications. For more details, see www.innovateuk.org/funding-support.

Tax incentives are also available to support business innovation. These include:

- R&D Credits, a corporation tax relief that may reduce taxable profits and, in certain circumstances, give rise to a payable cash credit; see www.hmrc.gov.uk/ct/forms-rates/claims/randd.htm.
- The Patent Box, which enables companies to apply a lower rate of corporation tax to profits earned from its patented inventions and certain other innovations. However, the UK Government issued a joint statement with Germany indicating that the Patent Box regime will be closed to new applicants on or before the end of June 2016, and will be completely closed down by June 2021; see www.gov.uk/government/uploads/system/uploads/attachment_t_data/file/373135/GERMANY_UK_STATEMENT.pdf.
- Creative industry tax reliefs apply to companies engaged in producing certain films, television programmes, computer-gaming and theatre productions; see www.hmrc.gov.uk/ct/forms-rates/claims/creative-industries.htm.

In addition, a number of designated "enterprise zones" exist throughout England and Wales. These are designed to encourage businesses to locate in particular places (mainly outside the South and South East of England). Enterprise zones typically offer up to 100% business rates relief (worth up to £275,000) over a five-year period (*see Question 26, Stamp duty and stamp duty land tax*). Some enterprise zones also offer enhanced capital allowances for investment in plant and machinery (particularly in economically deprived areas). Many enterprise zones provide other benefits, such as lease payment holidays, low-rent incubator units and development funding. Simplified planning (zoning) regulations sometimes also apply to encourage development. For more details, see <http://enterprisezones.communities.gov.uk/>.

EMPLOYMENT

31. What are the main laws regulating employment relationships?

UK employment law is based on contract, statute and EU law.

The contract of employment

All employees in the UK work under a contract of employment, whether in writing or not.

A written employment contract is not required but is commonly used to ensure that the intentions of both parties are clear and provide better protection of the employer's position. Employee must be given a Statement of Particulars of Employment (often called a "section 1 statement") within eight weeks of their start date. This contains information about certain specific key terms of their employment.

Pay

Employees are entitled to be paid at least the national minimum wage, which is reviewed on an annual basis. The current adult rate is GB£6.51 per hour (October 2014).

Employees are also entitled to statutory sick pay (SSP) if absent from work due to sickness or injury for up to 28 weeks (subject to certain qualifying conditions). The rate of SSP is reviewed annually and is currently GB£87.55 per week.

There is no legal requirement for employers to provide for medical insurance, but it is not uncommon to do so.

Working time and holidays

Working time and holidays are regulated under the Working Time Regulations 1998. In general, employees cannot be required to work for more than 48 hours per week (averaged over a 17-week period). Employees can agree to opt out of this restriction, but can always opt back in later. Senior employees and managers can use an exemption to the 48-hour maximum, under which they are deemed to manage their own time autonomously.

Employees are entitled to a minimum of 5.6 working weeks' holiday each year, which can include the eight UK public holidays. There is no obligation to grant these eight days on the same days as the public holidays, but it is common to do so.

"Family-friendly" rights

English law also provides specific "family-friendly" employment rights. Subject to certain qualifying conditions, employees may have rights to maternity and paternity leave and pay, adoption leave and pay and (for children born on or after 5 April 2015) shared parental leave and pay.

Under shared parental leave, a mother will be able to share her entitlement to 52 weeks' leave with the child's father (or her partner), subject to certain qualifying conditions. This does not apply to the first two weeks of maternity leave, which are mandatory for all mothers.

Female employees, irrespective of their length of service, can take up to 52 weeks of maternity leave, and may be entitled to maternity pay, depending on the level of their earnings and length of service. Statutory maternity pay is 90% of the employee's normal pay for the first six weeks of leave and then a lower rate of GB£138.18 for up to a further 33 weeks (from 6 April 2014, reviewed annually).

All parents (that is, those that are responsible for a child) with one year's service are entitled to up to 18 weeks of unpaid parental leave. To date, this leave can be taken any time before a child's fifth birthday or the fifth anniversary of placement (as appropriate) (or the 18th birthday, if the child is disabled). From 5 April 2015, parental leave will be extended to apply to all children up to the 18th birthday.

Flexible working

Employees with 26 weeks' continuous employment can make a "flexible working request" to their employers. Employees can make only one request each year. Flexible working means any pattern of work outside the employer's standard. There is a set procedure for the employer to consider the request and come to a decision. If the employer refuses the request, it must be able to base its decision on one or more of eight prescribed grounds.

Part-time employees must not be subjected to less favourable treatment than full-time employees due to their part-time status. Where possible, the benefits for full-time employees should be pro-rated for part-time employees.

Workplace pensions

Employers in the UK are or will soon be obliged to automatically enrol eligible workers into a qualifying workplace pension scheme, depending on the employer's relevant 'staging date'. Eligible

workers have the right to opt out of their workplace pension, but they must be automatically re-enrolled every three years.

Employers must make a prescribed minimum contribution. This currently stands at 1% of a worker's qualifying earnings (with the worker also making a 1% contribution). It is set to rise to 3% from 1 October 2018 (with the worker's contribution increasing to 5%).

Termination of employment

There is no "employment at will" in the UK. Employment can be ended either by giving notice or, in limited and very exceptional circumstances, with immediate effect. The statutory minimum notice period an employer must give varies depending on the employee's length of service as follows:

- One week's notice, for employees with one month's to two years' service.
- One week's notice per completed year of service (up to a maximum of 12 weeks) for employees with more than two years' service.

If there is no contractual agreement on notice, the employer must give "reasonable" notice. Employees must give at least one week's notice of termination. Contractual notice periods can be greater than the statutory minimum. If a contractual notice period is shorter, the statutory minimum applies instead.

If an employee is made redundant, he is entitled to a statutory redundancy payment, provided that he has been employed for at least two years. The entitlement depends on age and length of service but cannot exceed GB£13,920 (from 6 April 2014, reviewed annually).

After two years' service, an employee has a right not to be unfairly dismissed. A dismissal is automatically unfair unless both of these conditions are met:

- There was a valid reason for dismissal (these reasons are prescribed by statute).
- The dismissal was managed in a way that was procedurally fair.

Compensation for unfair dismissal comprises two elements:

- A basic award (which is similar to the statutory redundancy payment).
- A separate award to compensate the employee for loss of income, which can be up to GB£76,574 (since 6 April 2014, reviewed annually) or 12 months' salary (whichever is lower).

Since July 2013, claimants must pay a fee to bring an Employment Tribunal claim. This has significantly reduced the number of claims brought by employees in England.

Non-compete and other post-termination restrictions are not generally enforceable for being in restraints of trade. However, an employer can enforce these restrictions if they protect a legitimate business interest of the employer, go no further than is required and are reasonable in scope. It is vital to tailor non-compete provisions to the relevant employee's role to keep them appropriate and reasonable in the circumstances in order to maximise enforceability.

Discrimination

The Equality Act 2010 protects employees and workers from discrimination on the basis of certain characteristics, known as "protected characteristics". These are:

- Age.
- Disability.
- Gender reassignment.
- Marriage and civil partnership.
- Pregnancy and maternity,

- Race, religion or belief.
- Sex and sexual orientation.

There is no qualifying service requirement for an employee to bring a discrimination claim. Compensation for discrimination is not subject to any upper limit.

Wrongdoing

Under the Public Interest Disclosure Act 1998, a worker can make a "protected disclosure" regarding his employer ("whistleblowing"). This means a disclosure concerning an alleged criminal offence or other wrongdoing. An employee who makes a protected disclosure cannot be dismissed, selected for redundancy or subjected to any other detriment as a result of making the disclosure.

There is no upper limit on the amount of compensation payable to employees dismissed in connection with making a "protected disclosure".

Transfer of a business

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to many mergers, acquisitions, outsourcings and changes to service providers in the UK.

Broadly, TUPE provides that, on a transfer of a business or change of service provider, employees working in the transferred business or service arrangement transfer to the new owner or service provider on the same terms and conditions of employment (excluding some pension provisions). Employees can bring a claim before the Employment Tribunal if the current or new employer or service provider disregards TUPE.

The key consequences of TUPE are as follows:

- A buyer cannot simply buy the assets of a company (rather than the company's shares) to avoid taking on new employees.
- A company must be careful when outsourcing, as its employees may transfer to the service provider.
- A company must be careful when ending an outsourcing arrangement and bringing services back in-house, as it may have to take on some of the service provider's employees.
- The transferor and transferee must inform all affected employees and consult with their elected representatives or appropriate trade unions.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

Non-EU nationals require a work permit in order to work in the UK. Non-EEA nationals travelling to the UK to work must obtain a visa

(also known as entry clearance) for the UK in either their country of legal residence or the country of which they are a citizen.

The UK operates a points-based immigration system structured around five tiers, through which it assesses the eligibility and desirability of applicants to UK visas and work permits. Before a UK employer can employ a migrant under tiers 2 or 5 in the UK, the employer must apply for a sponsor licence from the UK Border Agency.

All employers in the UK must obtain and maintain records of their workers' right to work in the UK. This applies to all employees, regardless of nationality. Failure to maintain these records can lead to both civil and criminal liability.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform?

Corporate transparency

The Small Business, Enterprise and Employment Bill is currently being debated in Parliament. It is expected to be passed and enacted before May 2015. A key provision of the Bill (among various changes) is the requirement for all UK companies to disclose details of the persons exercising ultimately control over them.

This will apply to persons that:

- Hold voting rights or ownership indirectly (rather than being the registered shareholder).
- Can appoint and remove a majority of the company's directors
- Otherwise have "significant control" over the company.

The aim of the Bill is to prevent ultimate shareholders from concealing their identities (for example, behind trusts).

The Bill will also abolish bearer shares and corporate directors (subject to exceptions).

Tax

From 1 April 2015, the main rate of corporation tax is set to fall to 20%.

The UK Government is currently holding a consultation on the introduction of a "diverted profits" tax. This tax would apply at a rate of 25% on the profits related to the UK activities of non-UK residents (regardless of whether they have a UK permanent establishment). This new tax is expected to apply from 1 April 2015.

Further changes or the revision/revocation of existing principles may occur if there is a change in government at the next UK general election, which is due to be held in May 2015.

THE REGULATORY AUTHORITIES

Department for Business, Innovation & Skills (BIS)

Main activities. The central government department with oversight of trade, industry, business and enterprise.

W www.gov.uk/government/organisations/department-for-business-innovation-skills

Companies House

Main activities. An executive agency of BIS responsible for incorporating and dissolving limited companies, examining and storing company information delivered under the relevant company legislation and making this information available to the public.

W www.companies-house.gov.uk or www.gov.uk/government/organisations/department-for-business-innovation-skills

HM Revenue & Customs

Main activities. The central government agency with responsibility for collection of taxes and customs duties.

W www.hmrc.gov.uk

Financial Conduct Authority

Main activities. The authority responsible for overseeing banks and other regulated financial institutions. It also acts as the UK Listing Authority, overseeing companies whose shares are admitted to trading on a regulated exchange (such as the Main Market)

W www.fca.org.uk

ONLINE RESOURCES

Legislation.gov.uk

W www.legislation.gov.uk

Description. The official central government online archive covering all legislation from 1988 to date (and some older legislation). Not all legislation is shown in its updated form, incorporating later amendments.

British and Irish Legal Information Institute

W www.bailii.org

Description. An unofficial (but generally reliable) free source of publicly available legal information, including legislation and case law. Legislation is only shown as originally enacted, with no later amendments.

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