



Armstrong  
Teasdale

# DOING BUSINESS IN THE U.K.



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# SECTION 1

## **INTRODUCTION - DOING BUSINESS IN THE U.K.**

Post-Brexit, the U.K. continues to be a key centre for business in the global economy. English legal frameworks underpin international commerce and finance and London is still considered the world's preeminent finance centre, and remain one of the most attractive international cities for foreign investment.

The U.K. has consistently remained a popular destination for doing business and attracting foreign direct investment (FDI). According to Ernst & Young's 2023 annual European Attractiveness Survey, the U.K. has continued to outperform all other European destinations in terms of FDI.

Some of the reasons that the U.K. has remained such a popular destination for business and investment includes:

- Convenient location and time zone for global markets
- A competitive tax system
- Relative ease and speed of establishing a business here
- The wide use of English law and English law frameworks in business globally
- Access to the U.K.'s skilled and diverse workforce
- Support from U.K. government which incentivises and promotes FDI

The U.K. is made up of three distinct legal jurisdictions, namely, England & Wales, Scotland and also Northern Ireland. This guide only focuses on legal considerations in England and Wales and for ease of reference, when we refer to U.K. in this guide, the references relate to circumstances in England and Wales.

There are a range of legal considerations for a business looking to set up operations in the U.K. and we will cover some of the key legal considerations in relation to:

- corporate law (regarding setting up business);
- competition law;
- employment and immigration law;
- intellectual property law; and
- data protection.

Armstrong Teasdale's U.K. office provides comprehensive legal services and its lawyers regularly advise on the breadth of issues discussed in this guide attributed to us. Our team also has in-depth knowledge of the U.K. market built through years of experience.

If you have any questions on the matters discussed within this guide or if you need further guidance, please see the contact details of Our Team at the conclusion of the guide.

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# SECTION 2

## **KEY CORPORATE LEGAL CONSIDERATIONS**

In relation to company law in the U.K., the main piece of legislation is the Companies Act 2006 (“**Companies Act**”). It is key to understand the requirements under this legislation when setting up your business in the U.K.

Typically, when companies enter the U.K. market, they look to set up either:

- a U.K. subsidiary; or
- a U.K. registered ‘branch’.

But which option is preferable for your business? In our experience, a company would commonly prefer either of these options for the following reasons:

**U.K. subsidiary** – When a company has decided to enter into the U.K. market for the long term, the preference is often to set up a local legal entity for all operations within the U.K.

**U.K. registered branch** – Often (but not always) when a company is looking to test a new market or does not wish to incur the costs associated with setting up a new legal entity, it is possible for foreign companies to look to trade in the U.K. without a subsidiary. This involves setting up and registering a U.K. place of business for the foreign company (a ‘branch’) so that effectively all the business is still directly done by the main foreign entity.

In this section we set out a high-level overview of what is involved in setting up a U.K. subsidiary or a U.K. registered branch.

### 2.1 – Incorporating a U.K. subsidiary

U.K. companies and their shareholders generally benefit from limited liability. This enables a subsidiary company to exist separately from its parent company and/or shareholders, generally protecting the parent and shareholders from the liabilities of the subsidiary.

The most common types of companies are:

- **Private company limited by shares:** This type of company has a share capital and the liability of each shareholder is limited to the amount, if any, unpaid on its shares. A private company cannot offer its shares for sale to the general public. The vast majority of new businesses or subsidiaries are incorporated as private companies.
- **Private company limited by guarantee:** Such company does not have a share capital and its members are guarantors rather than shareholders. The members’ liability is limited to the amount of their guarantees (usually a nominal sum) only if the company is wound up. Private companies limited by guarantee normally are formed solely for nonprofit companies.
- **Public limited company:** A public company must have a minimum issued share capital of £50,000 (with at least 25% paid up in the company). The liability of members is limited to the nominal value of their shares. It may offer its shares or debentures for sale to the general public and may have its securities quoted on a stock exchange or other securities markets. Foreign parent companies rarely form a U.K. subsidiary as a public limited company.

In the U.K., all limited companies are registered at Companies House, which is an executive agency of the Department for Business and Trade. Companies House deals with all matters relating to the incorporation and dissolution of companies and acts as a storage repository of all company information that is required to be delivered under the Companies Act to Companies – noting that any information required to be delivered to Companies House is made available to the public freely via the Companies House website.

Incorporating a company can often be completed in less than a day on the Companies House website provided that the company has the following information and details prepared and ready to be filed:

- i. a suitable name available on Companies House;
- ii. (details of at least one shareholder, including details of any persons with significant control (any shareholder who holds more than 25% of shares in the company, more than 25% of voting rights in the company, or has the right to appoint or remove the majority of the board of directors);
- iii. details of at least one director who will manage the company on behalf of the shareholders (there is no requirement for shareholders and directors to be resident in the U.K., but there are incoming legislation changes in the U.K. requiring directors to either directly provide verification information to Companies House or to be verified by an authorised party);
- iv. a registered office address in the U.K. where the company's statutory records must be kept; and
- v. articles of association, which govern how the company is operated (a company can use a standard set of articles known as 'Model Articles' or tailor their articles for specific purposes).

Once established, there are ongoing filing requirements for U.K. companies, and companies must also file the following documents at Companies House, which can be viewed by the public on the Companies House website:

- i. a yearly confirmation statement confirming certain information held by Companies House remains up to date and accurate;
- ii. yearly company accounts detailing its performance during the previous financial year (types of accounts may vary depending on whether the company is dormant or trading, its turnover, balance sheet total and average number of employees);



- iii. changes to any persons with significant control;
- iv. changes to the board of directors; and
- v. changes of registered office address.

For the purposes of this guide, we have taken you through incorporating a subsidiary. However, we would note that instead of incorporating a company from scratch, you may consider other routes to enter the U.K. market, such as acquiring an existing U.K. business/company or entering into a joint venture agreement (a strategic collaboration typically for a specific project or business venture). These options could be a strategic preference for various reasons, i.e., an opportunity to enter an established market, acquiring an existing operational infrastructure with a proven track record, or to offer cost synergies such as shared resources and the potential to diversify your product or service offerings.

## 2.2 – Establishing a U.K. Registered Branch

An overseas company can carry on its business in the U.K. by setting up and registering a branch at Companies House.

A branch conducts business on behalf of the foreign company and allows the foreign company to directly conduct business in the U.K. through local representatives.

A branch is not set up as a separate legal entity in the U.K., meaning the overseas company would be responsible for the U.K. establishment, and all debts and liabilities of such establishment would be attributable to the foreign parent. However, the branch would still give the foreign company a permanent base and taxable presence in the U.K.

A branch can be registered as a U.K. establishment on payment of a fee. English law will apply to a branch, including with respect to registration and disclosure requirements, employment, health and safety, real estate, consumer protection, environmental protection and tax matters.

While generally the Companies Act is still the main legislation that applies when setting up a branch in the U.K., the Overseas Companies Regulations 2009 streamlined the registration and disclosure regime since 1 October 2009. When registering a U.K. establishment of an overseas company, the U.K. is treated as a single jurisdiction. In setting up a branch in the U.K., a foreign company will need the following registrations:

- i. Register the U.K. establishment of an overseas company with Companies House. This a relatively straightforward process which requires you to file the following with Companies House:
  - a. Form OS IN01 (providing various details about the foreign company, its officers and other required information);
  - b. a certified copy of the foreign company's constitutional documents;
  - c. a copy of the latest set of audited accounts required to be published by the foreign company's local law; and
  - d. payment of the £20 registration fee.
- ii. There will be further requirements to register the branch with HMRC for various tax reasons, including but not limited to Valued Added Tax, PAYE/income tax for local employees and National Insurance Contributions.

These are the general registrations with U.K. regulatory bodies that will be required but there are other various regulatory, reporting requirements and ongoing obligations for setting up your branch and doing business in the U.K.

Some other important considerations when setting up your branch include:

- If there are changes to the information you submitted to Companies House then you must submit those updates to Companies House.

- If the law applying to the overseas parent company of your U.K. branch requires the publication of accounts which have been audited, a copy of these accounts must be delivered to Companies House within three months of their public disclosure.
- If the law applying to the overseas parent company of your U.K. branch does not require publication of audited accounts, then within 13 months of a company's accounting reference date, you must deliver accounts to Companies House that comply with U.K. Company law (such accounts would relate to the wider corporate group and not just the U.K. branch).

### 2.3 – Competition Law

Here are some key competition law considerations for foreign companies looking to enter the U.K. market through acquisition or investment.

#### Merger control consents

The main competition issue to be addressed on any acquisition or investment (by way of share purchase or the purchase of assets that comprise a business) is whether the transaction is caught by merger control legislation of a relevant jurisdiction. The key questions include whether:

- The transaction falls under the jurisdiction of the U.K.'s Competition and Markets Authority ("**CMA**"), or any other national or supranational competition regulator (such as the European Commission).
- Notification of the transaction to the relevant competition authorities is compulsory.
- Completion must be suspended until competition clearance is received.
- The transaction may or may be expected to result in a significant reduction of competition in the relevant market(s).

**U.K. merger control:** The U.K. merger control regime is governed by the Enterprise Act 2002 ("**Enterprise Act**"). Where the Enterprise Act regime applies, a transaction that may result, or has resulted, in a relevant merger situation may be subject to a reference by the CMA. Following Brexit, U.K. and EU merger control rules may apply concurrently if the target of an acquisition or an investment has both U.K. and EU operations.

**EU merger control:** The EU Merger Regulation (Council Regulation 139/2004 (OJ 2004 L24/1)) ("**EU Merger Regulation**") applies where a transaction is a concentration with an EU dimension. Where a transaction is subject to the EU Merger Regulation, no other EU national merger control rules will apply (although this does not preclude the possible application of the merger control rules outside the EU). Transactions caught by the EU Merger Regulation must be notified to the European Commission the parties will not be able to put the transaction into effect until the Commission has approved it. This can have a significant impact on the transaction timetable.

#### National Security and Investment Act 2021

Separate from the U.K. merger control regime, the National Security and Investment Act 2021 ("**NSI**") provides for a comprehensive national security and inward investment vetting regime. This requires investors (both U.K. and foreign) which acquire shareholdings or voting rights above certain levels in U.K. companies or foreign companies which carry on business in the U.K. and active in 17 key sectors of the economy to notify the transaction to the Secretary of State for clearance. The new regime replaced the government's previous powers under the Enterprise Act to scrutinise mergers on the grounds of national security. The NSI regime is one of the more robust and demanding systems (including extra territorial effect) globally and involves significant financial and criminal sanctions for noncompliance. It is therefore important to seek early legal advice to assess whether the acquisition will fall within the NSI scope.

# SECTION 3

## **OTHER KEY LEGAL CONSIDERATIONS**

While we have taken you through the key corporate legal consideration for setting up and doing business in the U.K., there are various other legal considerations you need to consider when entering the U.K. market, as there are various legal frameworks and legislation that will affect doing business in the U.K. Chief among these, we have highlighted key legal considerations in relation to:

- i. employment law and U.K. business immigration law;
- ii. intellectual property; and
- iii. data protection.

In our experience these areas are often the key touchpoints for companies looking to set up and do business in the U.K. As such, we have given some overviews of key issues, legislation and legal considerations that relate to these areas of law and doing business in the U.K.

If you have any questions on the matters discussed below or if you need further guidance, please see the key contacts at the end of this guide.

### **3.1 – Employment law and U.K. business immigration**

#### **3.1.1 – Employment law**

When establishing a business in the U.K., understanding the intricacies of U.K. employment law is crucial. This section serves as a guide for overseas businesses, covering key aspects such as legal jurisdictions, employee classifications, basic rights, and crucial considerations when making the move.

In the U.K., employment law is crafted to champion principles of fairness, inclusivity and employee well-being, and plays a pivotal role in regulating the dynamic relationship between employers and their employees. It not only outlines the obligations that employers owe to their workforce but also delineates the protections that employees are entitled to.

#### **Legal Jurisdictions**

England and Wales, Scotland and Northern Ireland all have separate legal jurisdictions and systems. Contract law in each country is broadly the same, with some differences in Scotland. The statutory employment protection legislation is present in all of the U.K. apart from Northern Ireland where there are some differences in relation to discrimination law that are mentioned below.

#### **Is an employment contract needed?**

In the U.K., employment relationships are governed by contract law but within a statutory framework comprised of both domestic and, still to a certain extent, European law. Following the U.K.'s exit from the European Union, a transition period applied whereby the U.K. was treated, for most purposes, as if it were still an EU member state. Following this period, the U.K. is now free to make amendments to EU-derived employment law to a certain extent.

Every employee in the U.K. works under a contract of employment that may be in written form or not. A written contract of employment is not required by law but is commonly provided to ensure that the intentions of both parties are clear. It will also set out key provisions such as the obligations of each party, the conditions of work, wages and ways in which the contract can be terminated. U.K. law requires that the employee is given a "Statement of Particulars of Employment" which outlines the main terms of employment. This should be given to the employee within eight weeks of commencing employment.

#### **What are the different types of employees?**

Employees providing personal services are, broadly, classified into three categories:

- Employees
- Workers
- Self-employed or independent contractors



It is important to determine which category any certain individual falls within as this will affect the rights which that individual will be accorded during their employment.

Individuals in the employee category benefit from the greatest level of protection and have various rights including the right to claim unfair dismissal, statutory notice periods, redundancy pay, the rights to maternity/paternity/parental leave and the right to request flexible working. These rights are only available to those who are categorised as employees under U.K. employment law.

The self-employed category is accorded the fewest protections. Individuals in this category are not entitled to any employment protection rights. This is an area which has become hotly contested over the past few years with certain sections of individuals such as cab/taxi drivers and foster carers arguing that they should be classed as employees or workers, and therefore receive certain employment rights.

Those who are classified as “workers” are in between the two previous classes and are therefore entitled to some basic employment rights such as holiday pay, discrimination and whistleblowing protection, pension auto-enrolment and national minimum wage (NMW).

Agency workers may still be classed as employees or workers and will therefore have the according rights depending on whichever they are categorised as. If an agency worker does the same role, whether on one or more assignments for the same client for 12 weeks, they are entitled to the same basic working and employment conditions as the client’s permanent recruits. Employers can choose to opt out of this right but they must then pay their agency workers for a minimum of four weeks between assignments if they cannot find alternative work.

#### **What are the basic rights of employees/workers?**

There is a statutory sick pay scheme whereby employers must provide a minimum level of sick pay for up to 28 weeks. This can no longer be reclaimed from the

state. Sick pay schemes will often differ from employer to employer, but all must offer one which meets the statutory minimum.

Working time and holidays are regulated under the Working Time Regulations 1998. This states that employees cannot be required to work for more than 48 hours per week (this figure is taken from a 17-week average). However, employees can agree to opt out of this restriction which is a relatively common clause in a contract of employment.

Full-time employees and workers are entitled to a minimum of 5.6 weeks (28 days) holiday per year. There is no obligation to give workers holiday on public holidays, but it is common to do so, which would then count towards the statutory minimum.

Employers in the U.K. are required to enrol all of their eligible workers into a qualifying workplace pension scheme, which is automatic for those workers unless they opt out. The employer is obliged to pay mandatory minimum contributions.

Noncompete clauses are often included in employment contracts to restrict an individual's ability to work for a competing business, or to establish a competing business for a defined period after termination. They should be tailored to the employee's specific role so that the provisions are fit for purpose and also reasonable. Noncompete clauses are a type of restrictive covenant as they are restricting what a certain employee may do.

For clauses of this nature to be enforceable by an employer they must:

- Protect a legitimate business interest
- Go no further than is required
- Be reasonable in scope

#### **How much do employees need to be paid?**

National Minimum Wage is reviewed on an annual basis, with the rates changing every year on 1 April.

The current hourly rates are as follows (April 2023):

- Workers aged 23 and over: £10.42
- Workers aged 21 to 22: £10.18
- Workers aged 18 to 20: £7.49
- Workers aged under 18: £5.28
- Apprentices: £5.28

The rates which will apply starting 1 April 2024 are as follows:

- Workers aged 21 and over: £11.44
- Workers aged 18 to 20: £8.60
- Workers aged under 18: £6.40
- Apprentices: £6.40

#### **What maternity/paternity rights will my employees have?**

Employees who meet certain conditions may have rights to maternity pay, paternity leave and pay, and adoption leave and pay. Female employees, regardless of their length of service, can take up to 52 weeks of maternity leave and may be entitled to maternity pay depending upon the level of their earnings and their length of service. Statutory maternity pay is paid up to 39 weeks. The statutory level is 90% of average weekly earnings (pre-tax) for the first six weeks of maternity leave and then the lower of 90% of your average weekly earnings or £172.48 for the next 33 weeks. These rates are the current 2023 rates and are usually reviewed annually.

Mothers can choose to opt into shared parental leave which converts a portion of their maternity leave so that up to 50 weeks' leave and 37 weeks' pay can be shared between both parents.

Statutory paternity leave and pay of two weeks' salary is also available to fathers who have been employed for more than 26 weeks within 56 days of the birth of a child.

All parents (including adoptive parents) who have one year's service are entitled to up to 18 weeks of unpaid parental leave. This can be taken any time before the child turns 18, and no more than 4 weeks of unpaid leave can be taken per year.

### Termination of employment

Employment can be terminated either by giving notice, or in limited and exceptional circumstances, with immediate effect. Employees must give at least one week's notice of termination of their employment. For employers, it will depend on the employee's length of service.

There are statutory minimum notice periods that employers are required to give, as follows:

- For workers employed for 12 years or more: 12 weeks' notice
- For workers employed between 2 and 12 years: 1 week's notice for each year employed
- For workers employed between 1 months and 2 years: 1 week's notice

These notice periods can be modified within the contract of employment, as long as the statutory minimum is met. Alternatively, an employee's employment can be ended without notice if payment in lieu of notice ("**PILON**") is included within the contract of employment. In these cases, the employer will pay the employee instead of giving them a notice period.

If an employee is made redundant and they have been employed for at least two years, they will be entitled to a statutory redundancy payment.

Some typical reasons for making an employee redundant are:

- A business closure or relocation
- A workplace closure
- A need to reduce the workforce
- A restructuring within the business

The level of employees' entitlement will depend on age and length of service. An employee will receive:

- Half a week's pay for each full year the employee was under 22 years of age.
- One week's pay for each full year the employee was 22 or older, but under 41 years of age.
- One and a half weeks' pay for each full year the employee was 41 or older.

The length of service for all employees is capped at 20 years and their weekly pay is the average that they earned per week over the 12 weeks before the day they received their redundancy notice. If an employee is made redundant on or after 6 April 2023, their weekly pay is capped at £643 and the maximum statutory amount they may receive is £19,290 (as of 2023, but subject to annual reviews).

Once again, this is the statutory minimum. Employers often will have their own redundancy pay scheme which extends the amount which employees will receive.

### What claims can an employee bring?

One right which only employees have is the ability, once they have been employed for more than two years, to bring a claim for unfair dismissal or constructive unfair dismissal.

A dismissal of an employee may be deemed unfair if the employer does not:

- Have a fair reason for the dismissal; or
- Follow a fair process (this is called the statutory minimum dismissal procedure in Northern Ireland).

Constructive unfair dismissal (or constructive dismissal) is a legal concept that arises when an employee resigns from their job due to a fundamental breach of their employment contract by the employer. In a constructive unfair dismissal claim, the employee essentially argues that, even though they resigned voluntarily, the

circumstances leading to their resignation were so intolerable that it amounted to a forced or “constructive” dismissal.

Any compensation awarded for a finding of unfair dismissal will be made up of two elements: a basic award, which operates in the same way as the statutory redundancy payment outlined above, and a separate award to compensate the employee for loss of income. This can be up to £105,707 (as of 2023, subject to annual reviews).

The Equality Act 2010 is a key statute which 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

Discrimination law covers the whole of the employment cycle and therefore does not require workers to have been in employment for more than two years. It can cover elements to employment such as job adverts and the recruitment process, terms and conditions of work, conduct during employment, and dismissal. It can also relate to work-related matters arising after employment has ended, such as giving references. Compulsory retirement will amount to a form of age-related discrimination, unless the decision can be objectively justified. Employers must give men and women equal pay as well as terms and conditions. This has been enforced by the gender pay gap reporting requirements (in force since April 2017) which affects employers with more than 250 employees. The compensation which an Employment



The Equality Act 2010 is a key statute which protects employees and workers from discrimination on the basis of certain characteristics, known as “protected characteristics”.

Tribunal can award is uncapped for discrimination claims and both employees and workers can bring claims of this nature.

### We are here to help

Navigating the intricacies of U.K. employment law can be challenging. Our employment lawyers are here to assist with every step along the way, ensuring a smooth transition for your business in the U.K. Please see our key employment contacts below.

### 3.1.2 – U.K. Business Immigration

To work in the U.K. after Brexit, non-British and non-Irish nationals need an appropriate visa. A number of different routes can be used to bring migrants to the U.K. for work purposes, and the most appropriate route will depend on the aims of both the employee and the employer.

We would recommend speaking to legal advisers as soon as possible, ideally between four and six months before the intended start date of the employee coming to the U.K. Whilst the processing can be expedited in urgent situations, the Home Office (the lead government department for immigration and passports, drugs policy, crime, fire, counterterrorism and police) processing times can vary significantly. It is also important to allow time to consider the best visa categories to suit your organisation/business and the prospective employee's needs, and to prepare required supporting documents and legal representations for the relevant applications to the Home Office (i.e., U.K. visa and immigration authority).

### Company's Sponsor Licence Application

The first step in bringing foreign nationals to the U.K. for work purposes is for the U.K.-based employing organisation to apply for a 'Sponsor Licence'. This is required for almost all visa categories, aside from the 'Innovator Founder' visa (see below). This licence is awarded to organisations by the Home Office and confers the ability to sponsor migrants to come to the U.K. to undertake specific identified roles.

This application is complicated and the organisation must demonstrate its capability to manage the responsibilities of sponsorship, as the Home Office describes sponsorship as a privilege and not a right. There are several different Sponsor Licence and corresponding visa categories, so it is highly recommended to consult with legal advisers to understand the best route for your organisation's circumstances.

The application process involves submitting an application form with details about the organisation, the licence category the application is for, and individuals within the organisation who will manage the licence if awarded. Supporting documentation (which will be case- and category-specific) must be prepared, and after the application payment is made, the entire application will be submitted to the Home Office for consideration.

Once a Sponsor Licence has been awarded to an organisation, the organisation can identify a foreign national to undertake a specific role in the U.K.

### Migrant Worker's Visa Application

Before any visa application is submitted, a sponsoring organisation will have to decide on details about the job, including, among other things, job title, salary, job description and hours to be worked per week.

It is important to consult legal advisers at this point to ensure the job specifications are eligible for sponsorship. The Home Office has several rules on job eligibility, such as a minimum salary and skill level requirements.

Various routes can be used to bring employees to the U.K. and one must bear in mind that different visa routes may require different Sponsor Licences (see above). As demonstrated in the table below, the requirements for each category will vary slightly, and each category will have a different maximum stay in the U.K. and may or may not lead to permanent residence.

The only work-related visa category that does not require sponsorship from an organisation with a Sponsor Licence in the U.K. is the 'Innovator Founder' visa.

<p><b>Skilled Worker</b></p>	<p>A Skilled Worker visa is designed for people who have a specific job offer in the U.K. from a U.K.-based organisation that has a Sponsor Licence. The job must be an ‘eligible’ job on the Home Office’s list of ‘eligible occupations’, and the job must meet the minimum salary requirements.</p> <p>The applicant needs to show they can speak English to an adequate level. This can be evidenced in a few different ways, for example by taking a Home Office-approved English language test.</p> <p>The visa can be granted for up to five years at a time, and there is no limit to the number of times an applicant can extend their visa.</p> <p>After five years in the U.K. with a Skilled Worker visa, the applicant should be eligible to apply for permanent residence (known as Indefinite Leave to Remain).</p>	<p>‘Senior or Specialist’ applicants do not need to evidence their English language ability.</p> <p>This visa can be granted for up to five years at a time. The applicant may be able to extend their visa but there is a maximum total stay in the U.K. permitted in this category. This is either five years in any six-year period, or nine years in any 10-year period, depending on the level of the applicant’s salary.</p> <p>In this route, there is no option for ‘Senior or Specialists’ to apply for Indefinite Leave to Remain in the U.K.</p>
<p><b>Global Business Mobility (Senior or Specialist Worker)</b></p>	<p>The ‘Senior or Specialist’ subcategory of Global Business Mobility visas is designed for Senior or Specialist workers to undertake a job in the U.K. branch of their organisation. The applicant must be an existing employee of the organisation overseas. ‘Senior or Specialist’ workers have a higher minimum salary threshold than Skilled Workers.</p>	<p><b>Global Business Mobility (Graduate Trainee)</b></p> <p>This category allows applicants to work for a U.K. branch of their non-U.K. employer as part of a graduate training programme for a managerial or specialist role. The applicant must have already worked for the non-U.K. employer for at least three months before they apply. Graduate Trainees have a slightly reduced minimum salary threshold compared to Skilled Workers.</p> <p>There is no English language requirement for this category.</p> <p>The visa will be granted for a maximum of 12 months.</p> <p>This route does not lead to Indefinite Leave to Remain in the U.K.</p>

<p><b>Global Business Mobility (U.K. Expansion Worker)</b></p>	<p>The 'U.K. Expansion Worker' visa allows individuals to come to the U.K. to set up a branch of an overseas business that has not started trading yet in the U.K. The Expansion Worker must already be working for the business outside the U.K. as either a senior manager or a specialist employee.</p> <p>There is no English language requirement for this category.</p> <p>The maximum period of time a migrant can spend in the U.K. as an Expansion Worker is two years. The idea is to then switch to a Skilled Worker visa after two years.</p> <p>This route does not lead to Indefinite Leave to Remain in the U.K.</p>		<p>This route does not lead to Indefinite Leave to Remain in the U.K.</p>
<p><b>Global Business Mobility (Service Supplier)</b></p>	<p>An employee of an overseas organisation or a self-employed professional person based outside the U.K. may apply for a Service Supplier visa if they have a contract to provide services for a U.K. company. The applicant must have worked for their employer overseas for at least 12 months, or if they are self-employed, they must have at least 12 months' professional experience. The contract must be covered by a valid international trade agreement.</p> <p>There is no English language requirement for this category.</p> <p>A visa can be granted for up to 12 months. This will depend on the trade agreement the applicant is providing services under.</p>	<p><b>Global Business Mobility (Secondment Worker)</b></p>	<p>This category is designed for employees of a business outside the U.K. who are being transferred to the U.K. to undertake a job at a different organisation. The non-U.K. employer must have a high-value contract with the U.K. organisation. The employee must have worked for the non-U.K. employer for at least 12 months.</p> <p>There is no English language requirement for this category.</p> <p>The total time that can be spent in the U.K. as a Secondment Worker is two years.</p> <p>This route does not lead to Indefinite Leave to Remain in the U.K.</p>
		<p><b>Innovator Founder</b></p>	<p>The Innovator Founder visa is designed for individuals who want to set up and run an innovative business in the U.K. This must be different from anything else on the market and must be viable and scalable. The business or business idea must be approved by an 'endorsing body', which are Home Office-elected organisations that consider the proposal.</p> <p>This category requires the applicant to meet a minimum English language requirement.</p>



The initial visa will be granted for three years, and the visa can then be extended for further three-year visas. There is currently no limit on the number of times an applicant can extend their visa.

This route does lead to Indefinite Leave to Remain in the U.K. Applicants may be able to apply after their first three years in the U.K. if they meet the relevant requirements.

In all of these categories, if the main applicant has dependants (i.e., a durable partner who they have been living with for two years, a spouse or dependant children), those dependants can apply to join the main applicant in the U.K. Each dependant must apply separately for their visa.

### **3.2 – Intellectual Property (IP) Law (trade marks, branding, patents)**

#### **Identifying rights**

IP rights are varied in extent, and any one product or business may embody multiple rights. When setting up a U.K. business, an IP audit to identify what may be protectable is advisable, as sometimes delay can risk the loss of rights.

#### **Obtaining rights**

IP rights can be divided between registered rights and unregistered rights. Generally, unregistered rights cost nothing to obtain but can be uncertain in extent (if rights arise at all), whereas registered rights cost something to obtain but provide a reasonable certainty of scope.

## Registered rights

### *Trade marks and designs*

Departure from the European Union has meant that the U.K. now has a completely separate regime for protecting trade marks and designs. For EU rights that were in existence before Brexit, comparable U.K. registrations were created automatically and are now independent of the original EU right and must be maintained separately from the EU right. For new marks and designs, rights must be sought on a national basis if protection is required.

Protection in the U.K. can be sought either via the relevant international system (Madrid Protocol for trade marks, or Hague Agreement for designs) or directly. When using an international route, if any objection is raised or opposition filed, a U.K. address for service needs to be appointed to deal with the matter.

For trade mark protection, cost varies according to the number of trade mark classes that it is intended to cover, and this is determined by the nature of goods and services to be protected.

For design protection, cost varies according to the number of designs to be covered (the U.K. system permits multiple designs to be protected by a single application process).

With both trade marks and designs the extent of examination is limited to formalities and absolute grounds for refusal. Registration can be quick and inexpensive if there are no objections and no oppositions.

It should be noted that our Dublin office can handle corresponding EU rights, and we can offer a package deal if simultaneous EU and U.K. protection is required.

### *Patents*

For patents Brexit has had no effect. Patent protection can be sought either nationally (directly or via the Patent Co-operation Treaty) or by way of a European patent.

Most patents in the U.K. are obtained via the European route, and our patent lawyers are qualified to act before the European Patent Office and, in the EU context, before the Unified Patent Court.

It should be noted that there are national security provisions related to the jurisdiction of first filing of patent applications. If a U.K. business will be generating “military” technologies (and this is wide in its interpretation), advice should be sought before filing outside the U.K.

### *Other registered rights*

Other rights exist (e.g., supplementary protection certificates for certain classes of products; plant variety rights) but are rarer and sector specific. We can advise in detail on request.

### **Unregistered rights**

There are a variety of unregistered IP rights that may arise before or as a business commences operation in the U.K. For a newly establishing business the principal rights that may be relevant are passing off (for unregistered trade marks), unregistered design rights, copyright and associated rights, and trade secret protection.

### **IP-related tax breaks**

In the U.K., there is “patent box” regime which can give businesses that have undertaken some relevant development in the U.K. a reduced effective rate of corporation tax of 10% on worldwide income attributable to relevant IP.

To qualify for the reduced rate, a company will need to own or hold an exclusive licence to qualifying IP rights (U.K. patents, European patents, patents granted under the law of specified EEA states, or specified patent-like rights (for example, plant variety rights)).

If the IP qualifies for the reduced rate, there are specific types of activity that this reduced rate may apply to:

- the sale of patented products, products incorporating a patented product, or bespoke spare parts for patented products;
- licensing out the IP;
- selling the IP;
- infringement income or other compensation relating to the IP; and
- manufacture using, or provision of services using, a patented process.

In addition to the patent box, there is also a separate regime of research and development tax credits encouraging the creation and development of IP in the U.K.

#### Due diligence and freedom to operate

When acquiring an IP portfolio or a business that relies heavily on IP, it is important to ensure that the rights concerned appropriately cover valuable products and processes and are in good order. IP due diligence should address not only what is being acquired, but also whether what is being acquired is useful and usable. It is not uncommon for IP to be acquired that is not relevant to the commercially important business, that is defective, or that presents IP risks that prevent exercise of the IP. Further, third-party rights may stand in the way of a new entrant to the U.K., and while freedom-to-operate searches can be expensive, it is important to ensure that there is minimal risk of infringing third-party rights for the most important products or processes of the business concerned.

#### Branding

Every country has its own culture, and it is not uncommon for a brand having a high reputation in one country to have adverse connotations in another. Before adopting new branding or bringing established brands into the U.K. for the first time, it is important to seek a local view as to whether the brand has negative connotations to the U.K. native.

### 3.3 – Data Protection

#### The law

Since Brexit, the U.K. data protection regime is governed by the U.K. GDPR (which is the retained version of the EU GDPR) along with the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

The legislation applies to the processing of personal data by a controller or processor in the U.K. Personal data protected by the U.K. GDPR is defined as any information relating to a data subject. A data subject is the identified, or identifiable person to whom the personal data relates.

For U.K. businesses, data protection legislation in other jurisdictions may also apply. For example, as the EU GDPR has extraterritorial effect, the EU GDPR may also apply to U.K. companies who have an establishment in the EU, or who offer goods or services to individuals in the EU, or who monitor their behaviour as far as their behaviour takes place within the EU.

#### Key principles of the U.K. GDPR

The U.K. GDPR lays down several key principles which controllers and processors must comply with when processing personal data, including the following obligations:

- **Lawfulness, fairness and transparency:** Personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject.
- **Purpose limitation:** Personal data must only be collected for specified, explicit and legitimate purposes.
- **Data minimisation:** Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.
- **Accuracy:** Personal data must be accurate and, where necessary, kept up to date.

- **Storage limitation:** Personal data must not be kept in a form which permits data subjects to be identified for longer than is necessary for the purposes for which the data is processed.
- **Integrity and confidentiality:** Personal data must be processed in a way that appropriately ensures its security.
- **Accountability:** The controller is responsible for, and must be able to demonstrate, compliance with the other data protection principles.

### Data considerations for a U.K. business

The key questions that all U.K. business will need to ask in relation to their particular sector are:

- Is the company a controller or a processor?
- If it is a controller, do they appoint any processors and have appropriate contracts in place?
- What is the legal basis for processing?
- Has a privacy notice been provided to data subjects?
- Are there documented records of processing?
- Are there appropriate technical and organisational measures in place?
- Are there data retention policies in place?
- Can the controller handle requests from data subjects?
- Are there processes in place for breach notification?
- Has the company registered with the appropriate information commissioner's office(s) and paid any applicable fees?
- Does the business need to appoint a data protection officer?

### The implications of getting it wrong

The U.K. GDPR imposes fines of up to 4% of global turnover of the preceding financial year or GBP17.5 million (whichever is greater) for the most serious violations and up to 2% of annual worldwide turnover of the preceding financial year or GBP8.75 million (whichever is greater) for other violations.

The U.K. GDPR lays down several key principles which controllers and processors must comply with when processing personal data.



# SECTION 4

## **TAX CONSIDERATIONS**

#### 4.1 Overview of Corporations Tax in the U.K.

If you intend to do business in the U.K. you will an early stage need to consider the U.K. taxation system and legislation, the effect that will have on your ability to do business in the U.K. and what tax you will need register (and pay) to do business here. Broadly speaking, the main tax you need to be aware of is U.K. corporation tax which you will be subject to as a result of either:

- trading through a permanent U.K. registered branch (“**branch**”); or
- trading through a U.K. subsidiary.

The tax position for a branch or a U.K. subsidiary is largely similar and there is no separate type of tax specifically for a branch which is also subject to corporation tax. If your U.K. subsidiary is a U.K. incorporated company or otherwise a foreign company managed and controlled from the U.K., it will be a tax resident in the U.K. and subject to taxation in the U.K.

In the current financial year, the rate of corporation tax is set at 25% (known as the “**main rate**”) which applies to companies to with profits in excess of £250,000. Companies with profits between £50,000 and £250,000 are still required to pay tax at the main rate reduced by a marginal relief providing a gradual increase in the effective corporation tax rate. There is also a separate small profits rate of 19% which applies to companies with profits of £50,000 or less.

Whether you have decided to set up a branch or U.K. subsidiary your entity must register with HMRC within three months of commencing business. Further your branch or U.K. subsidiary must:

- account for corporation tax on the expiry of nine month from the end of the accounting period to which the tax relates;
- large companies have to make quarterly (on account) payments of corporation tax; and
- appoint accountants (or other service provides) to deal with its tax compliance needs.

#### U.K. subsidiary

If you to set up a U.K. subsidiary it will be subject to corporation tax on its worldwide profits. In relation to those worldwide profits which are also taxable in a non-U.K. jurisdiction, there is often double taxation relief which can be available if there is a relevant double taxation treaty (or unilaterally) with that non-U.K. jurisdiction. The U.K. has double taxation treaties with more than 100 jurisdictions globally. A U.K. subsidiary can also elect to operate an exemption from U.K. for all its foreign permanent establishments however, there are stringent conditions that must be met to qualify for the exemption.

#### Non-U.K. company with a branch

If you are a non-U.K. company with a branch you will be subject to U.K. corporation tax on all profits derived from any trade carried on through your branch. Further, these profits may also be subject to corporate income tax in the non-U.K. company’s jurisdiction of residence. However, depending on your non-U.K. jurisdiction credit may be available in that jurisdiction for any U.K. corporation tax you have already paid on those profits.

If your non-U.K. company is not trading through a branch, you will be liable for U.K. income tax at the basic rate (which is currently 20%) on U.K. source income (other than property income) which is also subject to any applicable relief under a double tax treaty.

#### U.K. anti-abuse rule (“GAAR”)

Another important point to be aware of is that the U.K. has a GAAR. GAAR means that any arrangements set up to avoid taxation may be invalidated (even if previously considered lawful) if they are considered to be “abusive”. The reason this rule was designed and enacted was to counteract what may have been previously considered lawful but “aggressive” tax planning being implemented in the U.K. Effectively this is another tool available to HMRC to help combat tax-avoidance in the U.K.

#### 4.2 Other relevant taxes and tax-related considerations affecting your branch of U.K. Subsidiary

There are various other taxes and tax-related considerations that you should consider when doing business or looking to do business in the U.K., while we cannot discuss all of these we have set out some common and important taxes and tax related considerations that you should be aware of.

##### Value added tax (“VAT”)

VAT is a U.K. sales/consumption tax that is generally charged on all supplies of goods and services made, or deemed to be made, by a business in the U.K. There are four main categories of supply for the purposes of U.K. VAT:

- standard rated: 20%;
- reduced rate: 5%;
- zero rated 0%; and
- exempt from VAT – generally referring to when supply is outside of the scope of VAT.

Supplies are most commonly standard rated. As such if your branch of U.K. subsidiary makes taxable supplies in the U.K. and the value of those supplies (after taking into account any exemptions) exceeds at the end of any month:

- a specified limited in the year then ended (this is £85,000 for 2022/23); or
- if there are reasonable grounds to believe that the value of the taxable supplies of the branch/U.K. subsidiary will exceed the specified limit in the next 30 days, you should notify HMRC and register for VAT.

There are financial penalties for failing to pay and/or register for VAT.

If you do not have a U.K. VAT establishment, you are required to notify HMRC and register for VAT when your business makes any taxable supplies in the U.K. Where your business’s turnover is below the specified limited you may still voluntarily register for VAT in order to recover VAT charged to your business.

##### Payroll Taxes

If your branch or U.K. subsidiary employs individuals to work in the U.K. it will be required to deduct income tax under the pay as you earn system (“PAYE”). This is deducted from all payments of salary and bonuses made to those individuals. Subject to limited exceptions, there are social security payments known as National Insurance Contributions (“NICs”) which are payable by both the employee and the employer (your business). Your business deducts the employee’s contribution from payments of salary when made to the employee and different rates apply to different bands of weekly earnings as currently follows:

- earnings between £242 and £967 per week attract a maximum rate of 12%; and
- any earnings in excess of that are taxed at a maximum rate of 2%.

As noted above your business’s employer contribution is made in addition to the employee’s and made not be recovered from the employee (which in effect can become an additional cost for the employer). Your business’s liability to NICs depends on the level of the employee’s earnings and their national insurance category (right now the highest current rate is 13.8%).

Your business will be entitled to an annual “employment allowance” of £5,000 to reduce its liability for the employer’s contribution. Further as soon as your business (whether branch or U.K. subsidiary) employs an individual it should inform HMRC and establish a payroll system. There are various payroll services providers in the U.K. where that this could be outsourced to.

## Dividends

If you are doing business via a U.K. subsidiary it is important to consider dividends and applicable taxation as repatriation of profit from a U.K. subsidiary is generally by dividend. Dividends in the U.K. can only be paid out of accumulated realised profits and any losses have to be made good before dividends can be paid out. A dividend paid by a U.K. subsidiary is made out of post-tax profits, and that dividend is not deductible in computing taxable profits.

Whether you are paying a dividend to a U.K. resident shareholder or a non-U.K. resident shareholder – the U.K. does not impose withholding tax on dividend payments. Individuals receiving dividend income benefit from a tax-free dividend allowance of £1,000 per tax year. In addition, some individuals may also be entitled to a tax-free personal allowance of £12,570 each year. In respect of dividends received by an individual above these allowance amounts, the amount of U.K. tax payable in respect of this income dividend is decided by which of the tax bands that individual falls into:

- Basic rate tax payers pay 8.75% on their dividend income from shareholdings that exceed the tax-free allowance of an individual. This will be £1,000 at a minimum (the tax-free dividend allowance) but could be as high as £13,570 (if an individual is entitled to an annual tax-free personal allowance of £12,570 on top of the tax-free dividend allowance of £1,000).
- Higher rate tax payers will pay 33.75% on their dividend income from shareholdings on amounts above £36,701 a year.
- Additional rate tax payers will pay 39.35% on their dividend income from shareholdings above £125,140 a year.

In relation to a branch, profits earned by a branch can be repatriated to the non-U.K. parent company at any time and there is not a branch profits tax to be withheld.

## Stamp Duty

In the U.K. stamp duty is payable on any transfer of shares in a company and certain other securities (although shares traded on AIM of the London Stock Exchange are exempt from stamp duty). Stamp duty is paid at 0.5% of the price paid for the shares (subject to any applicable or available exemptions or relief). Stamp duty land tax is payable on the acquisition of most types of U.K. real estate. This is charged by reference to the price paid for the real estate, including rent under a lease. It is a liability belonging to the party acquiring the real estate and it is charged at various rates that are applied to slices of the price. In England acquisitions of commercial real estate attract rates of up to 5%, and rents are charged at rates of up to 2% of the net present value (also subject to any applicable exemptions or relief).



*Ben Symons* of Old Square Tax Chambers contributed to Section 4 of this report. He is an experienced barrister with extensive knowledge in all areas of U.K. taxation law.

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# SECTION 5

## OUR TEAM

Armstrong Teasdale’s U.K. office provides comprehensive legal services and its lawyers regularly advise on the breadth of issues discussed in this guide. Further, we have in-depth knowledge of the U.K. market built through years of experience.

If you have any questions on the matters discussed within this guide or if you need further guidance, please contact us.

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