

## Establishing a business in the UK

### Why the UK?

The UK economy is highly attractive when compared with those of other European countries. As well as the strength of its economy there are a number of other advantages the UK can offer businesses including:

- access to European markets through the UK's membership of the European Union
- the UK has extremely sophisticated capital markets. The London Stock Exchange is the fourth largest stock exchange in the world and the UK is one of the world's largest financial centres
- the UK has an internationally renowned reputation for innovation and technological expertise
- the UK has a pool of relatively cheap skilled labour. There are flexible labour laws and the immigration laws have been amended to attract entrepreneurs and help employers bring highly skilled people into the country
- the UK's integrated transport network provides fast, low cost delivery throughout Europe
- English is the main language of the business speaking world
- exchange controls were abolished in 1979. There are no exchange control restrictions on inward direct or indirect investment in or on the repatriation of funds from the UK by overseas individuals and companies

- the UK warmly welcomes inward investment and continues to encourage trade to and from overseas.

### What are the Business vehicles used within the UK?

The most common entities for a foreign investor to carry on a business in the UK are through a:

- Company
- Branch
- Partnership or Limited Liability Partnership
- Joint Venture
- Sole Trader

Each has its own advantages and disadvantages depending on the type of business expected to be carried on. For the purposes of this note, we concentrate on limited companies and branches.

### Limited company

Most overseas businesses wishing to establish in the UK will form a UK company limited by shares, usually as a subsidiary of the overseas company. A company can be public or private. There are four main advantages of using a limited company:

- the liability of shareholders (the owners of the company) is limited to any amount which they still have to pay in respect of any unpaid amount of the subscription price of their shares. If no amount remains unpaid on the shares, shareholders generally incur no liability for the trading debts of a limited company

- the company is a legal person in its own right and can carry out acts in its own right
- it is quick and cheap to incorporate a limited company
- a limited company trading actively is an effective way of protecting a name.

### **Establishing a Place of Business, Branch or Subsidiary**

The process of registering a place of business is straightforward. The overseas company will need to complete a form which requires it to give details of the parent company, shareholders and directors and attach to this a copy of its memorandum and articles of association. These need to be certified as being true copies of the original, and if not in English, need to be translated.

#### **Branch**

The process of establishing a branch is similar to that of establishing a Place of Business. The overseas company will need to file a form giving details of its shareholders and directors. It will also need to submit with the form a certified copy of its memorandum and articles of association (company bylaws or equivalent). If these are not in English, they will need to be translated.

The form needs to provide details of the UK address from which business is going to be conducted.

The process of establishing a branch can take up to three weeks but can be less depending on the circumstances.

#### **Subsidiary**

A limited liability company is very easy to form. There are no statutory consents that need to be obtained prior to setting up the company.

A company can be established by submitting a form providing the authority of at least one person who is prepared to act as a director

and another person who is prepared to act as a company secretary. It is normal for a company to have at least two directors, one of whom will also be acting as a company secretary. The role of company secretary can be outsourced to third party service providers. There is no requirement for either officer to be a national of or resident in the UK.

There is no requirement for the company to have a minimum amount of issued share capital. Such a company is normally formed with one £1 issued ordinary share. Authorised and paid up capital can be increased at the time that the company is formed or later, depending on commercial requirements.

The name chosen for the company must not be equivalent to or similar to, an existing company's name. It is therefore sensible to register a company as soon as a decision is made to establish a UK presence.

### **Accounting Requirements**

#### **Branch**

If the law under which the parent is registered requires publication of audited accounts, a copy of those accounts needs to be filed in the UK. If the parent company has no such requirement, it must prepare and deliver for filing its accounts prepared in accordance with the requirements of UK company law.

The accounts that are filed are available for public inspection in the UK. This can sometimes be an issue if the parent is not used to having its financial information made public. In such circumstances, the parent should either form a subsidiary rather than a branch or, in its home jurisdiction, establish another company which then establishes the UK branch. When the accounts of the parent company are then filed, it only contains information relating to the branch activities.

## Subsidiary

A UK subsidiary needs to prepare and file annually, a copy of its accounts prepared in accordance with UK company law. The accounts, once filed, are available for public inspection. The UK subsidiary may also require a statutory audit.

## Taxation Liabilities

### General

Under UK tax law, a branch is subject to corporation tax on profits from its business activities carried on within the UK.

A subsidiary is treated as a separate entity and is subject to corporation tax on its worldwide profits, but with credit for overseas tax charged.

Rates of corporation tax are currently between 20% and 30% depending on the level of profits and the number of associated companies within the group.

### Transfer Pricing

The UK has transfer pricing legislation which dictates that trading between connected parties needs to be on an arm's length basis. This is to stop international groups organising intra-group transactions so that profits always pass out of the UK to those countries where the rate of taxation is lower than that charged in the UK.

For both branches and subsidiaries it will be necessary for it to undertake a transfer pricing review to evidence that the pricing between the parent and its UK entity is what would be agreed by parties acting on an arm's length basis.

### Losses

Generally, start up losses generated by a UK branch and subsidiary can be carried forward and set against future income or surrendered to other companies within the European Union.

The extent to which losses of a branch or subsidiary can be used elsewhere will depend on the law of the country to which such losses are surrendered.

## The UK's attractiveness as a Holding Company location

The UK is attractive for establishing a holding company that conducts business in the UK but has the potential to expand into other countries. The wide number of double tax treaties that the UK has negotiated and entered into means that withholding taxes on dividend payments from countries overseas will be minimized.

If the UK company was used to hold shares in other companies, and such shares were then sold, the resulting gain is exempt from tax provided the company held at least 10% of the shares and it was a trading company or part of a trading group.

Any dividends received by a UK parent company will be subject to UK tax but a credit is available of up to 30%. The UK itself does not levy a withholding tax on dividends paid to its shareholders whether UK or overseas based.

## Employment

An employee will be employed under a contract of employment, whether oral or written. Legislation provides considerable safeguards for the employee in his terms of employment as well as working conditions.

An employer is required to give an employee written information as to his terms and conditions of employment, any disciplinary rules applicable and the procedure available when there is a grievance about the employment.

An employer may also want to impose further terms and conditions on the employee including:

- an agreement to opt out of the maximum 48 hour week
- restrictions on the employee entering into business in competition with the employer after termination of the employment
- bonus payments and employee incentive schemes
- private health care
- pensions
- expenses

Nationals of states which are part of the European Economic Area (EEA) do not require leave to enter or remain in the UK to work or to conduct a business. Such nationals can apply to the Home Office for a residence permit.

Nationals of states outside the EEA coming to the UK to seek or take employment must hold a valid work permit. It is the employer who will apply for the work permit.

## Property

Property in the UK can be acquired as either a freehold or a leasehold.

No permission is needed for buying or leasing property in the UK, but a foreign corporation may be asked to show that its incorporation documents give it power to acquire and dispose of land wherever it may be located.

If the buyer has to borrow funds towards the purchase price, the lender will normally request that repayment of the loan and other charges are secured on the property.

Where the property is leasehold the terms of the lease must be carefully considered to check that the provisions meet with the buyer's expectations and requirements.

## Speechly Bircham

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With over 160 lawyers, the firm has the depth and quality of resources to handle complex transactions. We offer our clients a premium service from accomplished professionals who take a personal pride in exceeding modern service expectations.

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