



SETTING UP BUSINESS IN THE UK

Now is an ideal time to expand your business into the UK - a mature, high-spending market which offers world-class talent, high investment and a robust, business-friendly regulatory environment in which to trade and invest.

Our lawyers have the experience and expertise to guide you through each stage of setting up your UK business and will continue to support you as your business grows and expands. With a focus on practical, timely and commercial solutions, and our close relations with other professional advisers, agencies and service providers, we provide tangible benefits to our overseas clients who do business in the UK.

A CHECKLIST FOR SETTING UP IN THE UK

| FOCUS | ADVICE REQUIRED | WHO |
|-----------------------------|---|---|
| Setting up your UK business | Setting up the UK entity Ongoing corporate compliance | Lawyers |
| | Insurance policies including employer's liability, public liability and professional indemnity | Insurance brokers |
| | UK banking facilities | UK banks Lawyers to advise on terms of the facilities provided by the bank |
| Assembling a team | Drafting offer letters, employment contracts, confidentiality agreements and policies Visas, immigration advice and sponsorship licence Stock options | Lawyers |
| | Payroll | Accountants or specialist payroll providers |
| | Employee benefits | Benefits advisers |
| | Recruiting UK staff | Recruitment and executive search agencies |

| FOCUS | ADVICE REQUIRED | WHO |
|---|--|---|
| Doing business with clients and customers | Terms and conditions of business Distribution, franchise and other commercial arrangements E-commerce; website terms and conditions; consumer protection regulations, data privacy and cookies | Lawyers |
| | Meeting tax obligations | Accounting and tax restrictions Treatment of cross-border flows of funds within the company's group Home country and UK accountants and specialist tax advisers |
| | Protecting IP | Advice for individuals relocating to the UK on personal UK tax implications Lawyers Protecting trade marks, copyright and patents Putting in place intra-group licence arrangements Lawyers |
| Premises | Sourcing suitable premises | Real estate agents and property advisers |
| | Leases, property acquisition and maintenance contracts | Lawyers |
| | Construction and fit out Infrastructure compliance | Fit-out specialists Surveyors Building contractors |



SETTING UP YOUR UK BUSINESS

One of the first steps in incorporating a new UK company is ensuring compliance with the UK Companies Act regime. Compliance is crucial for the company's legal and operational success.

INCORPORATION OF A NEWCO

The process of incorporating a new company includes various steps such as verifying the proposed company name, providing electronic copies of essential documents like the certificate of incorporation, articles of association, and completed statutory company books and registers. Additionally, it is crucial to maintain records of the first meeting of directors through minutes and issue share certificates that validate the subscriber shares.

COMPANY SECRETARIAL SERVICES

We can provide company secretarial services on an annual retainer basis. Within this arrangement we ensure the digital maintenance of a company's statutory registers using a CoSec Platform. Annual tasks, such as filing the confirmation statement, are undertaken as part of the retainer. Furthermore, event-driven filings that do not incur additional costs are performed, ensuring that relevant statutory registers remain up to date. Examples of such filings include appointments and resignations of directors, updates to the Persons of Significant Control register, and modifications to the accounting reference date. The retainer also allows for the utilisation of Stevens & Bolton's office as the UK registered office for the new company.

A recent development in UK company law has been the Economic Crime and Corporate Transparency Act 2023, which is designed, amongst other things, to increase transparency and accuracy at Companies House. As the secondary legislation contemplated by the Act makes its way through Parliament, our service will support the company to meet the new and enhanced powers of the Registrar.

AD HOC SUPPORT AND GROWING A COMPANY

Over the course of a company's lifespan, there will be additional filings and updates to be managed. Support can be provided for activities such as share allotments, share transfers, and other changes related to the company's share capital. Additionally, assistance can be offered for updating the company's constitutional documents. To facilitate these processes, the necessary board minutes and shareholder resolutions can also be provided.

OTHER CONTACTS

Recognising the common need for accountancy support among new businesses, particularly in areas such as accountancy, tax, payroll, VAT, and transfer pricing, introductions can be made to friendly accountants who are eager to provide their assistance.

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ASSEMBLING A TEAM

People are critical to the success of a business and there are several considerations when staffing a UK business.

STAFFING OPTIONS

There are various options for engaging staff, including as employees, workers, genuinely self-employed contractors or via an employer of record. All UK staff are entitled to a certain level of protection under UK employment law, with employees currently possessing the most extensive rights. Advice should be taken on the most appropriate means of engaging staff, with direct employment likely to be the most appropriate in most cases.

The employer of record model is increasing in popularity due to its convenience but there are financial, legal and practical implications to consider. Care should be taken when engaging contractors due to the tax and legal risks which may arise if the contractor is not genuinely self-employed.

EMPLOYING ENTITY

If the preference is to directly employ staff, a UK subsidiary company is the most conventional employing entity. However, if the intention is not to incorporate a UK subsidiary, staff can be employed by a non-UK business, provided it is registered with the UK tax authority, HM Revenue & Customs (HMRC), to withhold payroll taxes.

MOVING PEOPLE TO THE UK

The UK's immigration rules are complex and there can be delays, so it is critical to take immigration advice at the earliest possible opportunity if transferring existing staff to the UK or if hiring from outside the UK is a consideration. In most cases the UK business must obtain a sponsorship licence if it wishes to employ non-UK or non-Irish nationals. Amongst other requirements, businesses will need a UK presence and UK bank account, as well as at least one UK based employee or director, to obtain a sponsorship licence.

APPROPRIATE DOCUMENTATION

However you engage your staff, you will need to put in place appropriate documentation with them, including a compliant contract under which they are employed or engaged, documents that go towards demonstrating your compliance with your data privacy obligations and a set of people policies which will set out the applicable rules and procedures that apply to your UK staff. It is rarely appropriate for non-UK documents to be used for this purpose so early advice should be sought on preparing compliant documentation.

PROTECTING BUSINESS INTERESTS

Businesses can protect their interests by incorporating necessary provisions in staff contracts. These provisions encompass safeguards for confidential information and intellectual property, as well as appropriate restrictions on unfair competition following the termination of employment. By including these protections, businesses will be in a better position to protect themselves and mitigate the risk of unauthorised use of confidential information and unfair competition.

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DOING BUSINESS WITH CLIENTS AND CUSTOMERS

Assistance can be provided in determining any preconditions to trading and advising on the commercial terms of trade with clients and customers. The following outlines a non-exhaustive list of key considerations from that perspective.

LICENCES AND AUTHORISATIONS TO TRADE

In the UK, most businesses do not need to be authorised or registered to conduct their operations. However, certain products require certification (for example electronic items, toys or medical devices), and there are certain regulated sectors, including pharmaceuticals, financial and other professional services, alcohol and defence, that require licences for specific activities. The business will also need to comply with generally applicable regulatory obligations.

INSURANCE REQUIREMENTS

Some insurance, such as employer's liability insurance, is legally required, while others, such as public liability insurance, product liability insurance, insurance for premises and commercial vehicles, and business interruption insurance, are recommended. Seeking professional advice and assistance from a broker can help to identify the most suitable coverage for a business.

SALES TO CONSUMERS

Subject to any sector specific requirements, it is not generally necessary for a company to be registered to trade with consumers. However, if a business grants credit to consumers outside of regular trade credit terms, a consumer credit licence is required, and credit documentation must adhere to legal format regulations.

When it comes to selling goods and services to consumers, there are specific legal protections that consumers benefit from under law. These include the right to receive certain information before entering into a contract, restrictions on additional charges, and the right to cancel certain contracts. These requirements must be taken into consideration in all dealings with consumers.

LOCALISING COMPANY STANDARD TERMS

In many cases, a parent company's standard terms of business can be used. However, adjustments may be necessary to ensure compliance with local law, and it is recommended that businesses have their terms of business reviewed before entering the UK market. Although standard terms of business used in the UK can be subject to a law other than English law, English law will apply to most aspects of employment and certain consumer contracts, regardless of the choice of law. It is important to specify in the terms which courts have jurisdiction over disputes between the parties.

NEGOTIATING WITH SUPPLIERS AND CLIENTS

It is likely to be significantly more straightforward to contract based on English law agreements than to seek to use foreign law agreements in the UK. Luckily, as a common law jurisdiction, there is a relatively limited amount of statutory law that overrides contract terms and so courts will typically give effect to the ordinary meaning of the terms contained in any contract. However it is important therefore that any contracts are carefully reviewed and negotiated. It is typically advisable to engage a lawyer in the jurisdiction to review any material contracts and can be a good idea to produce English law templates for the most common types of agreements entered into.

LITIGATION AND REGULATORY ENFORCEMENT

Of course, from time to time things do not go as planned, and this can result in litigation or enforcement by regulators. Specialist teams are available to provide assistance with these issues, whether they occur during the setup phase or as the business expands.

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MEETING TAX OBLIGATIONS

WHAT TAX WILL BE PAYABLE BY A COMPANY SETTING UP IN THE UK?

A UK company currently pays corporation tax at the rate of 25% in financial year 2025. There is a small companies' rate of tax of 19% for companies with profits up to £50,000.

The UK tax legislation is designed to promote innovation, such as through generous research and development tax credits or the "patent box" regime.

If the UK company has employees, it will need to operate a system called Pay As You Earn (PAYE) to deduct income tax. It will also need to deduct and pay social security contributions, called National Insurance Contributions. These are calculated as a percentage of salary with a proportion being paid by the employee and a more significant proportion by the employer.

Value Added Tax (VAT) is added to most supplies of goods or services and so a UK company will most likely both pay it and charge it. It may be possible to later reclaim the VAT from the UK tax authority, HM Revenue & Customs (HMRC), but this will depend upon the nature of the business carried out in the UK. The UK company may be required to register for VAT in the UK.

The UK company will need to file an annual tax return with HMRC online.

WHAT TAX WILL BE PAYABLE BY THE SHAREHOLDERS?

Shareholders generally only pay tax on dividends paid by the company and capital gains tax on disposal. Certain exemptions apply where dividends are paid to a parent company. Tax advice should be obtained in both the UK and parent company country.

HOW SHOULD THE PARENT COMPANY STRUCTURE ITS INVESTMENT IN THE UK SUBSIDIARY COMPANY?

Usually, equity investment is small and funding injected as a loan. This achieves greater flexibility because the ability to return equity investment is limited, unlike loan repayments. Payments of interest on the loan are usually tax deductible but withholding tax is sometimes payable on parent company loans.

Tax structuring will be important to establish treatment of repayment of parent company loans and any interest payable, the applicability of transfer pricing rules and the extent to which the investment is funded either through debt or equity.

WHAT ARE THE TAX IMPLICATIONS OF GRANTING SHARE OPTIONS TO EMPLOYEES?

It is common to grant shares or stock options to key employees. The UK has a complex code which taxes shares received by employees but there are various tax efficient schemes and structures which may be available, so early advice is essential.

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OBTAINING REGISTERED IP PROTECTION IN THE UK

As with any new market it is generally advisable to carry out clearance searches to ensure that a business entering the UK will have freedom to operate without risk of infringing third party rights.

Thinking carefully about the protection of registered IP in the UK has become even more important since it left the European Union. New EU Trade Mark and Registered Design applications no longer cover the UK, and there are complex transitional arrangements that apply to rights registered before 31 December 2020. The UK is also not participating in Europe's newly established Unified Patent Court (UPC).

Further, it is now a requirement that for most actions before the UK Intellectual Property Office the applicant/owner must have an address for service in the UK.

Finally, UK law regarding unregistered rights is also different to other jurisdictions. For example, there is no statutory or common law cause of action in "unfair competition", and rights in the closest equivalent ("passing off") require goodwill to have been established through significant trade in the UK, which can take months or years.

It is, therefore, very important to decide how a brand, technology or design is best protected in the UK before trading commences.

INTRA GROUP LICENSING

Many businesses will already hold IP outside the UK that they wish to use within the jurisdiction. There are various ways in which this can be achieved, and the best option may ultimately be driven by tax or accounting considerations within the wider group. However, in all cases it is advisable for the licensing of IP to be properly documented and generally for those licences to be subject to the law of England and Wales.

CREATION OF IP BY UK EMPLOYEES

The basic position under UK law is that IP created by employees in the course of their employment is owned by the employer, unless agreed to the contrary. However, the same is not true for consultants and there is no UK equivalent of the "Work For Hire" doctrine.

It is, therefore, important to think carefully about who will be creating IP for the benefit of the business in the UK; and ensuring that appropriate contracts are in place that provide for the business to own that IP.

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One of the primary considerations when setting up a business in the UK is sourcing suitable premises.

The location and type of premises will depend on the nature of the business and its target market. Factors to consider include accessibility, proximity to suppliers and customers and availability of necessary infrastructure such as transportation links and proximity to large population centres. Engaging with a commercial property agent at an early stage can be helpful in identifying appropriate premises that meet the specific needs of the business. There is a wide variety of agents in the market and we can often assist clients with recommendations of ones that may be suitable for the relevant property.

KEY CONSIDERATIONS FOR ACQUIRING OR LEASING BUSINESS PREMISES

Once suitable premises are identified, the next step is to determine whether the business will be acquiring the freehold of the premises in question or, alternatively, whether the business will be taking a lease of the premises. If the business intends to take a lease of the premises, it will be important to be properly advised as to the form of lease to be taken as well as the agreed lease terms. Some of the key lease terms to be considered are: the level of rent payable under the lease, the duration of the lease term, whether the lease will be taken on a full repairing basis, whether the rent payable under the lease will be subject to review, whether the lease will contain an ability for the tenant to assign the lease or underlet the premises and/or whether the lease will contain any break rights. Given the complexities around lease negotiations, it will be important to seek legal advice from a commercial property solicitor and a surveyor at an early stage who will be able to advise on what lease terms would be appropriate in the market for the business.

Regardless of whether or not a business will be taking a lease or acquiring a freehold interest in a premises, most property acquisitions require thorough due diligence, including property valuations, title searches and assessing any potential legal or financial encumbrances which may affect the title of the premises to be acquired. As such, engaging with a property surveyor and a solicitor experienced in property transactions will be essential to ensure a smooth acquisition. In the UK tenants are generally responsible for all repair and maintenance costs relating to a property which can differ from other jurisdictions. In addition there can be significant property taxes which should be considered at an early stage.

NAVIGATING CONSTRUCTION AND FIT-OUT

Once premises have been acquired or a lease secured, it will then be important to consider whether any construction and/or fit-out works might be needed. This can involve building alterations, interior design, and installation of necessary infrastructure and equipment. Accordingly, engaging with qualified contractors, architects, and interior designers will be crucial to ensure that construction and fit-out projects are completed efficiently, meet regulatory requirements, and align with the business's aesthetic and functional needs. We can assist with the selection of the relevant team and the contractual framework used for the works which can differ on projects, as well as carrying out due diligence on them.

ENSURING REGULATORY COMPLIANCE

Statutory compliance is another vital aspect. Businesses must comply with various regulations, including planning permissions, building regulations, fire safety requirements, and accessibility standards. Engaging with professionals who specialise in these areas, such as planning consultants and fire safety experts, can help ensure compliance and avoid potential legal issues. Again we can assist with these professionals.

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If you would like any further information on anything you have read in this document then please get in touch with your usual Stevens & Bolton contact or a member of our International Practice Group set out below.



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