

# Establishing a business presence in the UK





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If you are a non-UK corporate body and you wish to establish a business presence in the UK, this brief guide covers the main issues you need to consider. Establishing an operating subsidiary, branch or other business presence in the UK is a straightforward process, and can be achieved very quickly and at moderate cost.

There are no restrictions on foreign ownership of businesses and no UK exchange or investment control regulations – although some business sectors, such as banking, financial services and charities, will need sector specific government or regulatory approval or registration before starting to trade.

Relative to a number of other jurisdictions, the rates of UK corporation taxation remain low, helping to create an attractive trading and investment environment.

When deciding on the structure for your UK business presence, there are several different options to consider including the following:

- Establishing a UK branch or other place of business
- Establishing a UK subsidiary
- Establishing a UK limited liability partnership (LLP)

For UK corporate law purposes, England and Wales, Scotland and Northern Ireland are separate jurisdictions. The following focuses on the issues in relation to a company incorporated outside the UK wishing to establish a business presence in England.

## 1 Establishing a UK branch or other place of business

A UK branch or other place of business will share the same legal entity with its overseas parent, so the UK business will contract in the name of the parent for all sales and purchases and the parent will remain responsible for all debts and obligations which may be incurred in the UK.

### Establishment

Within one month after opening a branch or other place of business in the UK, the parent must send to Companies House, the UK companies register:

- a certified copy of the parent company's constitution and if necessary a certified translation of the constitution into English;
- a copy of the latest set of accounts filed by the parent company and if necessary a certified translation;
- a Companies House form giving details of both the parent company and the UK business including:
  - the parent company's corporate name;
  - the name under which the UK business is to be carried on (this will be the name under which the UK business will be registered);
  - the directors of the parent company;



- the address in the UK from which the business will be conducted;
- the permanent representatives who will be authorised to represent the parent company in respect of the UK business, and the extent of these individuals' authority to bind the UK business; and
- a small filing fee.

The name under which the UK business will trade and be registered will need to be one which is available in the UK and complies with certain restrictions as to prescribed sensitive words.

Before deciding on the UK business name, it would be advisable to consult a trade mark specialist to ensure that there is no one else who is already using an identical or similar name, and whose rights may then be inadvertently infringed. The trade mark specialist would be able to recommend and undertake appropriate searches, which are often much broader than just searches of relevant trade mark registries.

There is no restriction on where the permanent representatives are required to be based. They do not have to be resident in the UK.

If everything is in order, the registration can usually be completed within two weeks of filing the documents at Companies House.

### **Ongoing requirements**

Following registration, filings must be made with Companies House on an ongoing basis to record:

- any changes to the information and documents that have been sent to Companies House; and
- copies of the annual accounts of the parent company each time these are produced (with if necessary a certified translation).

The UK registered business name and the parent company's country of incorporation must be displayed at the UK business address.

All correspondence and documents, whether in hard copy or electronic form, and websites, used in the UK business, must show the UK registered name. There are detailed requirements as to what other corporate information must be shown on all UK business letters (including emails), order forms and websites. If any correspondence shows the name of a director of the parent company (other than in the text or as a signatory), then the names of all the parent company directors must be shown.

If the parent company establishes another branch or other place of business anywhere in the UK, not just outside England, it must register with Companies House that new branch or other place of business and each subsequent new branch or other place of business.

The parent company must notify Companies House as soon as it closes a UK registered branch or other place of business.

### **Tax**

Companies which are not incorporated in the UK nor otherwise UK tax resident will generally be chargeable to corporation tax in the UK only if they carry on a trade in the UK through a permanent establishment. However, a non-UK resident company will not generally be treated as having a permanent establishment if its UK activities are "only of a preparatory



or auxiliary character". Companies holding UK property may be subject to UK tax even if they do not have a permanent establishment in the UK.

In addition to corporation tax, other UK business taxes such as value added tax and payroll and employer taxes are also likely to be relevant to the activities of a UK branch or other place of business located in the UK. Please see the Tax section under "Establishing a UK subsidiary" on page 4 below for additional information in respect of rates of corporation tax and details of other applicable taxes.

## **2 Establishing a UK subsidiary**

When a parent company sets up a subsidiary that is incorporated in England as a private company limited by shares, the subsidiary company is a separate legal entity from the parent. The subsidiary trades and enters into agreements in its own name. Unless the parent company gives any guarantees to third parties, the debts and obligations of the subsidiary are for its own account and are not the responsibility of the parent. However, unless the subsidiary is well-capitalised from the outset, it is likely that third parties such as banks and landlords will require parent company guarantees.

### **Establishment**

It is possible to set up a new company, customised to meet your requirements, through a company formation agent. This typically takes no more than a few days, or could even be done on the same day.

A check on the Companies House website will quickly reveal whether your required name is available. Subject to availability and to certain restrictions regarding some prescribed sensitive words, a company can be incorporated with almost any name.

It would be advisable to consult a trade mark specialist to check that there is no one else already using a name which is identical or similar to the subsidiary's intended corporate name or, if different, the name under which it proposes to trade. This is to ensure that there are no third party rights which would then be inadvertently infringed. The trade mark specialist would be able to recommend and undertake appropriate searches which are often much broader than just searches of the trade mark registries.

The subsidiary's corporate name will end with the word "Limited". This indicates that it is a private limited company.

### **Shareholders**

As a minimum, a private company could have one shareholder (the parent company) holding a single share. There are no minimum capital requirements, except that a share will need to have a nominal value, even if it is only £1.

### **Constitution**

The constitution of the subsidiary company is its "articles of association" which set out the rights of the parent company shareholder and the management requirements of the directors of the company.

Many non-UK parent companies prefer to tailor the constitutions of their English subsidiaries to include special rights which allow the parent company to maintain a measure of control over the board of directors of the subsidiary.

### **Directors/management**

As the "stewards" of the company's assets, the directors of an English company are subject to strict duties. We have separate client guides describing the duties of directors.



It is usual for a subsidiary of a non-UK parent company to have two or more directors (perhaps one or more directors representing the non-UK parent company and one or more locally based directors). An English private company is only required to have one director. There are no UK residence or nationality requirements for directors.

A director should also be required to enter into a service contract with the company setting out the terms of engagement, including the duties and responsibilities, termination provisions and any restrictive covenants.

The directors act collectively to manage the business of the company. An individual director gains his or her authority from decisions of the directors, made at meetings or by resolutions signed by (usually) all of them.

It is now optional for a private company to have someone formally appointed as the company secretary, although the company secretarial work will still need to be done.

Companies usually enter into contracts and other legal obligations through the signatures of their directors and, if they have one, the company secretary (with the combination of signatures determined by what kind of contract it is). Whilst there are a number of ways in which a parent company may impose internal controls on the extent of any individual director's authority to commit the English subsidiary, third parties are generally entitled to rely on the apparent authority of the directors who enter into commitments on the company's behalf.

### **People with Significant Control (PSCs)**

On and from incorporation, the English subsidiary company must identify, record and disclose its PSCs, or state that it doesn't have any. Assuming you are a non-UK private company, you do not qualify as a PSC. Therefore, the new company must look up its chain of ownership to find the first person in that chain who does so qualify.

For example, if you, the overseas private company, are owned and controlled 100% directly by an individual, that individual would be entered on the PSC register of the new English company as its PSC.

Advice should be sought to enable the PSCs and the nature of their control to be determined correctly from the outset.

### **Tax**

All UK tax resident companies are subject to UK corporation tax. This is charged on the company's worldwide profits, which includes chargeable (capital) gains. This is the default treatment of UK tax resident companies; there is scope in some circumstances to elect that any non-UK permanent establishments of the company should fall outside the scope of UK corporation tax. Companies are taxed at a flat rate of 19%. This rate is scheduled to drop to 17% in 2020.

In certain circumstances, if a UK company sets up a subsidiary company in a non-UK jurisdiction, then the profits of any such non-UK company (known as a "controlled foreign company") may be apportioned to UK resident companies entitled to at least 25% of those profits. It is important that specialist advice is sought in the event that there are or may be any non-UK resident companies which are either subsidiaries of or otherwise controlled by any UK resident "holding" company.

There are certain types of income payments in the UK which give rise to a withholding tax obligation, particularly with regard to payments to overseas companies (for example, on most interest payable by a UK resident company). However, at present, there is no general UK withholding tax or other UK tax charge on dividends paid from UK companies to offshore shareholders.

In general terms, residents of countries that have a double tax treaty with the UK may be able to claim exemption or partial relief from UK taxes on certain kinds of income or capital gains derived from UK sources.



Depending upon the nature of the supplies made by the UK based branch or other place of business/ entity, value added tax (VAT), which is a type of sales tax based on turnover, will also need to be considered. The liability to register and account for VAT in the UK depends upon a number of factors, such as turnover, type of supplies made and location of the business.

Several other taxes affecting any business or trade carried on in the UK will also need to be considered, in particular employment taxes and national insurance (the UK form of social security).

### **Accounts**

Full accounting records of all trading and financial activities of the subsidiary company must be kept and for each financial year annual accounts must be prepared for the subsidiary. These may (depending on whether it qualifies and claims exemption from audit) need to be audited by a firm of professional auditors.

The annual accounts must be filed each year at Companies House.

The precise accounting requirements for each company will vary according to a number of factors and in particular whether it qualifies as small, medium-sized or large, and specialist accounting advice will always be needed.

### **Statutory records, filings and stationery**

The English subsidiary company must keep a set of its statutory records (such as minutes of all meetings and decisions of the directors and shareholders, registers of shareholders, PSCs and directors and any charges created by the company) at its registered office, or at another single place which must be notified to Companies House. This can either be at its place of business or could be at the offices of one of its professional advisers.

Filings must be made with Companies House on an ongoing basis in relation to the English subsidiary. These would include:

- any changes in relation to its directors or its PSCs;
- any changes to the articles of association or registered office;
- certain shareholder resolutions and changes to share capital; and
- the registration of mortgages or charges created by the English subsidiary.

The company must also file annually at Companies House a confirmation statement confirming the up to date details of its corporate information.

The full corporate name of the subsidiary must be displayed at any of its business addresses and its registered office.

All business correspondence and documents, whether in hard copy or electronic form, and the subsidiary company's website, must show the full name of the subsidiary. All business letters (including emails), order forms and the website of the subsidiary must also show its registered number, place of registration (England and Wales) and registered office address. Names of the directors need not be provided but if the name of one director is shown (other than in the text or as a signatory) then the names of all directors must be shown.



### **3 Establishing a UK limited liability partnership (LLP)**

An LLP may be suitable for use in the UK as a special purpose vehicle for a joint venture or strategic alliance. It would be rare to use an LLP as a conventional “operating subsidiary” because an LLP is better suited to regulating a multi-member business or project.

The LLP is different from a company and from either a traditional general partnership or a limited partnership.

An LLP is a corporate body which can contract and own property in its own right and which has a legal personality separate from that of its members. Therefore, unless the members (including any parent company) give any guarantees to third parties, the debts and obligations of the LLP will be for its own account and will not be the responsibility of the members. However, as with any trading relationship, unless banks and landlords are satisfied that an LLP is sufficiently capitalised, they may require guarantees from its members.

One of the benefits of a UK LLP is that, as LLPs are generally transparent for UK tax purposes, it is possible for key personnel within the business of an LLP to be incentivised and remunerated in a flexible manner which may be more tax efficient than a payment of salary. From 6 April 2014 significant anti-avoidance legislation was introduced which means that, in order for an LLP member to receive profits on a “tax transparent” basis, certain conditions must be fulfilled. These focus on the true level of risk which the LLP member is taking. Advice should therefore be taken regarding any LLP intended to be used as part of an incentivisation structure.

#### **Establishment**

Incorporation of a basic LLP is straightforward and requires completion of a Companies House form with details of the first two members and the registered office.

Typically, the registration process takes no more than a few days, or could even be done on the same day.

A check on the Companies House website will reveal whether your required name is available. The issues to consider when choosing a name for an LLP are very similar to those outlined earlier in this note relating to the establishment of a UK branch or other place of business or subsidiary, including checking any existing third party rights in relation to the LLP's name and any other name which the LLP proposes to use in its business.

The name will end with “LLP” to indicate that it is a limited liability partnership.

#### **Members**

An LLP needs two or more members and a non-UK company can be a member of an LLP.

#### **Constitution**

The constitution of an LLP is typically set out in a members’ agreement. It is important that the LLP has a members’ agreement and that it is comprehensively drafted. This avoids the provisions which are prescribed by law taking effect and producing unintended results for the management, capital and profit sharing proportions and membership of the LLP.

The members’ agreement should set out the terms and responsibilities agreed between members relating to: funding and capital contributions; meetings, management and decision making; authority of members acting on behalf of the LLP; financial consequences for a member leaving the LLP; any restrictions on competitive activities after leaving; designated members and their responsibilities; and the insolvency or winding up of the LLP.



The members' agreement is a private document and need not be filed at Companies House.

## **Management**

In the UK, an LLP acts through its members, who are subject to fiduciary duties in respect of the LLP's assets. There is no distinction between managers and owners, as there is in a limited company.

An LLP enters into contracts and other legal obligations through the signatures of its members. Every member is an agent of the LLP and the LLP is bound by anything done by a member. Whilst a non-UK parent company member may seek to impose internal restrictions on any individual member's authority to commit the LLP, third parties are generally entitled to rely on the apparent authority of any member who enters into commitments on behalf of the LLP.

Two or more of the members of the LLP must be appointed as designated members, who will have specific statutory duties and obligations – for example to sign and deliver accounts to Companies House, to prepare confirmation statements, to notify changes to Companies House and to act on behalf of the LLP in the event that it is wound up or dissolved.

## **People with Significant Control (PSCs)**

On and from incorporation, the English LLP must identify, record and disclose its PSCs, or state that it doesn't have any. Assuming you are a non-UK private company, you do not qualify as a PSC. Therefore, the new LLP must look up its chain of ownership to find the first person in that chain who does so qualify.

For example, if you, an overseas private company, hold more than 25% of the voting rights in the LLP and you are owned and controlled 100% directly by an individual, that individual would be entered on the PSC register of the LLP as its PSC or one of them.

Advice should be sought to enable the PSC and the nature of their control to be determined correctly from the outset.

## **Tax**

An LLP undertaking a trade or business with a view to profit is usually tax transparent for both income and capital gains purposes. This means that LLP members who are individuals have the same income tax considerations as any other partnership and are taxed as if they were partners in a general partnership. As members of an LLP who are individuals are generally treated as being self-employed, this means that employer social security contributions, known as "employer national insurance contributions", will often not arise. Similarly, assets held by an LLP which is carrying on a trade or business with a view to a profit are treated for UK tax purposes as assets held by the members. While this is the default treatment, anti-avoidance legislation (known as the "salaried member" rules) also applies. This legislation sets out certain conditions which, if met, could lead to a member of an LLP being taxed as an employee and subject to employer national insurance contributions. Simple profit-sharing arrangements, where the members agree to share the LLP's overall profits and losses according to fixed percentages, with no guaranteed pay element, should not generally be affected. However, more complex arrangements should be reviewed in light of this legislation.

A UK company which is a corporate member of an LLP will generally be taxed on its apportioned profits at the current corporation tax rate of 19%. Non-UK companies should take advice as to whether the LLP is treated as a corporate/tax-opaque entity or a partnership/tax-transparent entity, in the jurisdiction where they are based.

The carrying on of "a trade or business" implies an element of activity and therefore the passive holding of investments will not necessarily result in transparency for an LLP. Similarly, where an LLP ceases to carry on a trade or business it will no longer be treated as transparent and instead will revert to being taxed in the same way as a company.



VAT and other taxes, such as employment taxes, which apply to a UK company or UK place of business of a non-UK company as set out above, will also apply to an LLP.

### **Accounts**

Full accounting records of all trading and financial activities of the LLP must be kept and for each financial year annual accounts must be prepared for the LLP.

The precise accounting, audit and filing requirements for each LLP will vary according to a number of factors and in particular whether it qualifies as a small or medium-sized LLP. Specialist accounting advice will always be needed.

The annual accounts must be filed each year at Companies House.

### **Statutory records, filings and stationery**

The English LLP must keep a set of its statutory records such as its registers of members and PSCs and any charges created by the LLP (which are available for inspection) at its registered office or at another single place which must be notified to Companies House. This can either be at its place of business or it could be at the offices of one of its professional advisers.

Filings must be made with Companies House on an ongoing basis to record, amongst others:

- any changes in relation to the members or the designated members or the PSCs;
- the registered office address; and
- the registration of any mortgages or charges created by the LLP.

The LLP must also file annually at Companies House a confirmation statement confirming the up to date details of its corporate information.

The full name of the LLP must be shown at any of its business addresses and at its registered office.

All business correspondence and documents, whether in hard copy or electronic form, and the LLP's website must **show the full name of the LLP**. All business letters (including emails), order forms and the LLP's website must also show its registered number, place of registration (England and Wales), registered office address and the fact that it is a limited liability partnership registered under the Limited Liability Partnership Act 2000.

Names of the members need not be provided on correspondence but if the name of one member is shown (other than in the text or as a signatory) the names of all members must be shown. However, this does not apply to an LLP with more than 20 members that includes a statement on its correspondence as to the address of its principal place of business and that a list of the names of all the members is open to inspection at that address, and the LLP complies with that statement.

## **4 Employing individuals in the UK**

### **Corporate immigration to the UK**

As part of establishing a business presence in the UK, you may well need to engage individuals to work in the UK. If that will involve transferring any existing employees who are not EEA citizens from another jurisdiction, before they take up their position, you may need to obtain permission to allow the individuals to live and work in the UK. This will normally be in the form of a visa or work authorisation.



You should seek specialist advice in this area before starting the process of setting up your business in the UK because employing non-EEA citizens may influence the type of business vehicle which you will find best suited to help you start your business – and the chronology of events can influence the likely outcome and success of the visa or work authorisation application.

This section summarises the main immigration routes available to non-UK companies seeking to establish a business presence in the UK. It also explains how a business can sponsor non-EEA nationals to work in the UK, once the business is up and running.

The Home Office will grant a successful visa applicant an initial visa in one of several categories. Depending on the category, this would be for up to three years with the possibility of extension, or for five years. After a total of five years living and working in the UK, a migrant may be eligible to apply for settlement. The visa categories include the following which may be relevant:

- Representative of an overseas business

If you are an overseas company wishing to establish a branch or wholly-owned subsidiary in the UK, you may be able to send an employee to the UK under the “Representative of an overseas business” category. Both the employer and the employee must meet certain criteria to be eligible for this category; for example, the employee must be employed full-time and the overseas business must have its principal place of business and headquarters outside the UK.

- Sponsored worker

Once a business is established in the UK, it can apply to the Home Office for a sponsor licence to sponsor non-EEA national employees in the UK. A sponsor licence enables the employer, the UK business, to assign certificates of sponsorship to prospective UK employees. The prospective UK employees need the certificates of sponsorship to support their visa applications.

Employers can sponsor new hires or transfer existing employees based in other countries to the UK. In most cases, the work will have to be at a skill level of UK Regulated Qualifications Framework level 6 or above and be at the required salary level set by the Home Office for the specific role. A sponsor may have to advertise the role before sponsoring a new hire on a salary less than £159,600, unless other exceptions apply.

There are three other possible routes for establishing a business presence in the UK if you are a non-EEA national. Through these immigration categories you can establish one or more businesses and employ both EU nationals as well as non-EEA nationals through sponsoring:

- Tier 1 investor

This immigration category provides individuals with freedom to undertake any business activity without seeking formal approval from the Home Office. In their initial application, the investor must show access to a minimum of £2 million. The funds must be invested in specified UK investments which can include UK government-funded pooled investment vehicles or share capital or loan capital in one or more active and trading UK private or listed companies, but not companies which are mainly engaged in property management and/or development. The investor can choose to invest in the business they establish in the UK. The investments must be maintained throughout the individual’s stay in the category. Settlement is available after five years if £2 million is invested, or after three or two years for an investment of £5 million or £10 million respectively.



➤ Start-up

This immigration category is for entrepreneurs who wish to establish their own business in the UK for the first time. To qualify under this route, the entrepreneur must obtain a letter from a government-approved endorsing body, which confirms the proposed business has been assessed as innovative, viable and scalable to national level. There is no minimum level of investment required. However only a maximum period of two years may be spent in the category and it does not lead directly to settlement in the UK. The category can however act as a springboard for entry into the Innovator category.

➤ Innovator

This immigration category is for experienced entrepreneurs (including entrepreneurial teams) who wish to establish their own business in the UK. To qualify initially under this route, each innovator must obtain a letter from a government-approved endorsing body, which confirms the proposed business has been assessed as innovative, viable and scalable to international level. Unless an exception applies, each innovator also must also show that at least £50,000 has or will be invested in the business. Immigration permission is granted for three years at a time, with no restriction on the number of extensions allowed. At extension stage, an innovator must obtain a fresh endorsement, either on the basis that they have made significant achievements in progressing their business plan, or by relying on a new business. At settlement stage, an endorsement is again required, confirming that at least two of seven criteria relating to investment, customer base, research and development activity, gross revenue and job creation are met.

If you wish to consider these options further, the Immigration team at Lewis Silkin would be pleased to help.

### Income tax and social security payments

You will also need to become familiar with UK income tax and social security regulations.

In the UK, employers are obliged to withhold income tax and employee social security (national insurance contributions (NIC)) from employees' salaries and certain share awards under the Pay As You Earn (PAYE) system and account for employer NIC on employees' salaries and benefits in kind. It is the employer's obligation to ensure that it operates the PAYE system correctly – interest and penalties may be payable if it fails in its obligations.

The income tax and NIC rates in England and Northern Ireland for tax year 2019-20 (6 April 2019 to 5 April 2020) for those individuals with annual incomes of £100,000 or less are set out in Table 1 below. The Welsh and Scottish Governments are able to decide the rates of income tax paid by Welsh and Scottish taxpayers, respectively. For tax year 2019-20 the rates and bands for Welsh taxpayers will be as set out in Table 1 below. Different income tax rates (varying from 19% to 46%) and bands apply in Scotland.

**Table 1**

Amount of income	Income tax rate	Employee NIC	Employer NIC
£0 - £8,632.00	0%	0%	0%
£8,632.01 - £12,500.00	0%	12%	13.8%
£12,500.01 - £50,000.00	20%	12%	13.8%
£50,000.01 - £100,000.00	40%	2%	13.8%



The employee and employer NIC position for employees with annual incomes in excess of £100,000 is the same as set out in Table 1 above. However, their income tax position depends on the amount of their annual income.

Individuals with annual incomes of more than £100,000 but less than £125,000 will lose £1 of their tax free band of £12,500 for every £2 worth of income they receive in excess of £100,000. For example an individual with an annual income of £106,500 will have a tax free band of £9,250 whilst an individual with an annual income of £110,000 will have a tax free band of £7,500.

For those individuals with annual incomes of £125,000 or more, the relevant income tax and NIC rates in England and Northern Ireland for tax year 2019-20 are set out in **Table 2** below. The income tax rates and bands set out in **Table 2** also apply to Welsh taxpayers. There are different income tax rates and bands in Scotland.

**Table 2**

Amount of income	Income tax rate	Employee NIC	Employer NIC
£0 - £8,632.00	20%	0%	0%
£8,632.01 - £37,500.00	20%	12%	13.8%
£37,500.01 - £50,000.00	40%	12%	13.8%
£50,000.01 - £150,000.00	40%	2%	13.8%
£150,000.01+	45%	2%	13.8%

Some employers opt to offer equity related incentives to key employees. These can give those employees an incentive to work towards corporate aims. Under certain types of equity scheme, any increase in value of an employee’s equity holding or entitlement will be subject to capital gains tax (generally at 10% or 20% depending very broadly on whether the employee pays income tax at 20% or 40/45% respectively) rather than income tax and NIC. To put in place a plan which balances tax efficiency with commercial objectives, arrangements need to be carefully structured with the benefit of specialist advice, especially where overseas nationals may be involved.

## 5 Other ways to establish a business presence in the UK

If the establishment of a branch or place of business, subsidiary or LLP is not the most appropriate or efficient structure for your business at present, there are a number of other ways in which an overseas company can establish a business presence in the UK. These are:

### Setting up a joint venture

This can be established either as a purely contractual co-operation agreement or via a jointly owned corporate vehicle (company or LLP). In the UK there is no specific legislation regulating joint ventures and the relationship between the parties will depend upon the structure adopted. Generally the first choice to be made is whether or not a separate joint venture vehicle is to be used or whether the relationship is to be purely contractual between the parties.

### Entering into a partnership arrangement

Whether a traditional partnership or a limited partnership – these forms of partnership do not have separate legal entities from their individual partners. In the case of a traditional partnership, each partner will remain liable for all debts and obligations incurred by the partnership.

### Appointing an agent

The agent is an intermediary between the overseas supplier and its customers. Marketing agents only have authority to refer



customers and leads to the overseas supplier and not to enter into contracts on behalf of the supplier. Commercial agents do have authority to negotiate and enter into contracts on behalf of an overseas supplier.

The UK Commercial Agents Regulations have enhanced the position and security of commercial agents operating in the UK, particularly in relation to remuneration, notice periods and termination payments. Many of the provisions of the Commercial Agents Regulations are implied into the agency agreement and cannot be contracted out of. Because of this, specialist advice should be sought before appointing any agent.

### **Appointing a distributor**

A UK distributor will purchase goods from an overseas supplier and then contract on its own behalf with customers to sell the goods. Distributor relationships are regulated by the general principles of UK contract law. Distribution agreements which deal with a significant share of the market in a particular sector or confer territorial exclusivity on the distributor can raise complex competition (anti-trust) issues if they are or may be deemed by UK or EU legislation to be anti-competitive. Specialist advice will be needed when considering these arrangements.

### **Appointing a franchisee**

The use of franchisees in the UK marketplace enables an overseas franchisor to benefit from the franchisee's local market knowledge, resources and contacts. It will also enable overseas franchisors to develop and maximise their brand value using the franchisee's resources whilst retaining a significant degree of control. There is little specific regulation of franchising in the UK although the general UK and EU competition legislation may apply.

### **Acquiring an existing company with its business**

If the shares in an existing company are purchased, the business carried on by the company will continue with the company under its new ownership. Because a purchaser will acquire the company together with all its business, assets, liabilities and obligations, including any that an overseas purchaser may not specifically know about or may not have been told about, a due diligence investigation should be conducted and specialist legal, tax and accounting advice will always be needed.

Whether establishing a subsidiary or opting for one of the other structures outlined above is most appropriate for your business will depend upon a number of factors, including the commercial, trading and risk environment, taxation treatment in the UK and the country of the parent company and regulatory and financial issues.

To help you to formulate your investment decisions, you may wish to use the UK Government's UK Trade & Investment's Investment Services Team. This independent, free of charge and professional business team services potential and existing investors in the UK. It can provide specific help in setting up in the UK or just assistance with mapping your business ambitions to the UK. We can put you in touch with the appropriate person there to help you.

### **Brexit**

At the time of the production of this client guide, we are still waiting for the political outcome in relation to the UK's withdrawal from the EU. Accordingly, for the time being at least, the laws of the UK remain substantially unchanged and will be enforced in their current forms.



## Contact details

If you would like any more information about these matters or any other aspect of corporate law, please contact your usual Lewis Silkin LLP contact or:



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