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International Law Firm Alliance
COMPENDIUM 2015

FASKEN MARTINEAU LLP
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→ United Kingdom

FASKEN MARTINEAU LLP (FM) is a UK commercial law and litigation firm, which is part of the global partnership of Fasken Martineau DuMoulin LLP (FMD). The firm is unique in being the only commercial law firm practicing both UK and Canadian law. Globally the firm has 9 offices located in the United Kingdom, France, South Africa and Canada. FM has the critical mass necessary to act for the largest international organisations and on the largest projects and cases.

Sector specialisms

- Infrastructure
- Life Sciences
- Retailing
- Natural resources
- Publishing

Principal areas of practice

- AIM and other London securities markets
- Banking
- Commercial Litigation and ADR
- Competition Law
- Corporate Finance and Company Law
- Energy
- Insolvency and Restructuring
- Intellectual Property
- M & A
- Private Equity
- Reputation Management
- Aviation
- Commercial Law
- Commercial Property
- Construction
- Employment
- Information Technology and E-commerce
- Insurance
- International Trade and Transport
- Notary Services
- Project Finance
- Taxation

Our culture

FM has a practical, creative and results driven approach. Our clients range from entrepreneurs to public companies and we have a collaborative, team-based approach to solving their problems. Members of our different groups work together in the best interest of our clients and we believe in developing long term, broadly based client relationships.

Client support

We pride ourselves in maintaining close relationships with our clients, supporting and advising them in the following ways:

- Invitations to workshops and seminars that are of relevance to their business
- The circulation of bulletins by industry sector (e.g. Life Sciences, Natural Resources) and legal discipline (e.g. Employment law)

Professional development

We recognise that our firm is only as good as the people it employs and we take everyone's professional development extremely seriously. In addition to encouraging members and lawyers to attend the appropriate external seminars, we host internal training workshops. At these workshops, all professional staff have the opportunity of presenting to the group on their chosen subject. A firm-wide appraisal system is in place and each person has a clearly defined career structure. FM regularly has a number of Canadian lawyers on work placements from FMD and is considering an exchange program to include lawyers from the London office seconded in Canada.

→ Tax Law

Corporate Residence

A company is regarded as tax resident in the UK if it is incorporated in the UK or for non-UK incorporated companies if its central control and management is exercised in the UK. A company incorporated in the UK can also be treated as not resident in the UK under an applicable double tax treaty. It is possible for a company to be dually resident.

Rates of Corporation Tax

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The rates for the financial year ended 31 March 2014 are as follows:

BAND OF TAXABLE PROFIT	%
£0-£300,000	20
£300,001-£1,500,000	21.25
over £1,500,000	21

Non-resident Companies

Companies that are not resident in the UK are only assessable to corporation tax if they carry on a trade in the UK through a permanent establishment in the UK and on all profits wherever arising which are attributable to that permanent establishment. The profits attributable to the permanent establishment are trading income, income from property held by the establishment and chargeable gains on UK assets used for the purposes of the permanent establishment. The profits for corporation tax purposes are then determined as if the establishment were a distinct and separate enterprise, dealing wholly independently with the non-resident company.

Transfer Pricing

Transfer pricing rules apply to both international and domestic transactions. The basic rule may apply for transactions if an actual provision has been made between any two affected persons and one of them was directly or indirectly participating in the management, control or capital of the other or a third person was participating in the management, control or capital of both the affected persons. The basic rule requires the actual provision to be compared to an arm's length provision (which would have been made between independent enterprises) and, if the actual provision confers a potential UK tax advantage on one or both the affected persons, an adjustment (to bring the profits up to what they would have been if the arm's length provisions had applied) is to be made to the taxable profits of the advantaged persons.

Controlled Foreign Companies

The UK introduced a new controlled foreign company regime that applies for accounting periods beginning on or after 1 January 2013. The continued aim of the controlled foreign company regime is to identify whether the profits of a non-UK resident company arising in an accounting period should be brought into the charge to UK tax by attributing those profits to a UK resident person or persons. For a controlled foreign company charge to arise all of the following are required:

- A non-UK resident company that is controlled by a UK resident person or persons (that is, a controlled foreign company).

- A chargeable company (that is, a UK resident company that has a sufficient interest in the controlled foreign company).

- The controlled foreign company has chargeable profits (that is, profits of a specified type that are regarded as sufficiently connected to the UK).

- The controlled foreign company is not entitled to the benefit of one or more of the entity-level exemptions.

Group Taxation

In groups of companies where subsidiaries are owned as to 75% of the ordinary share capital beneficially together with 75% entitlement to income and assets it is possible to surrender current year trading losses and other amounts eligible for group relief to a profit making company within the same group. In many cases a payment for group relief is made by the claimant company to the surrendering company as consideration for the surrender. Consortium group relief is also available where a company is owned by a consortium where 75% or more of the ordinary share capital is beneficially owned between them by companies of which none owns beneficially less than 5% of that capital. UK legislation requires that both companies must be UK tax resident or non-resident companies carrying on a trade through a permanent establishment.

Tax Depreciation (Capital Allowances)

Tax allowances, called capital allowances, on certain purchases or investments can be claimed. This means a proportion of these costs can be deducted from taxable profits in order to reduce the tax charge.

Capital allowances are available on plant and machinery, industrial buildings and research and development. The amount of the allowance depends on what is being claimed for. In some cases, the rates are different in the year the purchase is made from those in subsequent years.

Inter-company Domestic Dividends

Corporation tax is not normally chargeable on dividends and other distributions received by a company resident in the UK, provided certain conditions are met, nor are such dividends or distributions taken into account in computing profits for corporation tax. This rule also applies to dividends received by a UK permanent establishment of a non-UK resident company.

Substantial Shareholding Exemption

Capital gains arising from disposals of trading companies in which a trading company has at least a 10% shareholding held for at least one year are in certain circumstances free of corporation tax on the chargeable gains.

Tax Incentives

Tax incentives are available for investment in unquoted trading companies providing tax relief for individuals and similar reliefs for companies.

Corporation Tax Administration

Corporation Tax is generally payable nine months after the end of the accounting period but large companies are required to pay by instalments payable quarterly in the current accounting period.

Double Tax Treaties

The UK has a large number of double tax treaties a list of which is provided. Relief from double taxation can be by way of treaty, by unilateral relief or by deduction.

Stamp Taxes

There are currently three stamp tax regimes in the UK as follows. Stamp Duty Land Tax (SDLT) is a transfer tax charged on transfers of all UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. The tax is charged at different rates and has different thresholds for different types of property and different values of transaction.

The tax rate and payment threshold can vary according to whether the property is in residential or non-residential use, and whether it is a freehold or leasehold. SDLT relief is available for certain kinds of property or transaction.

PURCHASE PRICE/LEASE PREMIUM OR TRANSFER VALUE FOR RESIDENTIAL PROPERTIES	SDLT RATE
Up to £125,000	Zero
Over £125,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000 to £1 million	4%
Over £1 million to £2 million	5%
Over £2 million from 22 March 2012	7%
Over £2 million (purchased by certain persons including corporate bodies)	15%

Stamp duty reserve tax is a transfer tax charged on agreements to transfer UK shares and securities and on foreign shares and securities which retain a register of shareholders in the UK. The rate of charge is generally ½% of the consideration. Stamp duty is payable on the transfer of UK shares and securities at the rate of ½% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of other assets. There is no capital duty in the UK.

Value-Added Tax

VAT is a tax paid when goods or services are bought from a VAT-registered business in the EU, including within the UK. VAT is not paid on some goods and services, and sometimes it is paid at a reduced rate. In some circumstances a refund of VAT paid may be received, for example if a person lives outside the EU and visits the UK. Each EU country has its own rates of VAT. In the UK there are three rates.

■ *Standard rate*. The standard rate of VAT on most goods and services in the UK increased to 20 per cent on 4 January 2011 (but was 17.5 per cent for the period 1 January 2010 to 3 January 2011).

■ *Reduced rate*. In some cases, for example children's car seats and gas and electricity for the home, VAT is paid at a reduced rate of 5 per cent.

■ *Zero rate*. There are some goods on which VAT is not paid, for example:

- most food items
- books, newspapers and magazines
- children's clothes
- some goods provided in special circumstances - for example, equipment for disabled people,new residential property

ATED

The Annual Tax on Enveloped Dwellings (ATED) is a tax payable by companies that own high value residential property. It came into effect from 1 April 2013. An ATED tax return is completed if the 'dwelling' (as defined) is located in the UK, valued at more than £2 million on 1 April 2012 (or at acquisition if later) and is owned by a company (or other defined entity). There are reliefs that could reduce the tax completely but these need to be claimed in a return to HMRC. The annual tax amounts currently payable range from £15,400 to £143,750.

National Insurance Contributions

Employer's national insurance contributions are payable at the rate of 13.8% on earnings in excess of £153 per week. Employees national insurance is payable at the rate of 12% for earnings between £153 and £805 per week and at 2% thereafter. For higher paid employees therefore the overall rate of tax is 42% being 40% income tax and 2% employee's national insurance. For additional rate employees the rate of tax is 47% being 45% income tax and 2% employee's national insurance.

PERSONAL TAXES

Residence and Domicile

The UK has introduced a statutory residence test in the Finance Act 2013. There are three limbs to the test – the automatic UK test, the automatic overseas test and the sufficient ties test. An individual will be UK resident if they do not meet the automatic overseas test and meet either one of the automatic UK tests or the sufficient ties test. To ascertain an individual's residence status under the statutory residence test it first needs to be considered whether the individual spent 183 days in the UK in that tax year. If so the individual will be resident in the UK. If not the three automatic overseas tests need to be considered. If the individual meets one of these the individual will not be UK resident but if it is not met it needs to be considered if the second and third UK tests are met. If one of these are met the individual is UK resident but if not the sufficient ties test needs to be considered. If this test is met the individual is UK resident and if not the individual is not UK resident.

Unlike residence, it is not possible to have more than one domicile at any one time, and it is not the same as nationality. Essentially, it is the place where an individual has his permanent home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. Domicile can have a significant effect on UK tax liabilities, as it enables resident, but non-UK domiciled individuals, to legally avoid UK tax on income and capital gains arising overseas if they are not remitted to the UK. However, these rules have been amended and restricted for those who have been in the UK for at least seven out of the previous nine tax years

or at least twelve of the previous fourteen tax years. Provided an individual has not been resident in the UK for seventeen out of the previous twenty tax years, such non-UK domiciled individuals are not chargeable to inheritance tax on non-UK situated assets. UK domiciled individuals are however assessable on their worldwide income.

Individual Tax Rates (for the tax year 2014/2015)

	DIVIDENDS*	SAVINGS	OTHER
£1-£31,865	10%	20%**	20%
£31,866 - £150,000	32.5%	40%	40%
Over £150,000	37.5%	45%	45%

**Dividends are increased by a non-repayable tax credit of 1/9th. This includes non UK companies of which taxpayers own less than 10%. ** 10% up to £2,880. If an individual's taxable non-savings income is above this limit, the 10% rate does not apply*

Dividends are treated as the top slice of total income, savings as the next slice and other income as the lowest slice.

Inheritance Tax

Inheritance tax is due on death and on certain lifetime gifts. It is charged at the rate of 40% on transfers in excess of £325,000 for the tax year 2014/2015. Certain lifetime transfers are tax free if the donor lives seven years. Inter spouse transfers are free of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. Where the transferee spouse is non-domiciled but the transferor spouse is domiciled the Finance Act 2013 introduced a new rule. From 6 April 2013 UK domiciled individuals who have a non-UK domiciled spouse are provided relief from inheritance tax where the transferee spouse is non-UK domiciled but the transferor spouse is UK domiciled.

Under the old rules a transfer of assets from a UK domiciled spouse to a non-domiciled spouse was limited to an exempt amount of £55,000, this being the original exempt amount when inheritance tax was first introduced. This has now been increased to the exempt amount (as reviewed from year to year) and is currently £325,000. This exempt amount applies to all individuals irrespective of their domicile status. So now lifetime gifts on transfers of assets on death are for many persons exempt regardless of the domicile of the spouse.

But for the larger gifts or transfers on death in excess of the exempt amount of £325,000 the non-domiciled spouse can irrevocably elect as a lifetime election to be treated as UK domiciled for these purposes. The effect of this is to put non-UK domiciled spouses on the same footing as UK domiciled spouses. Large gifts can therefore be freely made between

spouses without liability due to the spousal exemption from inheritance tax. If the non-UK domiciled person has died without an election having been made his personal representatives can make the election which must be made within two years of death and the person's UK domiciled spouse must also have died.

Capital Gains Tax

Individuals are subject to capital gains tax on their chargeable gains. Capital gains tax also applies to other entities that are not companies such as trustees and personal representatives. Gains are taxed for the tax year concerned. Under the capital gains tax regime, an individual is taxed on gains arising in the tax year concerned during any part of which the individual satisfies the residence conditions. The rate of capital gains tax is 28% (where the total income and taxable gains after all allowable deductions (including the personal allowance) is above £31,865).

The UK government announced on 19 March 2014 that it intends to change the capital gains rules so that non-residents will be taxed at a similar level to UK residents when they dispose of UK residential property. The changes are intended to have effect from 6th April 2015. The government has issued a consultation paper setting out their proposals as to how the tax change will work. In summary, where a non-resident person (or other entity) that is covered by the proposed new rules disposes of UK residential property at a gain, he (or it) will be liable to pay UK capital gains tax on the capital gain that arises.

DOUBLE TAX TREATIES

Treaty and Non Treaty Withholding Taxes

The following chart contains the withholding tax rates that are applicable to interest and royalty payments by UK companies to non-residents under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. There is no withholding tax on dividends from the UK.

Relief at source may be granted on application.

*UK – Treaty Withholding Rates Table**

	DIVIDENDS			
	INDIVIDUALS, COMPANIES	QUALIFYING COMPANIES	INTEREST [1]	ROYALTIES
Domestic Rates				
Companies:	0	0	0	0
Individuals:	0	n/a	20	20
Treaty Rates				
Treaty With:				
Antigua and Barbuda	n/a	n/a	– [2]	0
Argentina	n/a	n/a	12	3/5/10/15 [3]
Armenia [4]	n/a	n/a	5	5
Australia	n/a	n/a	0/10 [5] 5	
Austria	n/a	n/a	0	0/10 [6]
Azerbaijan	n/a	n/a	10	5/10 [7]
Bangladesh	n/a	n/a	7.5/10[5]	10
Barbados	n/a	n/a	15	0/15 [8]
Belarus [9]	n/a	n/a	0	0
Belgium	n/a	n/a	15	0
Belize	n/a	n/a	– [2]	0
Bolivia	n/a	n/a	15	15
Bosnia and Herzegovina [10]	n/a	n/a	10	10
Botswana	n/a	n/a	10	10
British Virgin Islands	n/a	n/a	– [2]	– [2]
Brunei	n/a	n/a	– [2]	0
Bulgaria	n/a	n/a	0	0
Canada	n/a	n/a	10	0/10[11]
Chile	n/a	n/a	5/15 [12]	5/10[13]
China (People's Rep.)	n/a	n/a	10	7/10[13]
Croatia[10]	n/a	n/a	10	10
Cyprus	n/a	n/a	10	0/15[8]
Czech Republic	n/a	n/a	0	0
Denmark	n/a	n/a	0	0
Egypt	n/a	n/a	15	15
Estonia	n/a	n/a	10	5/10[13]
Falkland Islands	n/a	n/a	0	0
Faroe Islands	0	0	0	0
Fiji	n/a	n/a	10	0/15[14]
Finland	n/a	n/a	0	0
France	n/a	n/a	0	0

Gambia	n/a	n/a	15	12.5
Georgia	n/a	n/a	0	0
Germany	n/a	n/a	0	0
Ghana	n/a	n/a	12.5	12.5
Greece	n/a	n/a	0	0
Grenada	n/a	n/a	– [2]	0
Guernsey	n/a	n/a	–[2]	–[2]
Guyana	n/a	n/a	15	10
Hong Kong	n/a	n/a	0	3
Hungary [15]	n/a	n/a	0	0
Iceland	n/a	n/a	0	0
India	n/a	n/a	10/15[5]	
10/15[13]				
Indonesia	n/a	n/a	10	
10/15[13]				
Ireland	n/a	n/a	0	0
Isle of Man	n/a	n/a	–[2]	–[2]
Israel	n/a	n/a	15	0/15[8]
Italy	n/a	n/a	10	8
Ivory Coast	n/a	n/a	15	10
Jamaica	n/a	n/a	12.5	10
Japan	n/a	n/a	0/10[5]	0
Jersey	n/a	n/a	–[2]	–[2]
Jordan	n/a	n/a	10	10
Kazakhstan	n/a	n/a	10	10
Kenya	n/a	n/a	15	15
Kiribati	n/a	n/a	0	0
Korea (Rep.)	n/a	n/a	10	10
Kuwait	n/a	n/a	0	10
Latvia	n/a	n/a	10	
5/10[13]				
Lesotho	n/a	n/a	10	10
Libya	n/a	n/a	0	0
Lithuania	n/a	n/a	5/10 [16]	
5/10[13]				
Luxembourg	n/a	n/a	0	5
Macedonia (FYR)	n/a	n/a	0/10 [17]	0
Malawi	n/a	n/a	0/– [18]	0/–[18]
Malaysia	n/a	n/a	10	8
Malta	n/a	n/a	10	10
Mauritius	n/a	n/a	0/– [19]	15
Mexico	n/a	n/a	0/5/10/15 [20]	10

Moldova	n/a	n/a	0/5 [21]	5
Mongolia	n/a	n/a	7/10[5]	5
Montenegro[10]	n/a	n/a	10	10
Montserrat	n/a	n/a	–[2]	0
Morocco	n/a	n/a	10	10
Myanmar	n/a	n/a	–[2]	0
Namibia [14]	n/a	n/a	–[2]	0 / 5
Netherlands	n/a	n/a	0	0
New Zealand	n/a	n/a	10	10
Nigeria	n/a	n/a	12.5	12.5
Norway	n/a	n/a	0	0
Oman	n/a	n/a	0	0
Pakistan	n/a	n/a	15	12.5
Papua New Guinea	n/a	n/a	10	10
Philippines [23]	n/a	n/a	10/15 [22]	15/25
Poland	n/a	n/a	0/5[5]	5
Portugal	n/a	n/a	10	5
Qatar	n/a	n/a	0/– [24]	5
Romania 10/15[7]	n/a	n/a	10	
Russia	n/a	n/a	0	0
Saudi Arabia	n/a	n/a	0	5/8[13]
St. Kitts and Nevis	n/a	n/a	– [2]	0
Serbia[10]	n/a	n/a	10	10
Sierra Leone	n/a	n/a	–[2]	0
Singapore	n/a	n/a	10	0/10[7]
Slovak Republic	n/a	n/a	0	0
Slovenia	n/a	n/a	0/5 [25]	5
Solomon Islands	n/a	n/a	–[2]	0
South Africa	n/a	n/a	0	0
Spain	n/a	n/a	12	10
Sri Lanka	n/a	n/a	0/10[5]	0/10[7]
Sudan	n/a	n/a	15	10
Swaziland	n/a	n/a	–[2]	0
Sweden	n/a	n/a	0	0
Switzerland	n/a	n/a	0	0
Taiwan	n/a	n/a	10	10
Tajikistan[9]	n/a	n/a	0	0
Thailand	n/a	n/a	0/25[5]	5/15[7]
Trinidad and Tobago	n/a	n/a	10	

0/10[14]				
Tunisia	n/a	n/a	10/12[5]	15
Turkey	n/a	n/a	15	10
Turkmenistan[9]	n/a	n/a	0	0
Tuvalu	n/a	n/a	–[2]	0
Uganda	n/a	n/a	15	15
Ukraine	n/a	n/a	0	0
United States	n/a	n/a	0	0
Uzbekistan	n/a	n/a	5	5
Venezuela	n/a	n/a	0/5[5]	5/7 [26]
Vietnam	n/a	n/a	10	10
Zambia	n/a	n/a	10	10
Zimbabwe	n/a	n/a	10	10

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
2. The domestic rate applies; there is no reduction under the treaty.
3. The 3% rate applies to royalties paid for news; the 5% rate applies to copyright royalties (other than films, etc.); the 10% rate applies to industrial royalties.
4. Effective from 1 January 2013 (for withholding taxes), 1 April 2012 (for corporation tax) and 6 April 2012 (for income and capital gains taxes).
5. The lower rate applies to interest paid to financial institutions (as defined).
6. The higher rate applies if the Austrian company controls more than 50% of the voting stock in the UK company.
7. The lower rate applies to copyright royalties.
8. The higher rate applies to films, etc.
9. The treaty concluded between the United Kingdom and the former USSR.
10. The treaty concluded between the United Kingdom and the former Yugoslavia.
11. The lower rate applies to copyright royalties (excluding films), computer software, patents and know-how.
12. The lower rate applies to interest on (i) loans granted by banks and insurance companies, (ii) bonds or securities that are regularly and substantially traded on a recognized securities market and (iii) a sale on credit of machinery and equipment.
13. The lower rate applies to equipment rentals.
14. The lower rate applies to copyright royalties (excluding films, etc.).
15. Effective from 1 April 2012 (for corporation tax) and 6 April 2012 (for income and capital gains taxes).
16. The lower rate applies to interest paid by a public body.
17. The lower rate applies to interest paid on a loan by one enterprise to another.
18. The domestic rate applies if the Malawi company controls more than 50% of the voting power in the UK company.
19. The zero rate applies to interest paid to banks; the domestic rate applies in other cases (no reduction under the treaty).
20. The zero rate applies to interest paid by a public body; the 5% rate applies to interest paid to banks and insurance companies and to interest on bonds and securities regularly and substantially traded on a recognized securities market; the 10% rate applies to interest paid by a bank or by a purchaser of machinery and equipment in connection with a sale on credit.

21. The lower rate applies to interest paid by a public body and to interest paid to a financial institution.
22. The lower rate applies to interest paid by a company in respect of the public issue of bonds, etc.
23. The lower rate applies to films, etc.
24. The zero rate applies, inter alia, to interest (i) paid to an individual, a pension scheme, a financial institution and a company in whose principal class of shares there is substantial and regular trading on a stock exchange, provided that such interest is not paid as part of an arrangement involving back-to-back loans; and (ii) interest paid by the state or a bank, or interest on a quoted Eurobond. The domestic rate applies in other cases (no reduction under the treaty).
25. The lower rate applies to interest paid by public bodies. It also applies where the payer and the recipient are both companies and either company owns directly at least 20% of the capital of the other company, or a third company, being a resident of a contracting state, holds directly at least 20% of the capital of both the paying company and the recipient company.
26. The lower rate applies to royalties for patents and know-how.

**accurate to April 2012*

→ Corporate Law

UK corporate law is based on both common law and statute. The legislative framework of UK company law has experienced a comprehensive overhaul in recent years with the implementation of the Companies Act 2006 (the "2006 Act") which is intended to simplify and modernise company law in the UK. The 2006 Act received Royal Assent on 8 November 2006 and came into force by way of phased implementation between 1 January 2007 and 1 October 2009.

The 2006 Act repealed the Companies Act 1985 and majority of the Companies Act 1989 pertaining to company law matters and exists alongside a number of other statutes to be considered depending on the activity a company wishes to follow. Although the provisions are similar in the constituent parts of the UK (England and Wales, Scotland and Northern Ireland), there are some differences and what follows applies specifically to England and Wales.

Types of Business Structure

The first question to be considered by anyone wishing to establish a business operation in the UK is the type of structure to be used.

Although the corporate structures set out in paragraph 3 below are the most widely used structures in the UK, there are a variety of other structures available to overseas entities seeking to establish a presence in the UK including setting up a branch or place of business of an overseas company, a partnership or joint venture or a limited liability partnership.

Registration of an overseas company is only required when it has some degree of physical presence in the UK through which it carries on business. A UK establishment is the phrase

used to refer to a place of business or a branch of an overseas company in the UK. Since 1 October 2009, this term has replaced the need for an overseas company to distinguish between and register as either a 'place of business' or a branch. The Overseas Companies Regulations 2009 govern the registration of UK establishments.

Types of Companies

There are different types of corporate structure which can be used under English law. The most common structure used is a company limited by shares. Companies can be either public, which means that they can offer their shares or other securities for public subscription; or private, which means that they are not allowed to offer their shares or other securities to the public. A private company bears the suffix "Limited" or "Ltd" and a public company bears the suffix "PLC". Other types of corporate structure can be established such as companies limited by guarantee or unlimited companies, but these are not common for trading entities.

Public companies are generally subject to stricter regulations under the 2006 Act and, if they are quoted, they will also be subject to the regulations and codes of practice applicable to the relevant trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs of the proposed company can be obtained very quickly with a "same day" service being generally available. There are no requirements for local shareholders or directors and no minimum capital rules apply to a private company (see paragraph 5 for further information). Certain documents, for example the company's constitutional documents, must be filed with the Registrar of Companies to form a company.

A company is required to file its memorandum of association with the Registrar of Companies on applying for registration. The memorandum of association need only state that the initial subscriber(s) wish to form a company under the 2006 Act and they agree to become members of the company and to take at least one share (each).

The articles of association contain the regulations relating to the internal management of the company covering matters such as the holding of meetings of directors and shareholders, transfer of shares and changes to share capital, appointment and removal of directors and the powers of directors. There is a standard or model form of articles of association, known as the Model Articles, which many UK private companies follow to some extent. The Model Articles will automatically apply to any company limited by shares that does not adopt its own articles of association on incorporation.

No government or other permission is required to establish a company, although there is some regulation of the use of business and trading names. Once registered, the name of a company

can be changed by special resolution (75% majority) of the shareholders but care must be taken to check that the desired name is available for use by the company.

Under the 2006 Act, any person can object to a company's registered name on the grounds that it is the same as, or similar to, a name in which the objector has goodwill. Objections to the registration of company names must be lodged with the Companies Names Adjudicator.

Liability of Shareholders

Every company having a share capital, whether public or private, must have at least one shareholder. There are no rules relating to the residency of shareholders.

In the case of both private and public companies, the liability of the shareholders or members is limited to the amount unpaid on the shares held by them. The company and its shareholders are regarded for company law purposes as separate legal persons.

Share Capital. Authorised Share Capital

Under the 2006 Act, there is no longer a requirement for a company to have an authorised share capital (being the maximum number of shares a company can issue in total). A company incorporated under the Companies Act 1985 will still be subject to this maximum as a result of its articles of association unless it has taken, or takes, measures to remove this restriction.

If a company wishes to restrict the number of shares it can allot or remove its existing authorised share capital, it will need to amend its articles of association by special resolution (75% majority) to include or remove suitable provisions restricting the share capital of the company.

Issued Share Capital

The shares which are allotted and issued to shareholders will determine the company's issued share capital. In order to allot and issue shares, the company's directors must be authorised, by the articles of association or by shareholder resolution, to issue the relevant shares Directors of private companies incorporated under the 2006 Act with only one class of share will automatically be free to allot shares without the prior authorisation from the members, subject to any express restriction on this power contained in the company's articles. Directors of a public company incorporated under the 2006 Act must seek authority to allot from the company's shareholders by way of ordinary resolution (simple majority). A company incorporated under the Companies Act 1985 will first need to pass an ordinary resolution (simple majority) in order to give the directors the power to allot shares as set out above.

Note that where a company has more than one class of share or where the articles of a private company incorporated under the 2006 Act prevent automatic authority, authority will need to be sought of the shareholders of that company prior to any shares being issued and allotted. These allotments are still subject to any rights of pre-emption in favour of existing shareholders although these may be disapplied by the company's articles or by special resolution (75% majority) and consequently the directors will be given specific authority to issue shares for cash otherwise than in proportion to existing shareholders.

Shares must be issued for not less than their nominal value, although shares can be issued as partly paid and the directors can call up the unpaid amount at any time.

Minimum Shareholdings. Private Companies

There are no minimum requirements for the issued share capital of a private limited company and the most typical formation is for a company to have a share capital of £100 divided into 100 shares of £1 each. However, it is possible to establish companies with shares of different denominations and in currencies other than sterling.

Public Companies

Before a public company can carry on business, it must have a minimum share capital of £50,000 of which 25% of the shares must be paid up.

Share Capital Rights

The rights and restrictions attaching to the shares are set out in a company's articles of association. Most companies issue only one class of share, known as ordinary shares. The rights and restrictions can be changed only by a special resolution (75% majority) of the shareholders and, where appropriate, a resolution of the holders of any affected class of shares. Preferred or preference shares would be expected to carry rights (e.g. to receive dividends, return on capital, etc.) ahead of ordinary shares and deferred shares would be expected to carry rights behind those of ordinary shares. In the case of a quoted public company, it would be usual for the shares to be freely transferable and this would be expected to be a requirement of the UK markets. However, this is without prejudice to agreements restricting transfer, eg by way of a lock-up or to comply with the requirements of overseas securities laws.

Shares in UK companies are generally held in certificated form, although there is an electronic system known as CREST through which shares in quoted companies can generally be traded in uncertificated (non-paper) form. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate issued or a CREST account is credited, as applicable.

Shareholder Meetings

Most powers needed to run the company are vested in the directors by the articles of association, although it is possible to include specific provisions in the articles of association or in a shareholders' agreement requiring shareholder approval in relation to certain specified matters. The 2006 Act set out those matters which require shareholder approval. In the case of a private company with few shareholders or which is a wholly-owned subsidiary, shareholder approval can be obtained by written resolution of the shareholders, or otherwise by the shareholders in a general meeting. The written resolution procedure is not available to public companies.

Matters reserved to the shareholders by the 2006 Act include authorisations in relation to share capital issues, certain categories of related party transactions, amendments to the company's constitutional documents and the decision to liquidate the company. A private company seeking to reduce its share capital will generally be able to do so using one of two procedures available to it designed to protect the creditors of the company. The first, and perhaps the simplest, procedure is a reduction of capital by means of a special resolution (75% majority) of the shareholders supported by a solvency statement. The second and more onerous procedure in terms of time and cost requires shareholder approval as well as the sanction of the court. Public companies seeking to reduce their share capital are restricted to using the court approved procedure.

A public company must hold a general meeting of its shareholders, known as the annual general meeting, each year at which it is usual to present the accounts, appoint auditors, deal with dividends and elect any directors who have been appointed since the last annual general meeting. Private companies are not required to hold an annual general meeting subject to any express provision to the contrary set out in the articles.

Shareholder meetings require a prior period of notice to shareholders of not less than 14 days save in respect of a private company's annual general meeting where 21 days' notice is required. Where not less than 90% of the shareholders of a private company agree, however, these notice requirements can be dispensed with and the meeting (including the annual general meeting) may be held on short notice.

A public company can only dispense with the requirement for a notice period in respect of a general meeting if 95% of the shareholders agree and for an annual general meeting, if all the shareholders agree. A general meeting on short notice is not permitted for a public limited company that is trading on a regulated market.

Directors and Officers. Appointment and Removal

A company may, if its articles of association permit, have only one director who must be a natural person, and be at least 16 years old. Such person does not have to be based in the UK in order to be a director of a UK company.

The rights to appoint directors will be contained in the company's articles of association. Any person proposing to act must indicate his or her consent to act and provide specified information to the Registrar of Companies. It is usual for the shareholders to have the right to appoint directors and for the directors to be able to fill any vacancy on the board subject to the right of the shareholders to confirm the appointment at the next annual general meeting. Similarly, the articles of association set out circumstances in which a director can be removed from office in addition to the statutory right for shareholders to, by simple majority, remove any director from office regardless of any agreement to the contrary in place with the director, subject to compliance with certain procedures.

It should be noted that the office of director is quite separate as a matter of English law from the director's position (in the case of executive directors) as an employee and accordingly, the removal from office of a director is without prejudice to the director's rights under his or her contract of employment.

Directors' Duties

Part 10 of the 2006 Act sets out the general duties of directors which are owed to the company. There are seven statutory duties which are based upon and replace the previous common law and equitable principles relating to directors' duties. The various statutory requirements and restrictions placed on the powers of directors must be considered in the light of any proposed activity of the company. The effect of these duties is that the directors can be held personally liable if they are deemed to have failed in promoting the success of the company.

It should also be noted that in certain circumstances, directors may become liable to creditors in an insolvent liquidation and that directors will be personally liable for the information about the company contained in any prospectus issued for the purposes of a fund-raising.

Subject to the rules relating to conflicts of interest, as further described below, there is no general legal requirement for a company to have a proportion of independent directors on its board nor is there a requirement for companies to have a supervisory board. However, quoted companies will be expected to comply with best practice in relation to corporate governance, which includes the requirement for independent directors.

Similarly, there are no specific rules on the level of directors' remuneration in private companies and this will usually be a matter for negotiation. In some circumstances, such as payments proposed to be made to a director for loss of office, shareholder approval will be required. In the case of fully listed (quoted) companies, shareholders must approve on an advisory basis a remuneration report which sets out, amongst other things, all payments and other benefits made to directors.

Conflicts of Interest

Directors have a statutory duty to avoid situations in which their interests can or do conflict, or may possibly conflict, with those of the company. Matters that give rise to an actual or potential conflict may be authorised by the board subject to the board having all necessary powers to authorise such conflicts. For private companies incorporated on or after 1 October 2008, the power to authorise is subject to provisions in the company's articles of association invalidating such authorisation. Private companies incorporated prior to 1 October 2008, must pass an ordinary resolution (simple majority) expressly providing the board with the power to authorise conflicts. For a public company, the directors may only authorise a conflict of interest if permitted to do so by the company's articles of association.

Secretary

A public company must appoint a company secretary. The company secretary does not need to be a natural person. The company secretary is principally an administrative function and the appointed secretary should be familiar with the filing and other requirements of the Registrar of Companies. Accordingly, it would be usual for the secretary to be based in the UK.

There is no requirement for a private company to have a company secretary. If a private company chooses not to have a secretary, anything which is required or authorised to be done by the secretary can be validly done by a director or any person authorised by a director.

Annual Return

Companies must complete an annual return each year which gives details of its share capital, shareholders, location of the statutory books, registered office, directors and secretary.

Registered Office

A company needs to file details of its registered office in England and Wales with the Registrar of Companies and any official notifications will be sent to that address. Subject to certain exceptions, the full name of the company must appear at its registered office and business premises. Any change to the registered office can be made by simple board resolution and must be notified to the Registrar of Companies.

Company's Notepaper

All business stationery must show the company's full name and number and registered office. The names of the directors need not be included, but if the name of any director appears then so must the names of all the other directors.

Accounts and Auditors

Subject to exemptions for small companies, every company must appoint a firm of auditors to audit and report on its accounts for each financial period. Companies are also required to file accounts and a directors' report with the Registrar of Companies, and these documents must comply with the requirements of the 2006 Act and show a true and fair view of the financial position of the company.

The 2006 Act lays down detailed rules as to the form and content of accounts and time limits for their delivery to the Registrar of Companies.

Other Filings

Companies must also notify the Registrar of Companies whenever there is a change of share capital, directors and officers and whenever the company creates a charge over any of its assets (in part or in full). In the case of a charge, the required information must be filed within 21 days of its creation to ensure its security in the event of liquidation.

The 2006 Act creates an offence where a person knowingly or recklessly causes to be delivered to the Registrar of Companies a document that is false or misleading, and is liable for up to two years imprisonment or a fine.

Statutory Books

Every UK company must maintain a statutory register giving details of its shareholders, directors, secretary, any issues and transfers of shares as well as charge-holders. There should also be a minute book containing minutes of all meetings of directors and shareholders.

A company can now keep its statutory books at an address other than its registered office. This is known as a single alternative inspection location (SAIL). The location must be in the same part of the UK as the company's registered office and notification of the SAIL must be given to the Registrar of Companies.

Methods of Raising Finance

The appropriate method of raising finance will depend on the nature, size and stature of the company. Funds can be raised by way of private equity, a stock exchange listing or loan finance, and within these broad categories there are a number of variations.

→ Labour Law

Employment law in the UK is based on both common law and statute. Although the employment law regime is not as onerous for employers as in many other European countries, in recent years there has been a significant increase in employment regulation, much of it to implement EU Directives.

Employment Contracts

An employer is required to provide an employee with a written statement of specified employment particulars within two months of the start of their employment. This includes certain details of the disciplinary and grievance procedures that apply to his employment. Any changes to the statement must be notified within one month of the date of the change.

Cost of Dismissal and Wrongful Dismissal

There are two issues to consider when dismissing an employee: contractual rights and statutory rights.

■ CONTRACTUAL RIGHTS. If an employee's contract of employment is terminated in breach of that contract, the employee may be entitled to claim damages for wrongful dismissal or breach of contract. The amount of damages claimed will be the sum that would put the employee in the position he would have been in had the contract been terminated correctly. Usually, this is the amount of salary and benefits to which the employee would have been entitled during the notice period or until the end of any fixed term contract. This entitlement to damages is subject to the employee's duty to mitigate the losses he suffers by finding alternative employment.

■ STATUTORY RIGHTS. Statute provides for minimum periods of notice, which are: one weeks' notice for employees with between one month and two years' continuous service, and an additional week's notice for each complete year of service thereafter, up to a maximum of 12 weeks for 12 complete years' service. However, usually the contract provides for a period of notice which can be more generous (but not less generous) than the statutory minimum.

Claims for breach of contract may be brought either in the High Court or the County Court, or for claims limited to £25,000 in an Employment Tribunal.

It is significant to note that for claims in the Employment Tribunal, each party bears their own costs, so costs are not awarded against the unsuccessful party save in exceptional circumstances. This is different from the position in the civil court where costs will usually be awarded against the unsuccessful party.

Unfair Dismissal

Employees who have at least two years' continuous employment with the employer may bring a claim for unfair dismissal in the Employment Tribunal. It should be noted that certain unfair dismissal claims (for example, dismissal by reason of pregnancy, for whistleblowing, for exercising a statutory right or for trade union membership) do not require a qualifying period of employment to be able to bring a claim.

In order to avoid claims for unfair dismissal, an employer should ensure that employees are only dismissed for a "fair" reason, following a "fair" procedure. The five potentially "fair" reasons for dismissing an employee are conduct, capability (ie competence or on health grounds), redundancy, statutory bar or "some other substantial reason" justifying the dismissal. The procedures to be followed in relation to each category are slightly different but they all involve consultation with the employee before the dismissal. The Tribunal will also consider whether the employer has acted reasonably in all the circumstances in treating the reason for the dismissal as a sufficient reason for dismissing the employee.

Employers will need to follow certain minimum disciplinary and grievance procedures or risk both unfair dismissal and an uplift to compensation, at the discretion of the Employment Tribunal. In determining whether such an uplift should be applied, the Tribunal shall take into consideration the extent to which the employer has complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

If an employee is successful in bringing an unfair dismissal claim, an Employment Tribunal can order reinstatement, re-engagement or compensation. Compensation is the most common award and comprises the following elements:

- a basic award which is calculated in the same way as a statutory redundancy payment depending on the age and length of service of the employee and a week's pay, which is currently capped at a maximum of £464 per week;
- a compensatory award which will be assessed on the basis of the losses suffered by the employee. The maximum award is currently £76,574 or 12 months' pay, whichever is the lower (note: this figure is reviewed annually on 1 February).

Employment Contracts for Directors

The employment contracts for directors are commonly referred to as service agreements and should be approved by the board of directors of the company before they are entered into. They usually contain more onerous provisions specifying the director's duties to the company as well as protection for the company's confidential information, "garden leave" provisions, intellectual property rights, restrictions on activities during employment and possibly post-termination restrictive covenants. It is also common for directors to have longer notice periods than other

employees. A service agreement usually provides for the director to resign his office on termination of the employment. There is no special regime for the employment of directors. However, there are requirements in the Companies Act 2006 which limit the period of a director's service agreement to no more than two years without the prior written consent of the shareholders of the company. There are also special provisions regarding notice and remuneration which apply to directors of UK quoted companies.

Employees' Representatives and Union Representation. Collective Consultation with Employee Representatives

In a situation where 20 or more employees are being dismissed by reason of redundancy within a 90-day period, or where a transfer of a business (or part thereof) is proposed, employers have a statutory duty to carry out collective consultation and to inform (with specified information) and consult with the affected employees either through a trade union (if that is appropriate) or through their own elected representatives. The penalty for non-compliance with this obligation to inform or consult over collective redundancy is up to 90 days' actual pay for each affected employee if an affected employee or his representative brings a successful claim for a protective award in an employment tribunal. The penalty for failure to comply with the obligation to inform or consult over a TUPE transfer is 13 weeks' actual pay for each affected employee.

European Works Councils

The purpose of a European Works Council (EWC) is for employers to inform and consult their workforce on an ongoing basis about measures which are proposed which may affect employment prospects and decisions which are likely to lead to substantial changes in the organisation such as redundancies or transfers of the business. The Transnational Information and Consultation Regulations 1999 (TICE Regulations) apply if central management of a "community scale" undertaking or group of undertakings is in the UK. There must be at least 1,000 employees within the EEA and at least 150 employees in each of two member states.

Information and Consultation obligations are not automatic; if there is no EWC (either because central management has not initiated one or the employees have not requested one) there is no obligation to inform or consult. However, if a written request has been made by employees (or their representatives) covering 100 or more employees in at least two member states, central management must set up a special negotiating body to negotiate an EWC or a procedure for Information and Consultation. If they fail to do so within three years of an EWC request, the default model EWC provisions apply and Information and Consultation obligations arise under the TICE Regulation where workers' interests are affected in at least two undertakings in at least two member states represented on an EWC.

Union Representation

Just over a quarter of workers in the UK belong to a trade union. A trade union is an organisation which consists wholly or mainly of workers of one or more description. A trade union's main aim is to reach agreements with employers over the contractual terms under which workers will work.

An employee who is a member of a trade union has rights which include the following in relation to his employer: to be accompanied to a grievance/disciplinary hearing by a trade union official; not to be refused employment, dismissed or subjected to any detriment by reason of his trade union membership or activities and the right to paid time off work to take part in trade union activities. Where a trade union is recognised for collective bargaining purposes, the employer has a duty to consult on training for workers within the bargaining unit.

Collective Bargaining Agreements

A collective agreement is an agreement or arrangement made by or on behalf of a union and an employer which relates to matters such as terms and conditions of work, termination/suspension of employment, disciplinary matters or allocation of work. In large sectors of industry in the UK, levels of pay and other principal terms are agreed in a collective agreement.

Where a union has been formally recognised by an employer for collective bargaining, it can negotiate pay and other terms on behalf of a group (or groups) of workers. This will result in a collective agreement being formed.

The provisions of a collective agreement will be legally enforceable provided the agreement is in writing, and expressly states that the parties intend the agreement to constitute a legally binding agreement between the employer and the union. To be enforceable between the worker and the employer, the collective agreement must be incorporated into the worker's individual terms and conditions of employment. Such provisions will be enforceable between the employer and the worker even if the collective agreement is not legally binding as between the employer and the union.

There are statutory rights in the UK for trade unions to be recognised by employers for collective bargaining purposes, provided various conditions are satisfied. The regime seeks to promote voluntary recognition wherever possible. The recognition procedures are complex and were introduced in the Employment Relations Act 1999. The recognition machinery is contained in The Trade Union and Labour Relations Consolidation Act 1992.

Wages And Other Types Of Compensation

The National Minimum Wage Act 1998 specifies a minimum wage for employees over school leaving age. The rates are reviewed (and typically increased) annually on 1 October. From 1 October 2014 the rates are as follows: for employees over school age but under 18 the minimum wage is £3.79 per hour, for employees aged 18-20 it is £5.13 per hour and for employees aged 21 and over it is £6.50 per hour.

The requirement to work overtime and additional payment (if any) for overtime worked is something which is usually dealt with by the employee's contract of employment.

Pensions Auto Enrolment

The new pensions auto-enrolment obligations are being phased in over a period of six years (starting with the largest employers in 2012 and ending with the smallest employers in or around 2017). Every employer will have a date from when the automatic enrolment duties come into force for their business. Employers will then have to automatically enroll eligible staff members into a qualifying workplace pension scheme and make mandatory employer contributions towards it. Employees who don't want to be in the pension scheme must actively "opt out".

Insurance Benefits

It is common in the UK for employers to provide their employees with insurance benefits. Probably the most common is private medical insurance. Other benefits which are often provided are life insurance, travel insurance, permanent health insurance and critical illness insurance. Whether or not an employer provides these to employees is a matter for the contract. Where such benefits are provided, the contract should be carefully drafted to ensure that the employer reserves all necessary rights and does not put himself in a position where he is contractually obliged to provide a benefit for which he is not insured.

Employment Regulations

The following is a brief summary of some of the main statutory provisions which employers must be aware of when employing employees in the UK:

■ WORKING TIME. The Working Time Regulations 1998 impose a limit on employee's working time of an average of 48 hours a week averaged over a 17 week reference period. Individual employees can choose to work longer than this by signing an 'opt out' agreement with their employer. There are also requirements for minimum rest breaks and daily and weekly rest periods. There are special provisions for night work.

■ HOLIDAY. Employees are entitled to 28 days' paid holiday each year (including bank and public holidays) under the Working Time Regulations 1998. There are eight recognised bank and public holidays per year in England and Wales (nine in Scotland) which are included in this minimum entitlement. Employers are free to agree a more generous contractual entitlement and in the UK it is common for employers to allow paid holiday entitlement of between 20 and 30 days and for bank and public holidays to be given in addition to this entitlement.

■ SICK PAY. There is a statutory entitlement to sick pay for up to 28 weeks in any period of incapacity for work (PIW), or series of linked PIWs, under the Social Security Contributions and Benefits Act 1992. The current statutory sick pay rate is £87.55 per week. The first three days of any sickness are "waiting days" when no sick pay will be payable. It is open to employers in the UK to agree a more generous contractual sick pay arrangement and it is common practice to do so.

■ REDUNDANCY. If an employee with two or more years' continuous employment is dismissed by reason of redundancy, he is entitled to receive a statutory redundancy payment from his employer. The amount of the redundancy payment is calculated by reference to the employee's age, length of service and weekly pay (subject to maximum of £464 per week). The maximum statutory redundancy payment (or basic award) is currently £13,920.

■ DISCRIMINATION. Currently under English law, discrimination on the grounds of sex, race, disability, sexual orientation, age, religion or belief, gender reassignment, marriage and civil partnership, pregnancy and maternity is unlawful. Compensation for workers who successfully bring discrimination claims against their employers is potentially unlimited and can include a claim for injury to feelings.

■ PROTECTION FOR PART-TIME AND FIXED TERM EMPLOYEES. It is unlawful for an employer to subject to a detriment or treat part-time or fixed term workers less favourably than full time staff unless such treatment can be objectively justified. A worker whose fixed term contract is successively renewed will be considered a permanent employee after four years of continuous employment.

■ DATA PROTECTION. Employers have a duty to notify their staff as to the personal and sensitive personal data they hold, tell them how it will be processed and obtain their consent to process the data. Such data must be kept securely. Data must be processed in accordance with the provisions of the Data Protection Act 1998 and the various Data Protection Codes issued by the Information Commissioner's Office. Failure to comply carries civil penalties. Workers have the right to request copies of personal data held in relation to them by the employer.

■ MATERNITY RIGHTS. All pregnant women have the right to paid time off for antenatal care in preparation for the birth of their baby. Pregnant employees are entitled to six months ordinary

maternity leave from work and then an additional maternity leave period of six months, regardless of their length of service with their employer.

Employees on maternity leave who meet the eligibility requirements are entitled to statutory maternity pay, which is pay of 90% of the employee's normal weekly earnings for the first six weeks of maternity leave and either £138.18 per week or 90% of normal weekly earnings, whichever is lower, for the next 33 weeks. A high percentage of this payment is recoverable by the employer out of its National Insurance contributions.

■ PATERNITY RIGHTS. Employees with at least 26 weeks' continuous employment who meet the eligibility requirements may take up to two weeks ordinary paternity leave and 26 weeks additional paternity leave (if the mother returns to work before taking her full maternity leave entitlement). Employees who take this leave are entitled to statutory paternity pay which is currently £138.18 per week or 90% of normal weekly earnings if lower.

■ ADOPTION RIGHTS. The adoption regime provides similar leave and pay rights and has similar qualification provisions to the maternity provisions. In a situation where there is a joint adoption, one partner is entitled to statutory adoption pay whilst the other has paternity leave entitlements.

■ PARENTAL LEAVE. Employees with one year's continuous employment can take up to 18 weeks' unpaid leave for each child up to the child's fifth birthday (or 18th birthday in special circumstances). This right transfers with the employee when he/she changes employer. Statute provides a scheme which allows parental leave to be taken in blocks of one week or more although no more than four weeks in any year. However, employers can agree arrangements that are more generous and in particular which permit leave to be taken in blocks of less than one week.

■ THE RIGHT TO REQUEST FLEXIBLE WORKING. All employees have the right to request flexible working arrangements from their employer. The requirements which must be fulfilled before such a request can be made are that the employee must have 26 weeks continuous employment and the employee must not have made another application to work flexibly under the right to request legislation during the preceding twelve months. The employer has an obligation to consider the request and give a reason for any refusal (a request may only be refused on eligibility or procedural grounds or on one or more prescribed statutory reasons). A refusal to consider a request for flexible working arrangements from a female worker with childcare responsibilities may amount to indirect sex discrimination if it cannot be justified on objective grounds.

■ TIME OFF TO CARE FOR DEPENDANTS. Employees may take a reasonable amount of unpaid time off to deal with family emergencies.

Health And Safety

An employer is under a common law duty to have regard to the safety of its employees. The employer must provide a safe place of work and safe access thereto, it should take reasonable care that employees are not subjected to unnecessary risks of injury, provide safe systems of work, safe equipment and materials and competent fellow employees. An employer can also be liable at common law for accidents caused by acts of its employees where the employees were acting in the course of their employment. In addition to these common law duties, statutory obligations have been imposed under the Health and Safety at Work Act 1974. The Occupiers' Liability Act 1984 imposes duties on an employer for both his employees and visitors to the premises. Breach of such obligations can result in criminal as well as civil liability.

Contracting and Outsourcing of Work or Services

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), which implements the EU Acquired Rights Directive, protects employees' rights in the event of a transfer of a business or part of a business in which they are working or in the event of a 'service provision change' (for example an outsourcing arrangement). The TUPE regulations generally do not apply to situations where the shares of a company are sold.

TUPE imposes a duty on the employer to inform and consult with employee representatives before the transfer takes place. There are potentially significant penalties for failure to adhere to these obligations.

The main effect of the TUPE regulations is that in the event of a transfer of a business or service provision change, the employment rights and obligations of the employees of the business (or the part of the business) being transferred or function being outsourced will be automatically transferred to the new owner of the business or new contractor who will automatically assume those rights and obligations.

Any pre or post transfer dismissal where the sole or principal reason for the employee's dismissal is the transfer itself will be deemed automatically unfair. However, the employer will have a defense if it can show that the sole or principal reason is an "economic, technical or organisational reason entailing changes in the workforce" ("an ETO Reason") which entailed changes in the workforce. The employer is however still required to follow a fair dismissal procedure to escape liability.

TUPE also makes it very difficult to change the existing terms and conditions of employment of transferring employees and legal advice should be sought before attempting to do so. Any changes to terms and conditions will be automatically void if the sole or principal reason for the change is the transfer itself. However, changes may be valid if: A) the sole or principal reason is an ETO Reason and the employees agree to the change; or, B) if there is an intervening

justification for the change and/or the employment contract allows the employer to implement such a variation.

Unfortunately, it is not open to contracting parties to agree that the TUPE regulations will not apply. As the obligations which result from a TUPE transfer can be significant, particularly for the purchaser, it is common for business and asset sale agreements in the UK to contain indemnities and other provisions whereby the parties agree the way in which costs and liabilities will be borne.

Social Security

The UK operates a pay as you earn ("PAYE") tax deduction system which must be operated by all employers. There are currently four rates of tax: starting (10%), basic (20%), higher (40%) and additional (45%). These percentages are applied to a portion of an employee's taxable income subdivided into bands. The PAYE system requires the maintenance of pay and tax records for virtually all employees. Tax deducted by the employer under PAYE must be paid to HM Revenue and Customs within specified time limits. Employers are required to use certain forms to record pay and tax information and these must be retained for three complete tax years.

In addition employers must deduct National Insurance contributions. Generally employers must deduct National Insurance contributions on the earnings of the employee – known as employees' National Insurance contributions. In addition, employers must pay National Insurance contributions at 13.8% of the employee's earnings as employer's National Insurance contributions. Again employers have duties to keep records and account to HM Revenue and Customs within specified time limits.

Benefits provided to employees are also taxable and subject to the deduction of National Insurance contributions. Special rules apply for company cars.

→ Real Estate Law

Types of Ownership

For the purposes of this section, the UK means England, Wales and Northern Ireland but excludes Scotland. Scotland has a different system of land ownership.

A few words about terminology may help. Both the words "land" and "property" mean real estate. The word "premises" may also be used. This has the same meaning as "land" and "property" but is most correctly used to describe land or property included in a lease.

There are three types of ownership in the UK. They are called freehold, leasehold and commonhold. Land can only be registered as commonhold land if it is registered land with absolute title. It is a type of freehold and the essence of its creation is a further registration at the Land Registry.

Freehold is an estate in land which provides the holder of the estate with rights of ownership. The most common types of freehold estate are:

- fee simple, which is effectively absolute ownership of the land; and
- life estate, which means ownership for the duration of the holder's life.

The owner of a freehold has no landlord and can do whatever he likes with his property subject to the general law of the land and subject to any restrictions placed on the property by the owner or any former owner. Freehold ownership is most common for residential houses, large estates and investment property.

Leasehold ownership is where land is held by one person (called the tenant) from another person (called the landlord) for a limited period of time on the terms of an agreement (called a lease). Most business premises in the UK are occupied under leases. Residential flats (apartments) are also mostly occupied under leases. In most circumstances a tenant under a lease will pay a rent to the landlord. The lease will last for a limited amount of time. The lease document itself will contain rights and obligations both for the landlord and the tenant and numerous restrictions on what the tenant can and cannot do with the property. Modern commercial leases are long, complex documents which require legal advice.

The third form of ownership is commonhold which has been introduced recently. This new system of ownership was designed primarily for blocks of residential flats and other developments which are split into a number of units and where there is a significant amount of "common parts". Although this new form of ownership has now been available for a number of years commonhold schemes are still very rare.

Land Registry

There is a computerised register of land in the UK maintained by a government agency called the Land Registry. The register is computerised and accessible online. The register is maintained by a number of district land registries located throughout the country. At the moment, not all land in the country is registered but the government is committed to making it so. The government is also committed to extending the facilities available via the Land Registry portal including a system enabling the transfer of land to be effected electronically.

All registered land has its own "title number" and plan which identifies the land in question. The entries which appear on the register against a particular title number are guaranteed by the

state as accurate. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. In theory, such rights and obligations should be apparent by a proper inspection of the land in question or making enquiries of the current owner/occupier. Land which is not registered at the Land Registry is increasingly rare particularly in urban areas.

Transfer

Generally, land can only be transferred by deed. A deed is a document usually prepared by a lawyer which is signed and witnessed and brought into effect in a particular way. This process does not require a notary. In order for a transfer of registered land to be effective, it must be completed by registration at the Land Registry. This cannot be done unless the relevant tax has been paid in respect of the transaction. The relevant tax is Stamp Duty Land Tax which is explained below.

Mortgages And Charges

If money is borrowed to assist with the purchase of land in the UK, the lender will invariably take a mortgage or a charge over the land in question. In this context the expressions "mortgage" and "charge" effectively mean the same thing. A commercial mortgage will normally involve two key documents. The first is a loan agreement which can be in the form of a formal agreement or a letter (sometimes called an offer letter or a facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry. The mortgage usually incorporates the loan agreement.

The lender who takes a mortgage is called a mortgagee or chargee. The mortgagee's main rights are as follows:

- to be repaid the loan plus interest and costs.
- if the borrower defaults, to take possession of the mortgaged property and to sell it to repay his loan. It is not always necessary for a mortgagee to obtain a court order before taking possession or selling the mortgaged property.
- to appoint a receiver to manage and if necessary sell the property.
- to prevent a sale of the property if he is not repaid.

In practice, the mortgage or charge is now the only recognised formal, fixed security taken over land in the UK. Businesses may also be asked to provide floating charges in favour of institutional lenders. These charge all the assets of the business but only restrict dealings with those assets if the borrower is in default.

Restrictions on Acquisition

There are no restrictions on foreign ownership of UK property.It should be noted however that there have been recent moves by the government to deter the holding of high value residential property (over £2million) by "non natural persons" and this has had a "knock on" effect in respect of holding such property in off shore entities. In practice, it should also be noted that it should not be possible to acquire property in the UK or to borrow money on the security of property in the UK without complying with the identification requirements of the money laundering regulations.

Legal Protection for Buyers and Sellers

In general, the law gives no special protection to buyers or sellers of UK property. Those involved in property transactions will invariably use a solicitor to represent their interests. It is the job of the buyer's solicitor to ensure that the property being bought is free from undisclosed restrictions or obligations and that it is validly transferred at the correct price.

Restrictions on Development

UK law prohibits the development of land without planning permission. Development includes changing the use of land or carrying out building, mining or engineering operations on land. A planning permission is a permission given by the planning department of the relevant local authority. The local authority is allowed eight weeks in which to reach a decision on any planning application. For major developments, decisions can take up to 13 weeks.

Some types of minor development are permitted without planning permission. For example, minor works and changes of use where the new use is similar to the old use. For minor works a licence to alter may be required. However, this area is very tightly controlled and professional advice is advisable.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent, this is a formal consent from the District Surveyor (a local government officer) who will consider the plans and specifications of any building works before giving consent and inspect the progress of the works at key moments.

All local authorities prepare plans for how they want different parts of their areas to be used and developed and these plans are available to the public. They will set out areas or zones where the local authority wishes to encourage particular uses (eg shopping, residential or industrial) and discourage other uses. The local government will consider any application for planning permission in the light of these plans so that, for example, applications for industrial development in residential areas will not succeed.

Leases

A lease is the most common way of holding commercial property in the UK. The length of leases will vary depending upon the circumstances and requirements of the parties. There is however a standard which is called an institutional lease. Such a lease would be granted by a major financial institution such as an insurance company, pension fund, investment trust or property company. Institutions tend to look for longer leases, eg 15 years or more (though terms of 10 years and even five years are available). The rent will be subject to review most commonly at five yearly intervals. Rent reviews in the UK are almost invariably on an upwards only basis. This means that the terms of the lease guarantee to the landlord that either the rent will go up in line with market rents or it will remain the same even if the market rent has fallen below the existing rent level.

Institutional landlords own property for investment and/or business purposes and require that property to provide a secure and predictable income. The institutional landlord wants the rent it receives to be pure profit, this is referred to as "clear rent". This means that the rent the landlord receives will be clear of any deductions to cover the cost of, for example, repairs and maintenance of the building, the supply of services to the building and the cost of insuring the building. All these expenses will be payable by the tenant or (in a building containing a number of tenants), by all the tenants together. These extra payments on top of rent are generally called a "service charge".

In addition to rent and service charge, there are local taxes to help pay for local services to be paid to the local authority which are called business rates. They are charged on most non-domestic properties (including commercial), for example, shops, offices, pubs, warehouses, factories and can be as much as the rent again.

The lease will impose obligations and restrictions on the tenant. The obligation which is most significant from a financial point of view is the obligation to repair, decorate and if necessary re-build or pay towards the cost of rebuilding. In an office block for example the tenant will be responsible for maintaining, repairing and decorating his own property. He will also be responsible through the service charge to contribute towards the cost of repairing and maintaining the building of which his offices form part including all services to the building (eg lifts, air-conditioning and heating plant and systems). It is often the case that these expenses are not capped and if the building and its services are old, the tenant can face very significant extra costs through the service charge.

- restrictions on use
- restrictions on alterations to the property
- restrictions on disposing of the property
- VAT is often payable on the rent of commercial property

Tenants of property used for business purposes will normally have statutory rights to remain in the property when the lease comes to an end. They will have to negotiate a new lease and pay a commercial rent but the landlord cannot insist that they vacate unless special circumstances apply. It is also quite common for the statutory rights referred to above to be excluded by agreement between the parties.

Stamp Duty Land Tax

Stamp Duty Land Tax ("SDLT") is a tax payable to the government on land transactions. Any sale of freehold or leasehold land or the grant of a lease at a rent gives rise to SDLT. The tax is payable by the buyer or the tenant. Tax is payable on a sliding scale up to a maximum of 4% for commercial transactions (7% for residential property) of the capital sum paid by the buyer. In the case of leasehold commercial premises SDLT is payable on the capitalised value of the rent at the rate of 1% of the value that exceeds £150,000.

It should be noted that a penal rate of SDLT (15%) is payable in respect of residential property acquisitions by "non natural persons" if the purchase price is over £2million.

VAT

Value added tax is generally not payable on residential land. In some circumstances it is payable on the purchase price of commercial land and it is also often payable on rent charged to tenants.

Setting Up in Business in the UK

Some choices for a business setting up in the UK can include obtaining:

■ A SERVICED OFFICE. These are usually small offices where office services are supplied as part of the package. The extent of services varies between providers but normally they will include furniture, use of equipment (such as photocopiers and fax machines), telephones and telephone answering, conference facilities and secretarial services. The commitment is short term and the cost is relatively high.

■ A SHORT TERM LICENCE. This is similar to a lease but for a very short term (i.e. 6 months to a year) and is designed to regulate a "temporary" arrangement. It would generally give the new business the space only. The tenant would have to supply furniture, equipment and personnel. There would be no security when the licence comes to an end.

■ A LEASE. The minimum commitment would be three to five years. Shorter periods are sometimes available from tenants who themselves have surplus space (ie by taking an underlease). Landlords will wish to be satisfied above all that the incoming tenant is able to

pay the rent and fulfil the tenant's obligations in the lease. They will want to see accounts and references that demonstrate this. They may also require a guarantor or a rental deposit of between six months and two years rent.

■ A FREEHOLD. Purchasing a freehold involves a major capital commitment which is likely to be inappropriate for smaller businesses.