United Kingdom

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McCarthy Denning Limited is the original next generation law firm. Established in 2013 with the vision of transforming the way that legal services are provided, we ensure that our law firm is designed to support our clients, not expensive infrastructure.

We are a commercial law practice widely respected for our reassuringly straightforward approach. We are focused on building strong client relationships and pride ourselves on our character and tenacity – it allows us to get off the fence and cut through the jargon to provide confident strategic commercial advice.

We are a progressive and innovative firm with an enviable portfolio of domestic and international clients, many of whom are leaders in their field. We have partnerships with trusted firms around the world to provide quality-driven and commercially sound advice to our clients. We act for many entrepreneurial, fast-growing companies and we grow with our clients, ensuring our partners are fully equipped to handle a wide range of matters to support clients through their growth.

We recruit the best legal talent and our lawyers are recognised as stand-out individuals.

As a full service law firm, there are very few legal areas in which we do not provide advice.

At McCarthy Denning we have brought together a team of senior lawyers who are recognised as experts in their area of specialisation by both clients and leading legal directories. Unlike many of their peers in the leading traditional firms, however, our lawyers pride themselves on their willingness and ability to go the extra mile. They not only bring commercial expertise to the solving of legal problems, but use their business ideas and networks of contacts to solve commercial problems and create profitable opportunities for our clients.

Collectively, this breadth of experience keeps us at the forefront in our fields, constantly honing our understanding of the way that legal and commercial interests intersect.

In early 2019, the firm decided to move office and is now situated in the heart of the City of London. This was a necessary move due to unprecedented growth over the past few years and also provides us with room for further expansion in years to come.

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TAX

VENTURE CAPITAL AND PRIVATE EQUITY

United Kingdom
Corporate Law

McCarthy Denning Limited

1. Framework

UK corporate law is based on both common law and statute. The legislative framework of UK company law was overhauled with the implementation of the Companies Act 2006 (the "2006 Act") which was intended to simplify and modernise company law in the UK.

The 2006 Act exists alongside the Companies Act 1985 and Companies Act 1989 (together with the 2006 Act, the "Companies Acts") together with some subsequent amendments. There are also 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.

2. 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 limited liability corporate structure is the one which is most widely used 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, joint venture or a limited liability partnership. In addition to corporate law considerations, the taxation consequences will also be significant in determining the final desired structure of any business structure.

Overseas companies can register as a branch or as a place of business in the UK. A branch is part of an overseas limited company organised to conduct business through local representatives in the UK. A place of business is for companies who cannot register as a branch because they are from within the UK, they are not limited companies or their activities in the UK are not sufficient to define it as a branch (for example if the activity is simply a representative office).

3. Types of Companies

There are different types of corporate structure, which can be used in the UK. The most common structure used is a private company limited by shares. Companies can be either public, which means that they can offer their shares or other securities for public subscription, subject to compliance with the relevant laws,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 Companies Acts and, if they are quoted, they will also be subject to the regulations and codes of practice applicable at the relevant time to the particular trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs can be obtained very quickly and an expedited “same day” service is available, subject always to compliance with all applicable requirements. There are no requirements for local shareholders or directors and no minimum capital rules apply (in the case of a private company). 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 simply state that the initial subscribers 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 certain 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.

Specific authorisation is required for the carrying on of certain types of business, for example, in financial services.

4. 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.

5. Share Capital

Authorised Share Capital

A company's authorised share capital is the total number of issued and unissued shares in the capital of the company. An increase in a company's authorised share capital requires shareholder approval by ordinary resolution (a simple majority).

There is no longer a requirement for a company to have an authorised share capital. If a company wishes to restrict the number of shares it can allot, it will need to amend its articles of association by special resolution (75% majority) to include suitable provisions to the extent the articles do not already contain any such restriction.

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 and also specifically authorised to issue shares where the directors wish to issue shares for cash otherwise than in proportion to existing shareholdings. 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. A company incorporated under the Companies Act 1985 will first need to pass an ordinary resolution in order to give the directors the power to allot shares as set out above. 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).

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

6. Minimum Shareholdings

Private Companies

There are no minimum requirements for the authorised and issued share capital for private limited companies and the most typical formation is for a company to have an authorised share capital of at least £100 divided into shares of £1. 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.

7. Share Capital Rights

The rights and restrictions attaching to the shares are set out in the company's articles of association. Most companies issue only one class of shares, known as ordinary shares. The rights and restrictions can be changed only by shareholder resolution (75% majority) and, where appropriate, a resolution of the holders of any affected class of shares. Preferred or preference shares would be expected to carry rights (eg to receive dividends, return on capital, etc) ahead of the ordinary shareholders and deferred shares would be expected to carry rights behind those of the ordinary shareholders. In the case of a quoted public company, it would be usual for the shares to be freely transferable and this has generally been 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 are generally 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.

8. 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 Companies Acts 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.

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 in any event permitted for a public limited company that is trading on a regulated market.

Matters reserved to the shareholders by the Companies Acts 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.

9. 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.

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 would set out the circumstances in which a director can be removed from office and there is also a statutory right, subject to compliance with certain procedures, for shareholders, by simple majority, to remove any director from office regardless of any agreement to the contrary in place with the director.

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 on 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, among other matters, 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 companies on a regulated market, 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 anything 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.

10. Confirmation Statement

Companies must complete a confirmation statement each year, which gives details of its share capital, shareholders, location of the statutory books, registered office, directors and secretary. It is also necessary to maintain a register of persons with significant control and influence over the company and to file this information with the Registrar of Companies. Persons with significant control and influence include various categories of person, but broadly speaking are most usually persons who hold more than 25% of the shares or voting rights or have the right to appoint or remove directors but would also include persons who exercise significant control or influence, either directly or through an intermediate organisation.

11. 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.

12. 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.

13. 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. There are additional filing and compliance requirements applicable to public quoted companies.

14. 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 part of its assets. In the case of a charge, the required information must be filed within 21 days of its creation to ensure the validity of the 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.

15. Statutory Books

A UK company must maintain a statutory register giving details of its shareholders, persons with significant control or influence, 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 specifically elect to keep the information that must be recorded in certain statutory registers on the public register held by the Registrar of Companies.
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.

16. 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 seed, venture or crowd funding, private equity, a stock exchange listing or loan finance, and within these broad categories there are a variety of structures.

17. Forthcoming Changes:
A Note of Caution

It should be noted that the above is a very general guide to the current position. There are a number of proposals currently under discussion which are likely to involve some changes to what is stated above over the next year or so. Of particular note are measures designed to help combat economic crime and promote corporate transparency which would, among other things, give the Registrar of Companies increased power in relation to a number of matters including verifying information provided and the identity of individuals. There are also proposals to make changes to the requirements for filing company accounts. Separately, there are a number of amendments being proposed to both the UK listing regime and the prospectus regime.

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Corporate and Personal Taxes

The following information is based on UK tax law and HM Revenue and Customs (**"HMRC"**) practice currently in force in the UK and takes into account the announcements in the Autumn Statement of 17 November 2022. Such law and practice (including, without limitation, rates of tax) is in principle subject to change at any time. The information is correct as at today's date but may be subject to change following finalisation of the legislation for the Autumn Finance Bill 2022 and the Spring Finance Bill 2023.

The UK left the EU on 31 January 2020. Under the terms of the Withdrawal Agreement, a post-Brexit transition period started on exit day and ended at 11pm on 31 December 2020. During the transition period, the UK continued to be treated for most purposes as if it were still an EU member state. EU-derived law applied or had been implemented in the UK across a wide range of areas, including tax. It is currently unclear when, how and to what extent UK law in these areas will in future diverge from European rules and regulation. Significant change is expected in the future.

1. Corporate Residence

A company is regarded as tax resident in the UK if it is incorporated in the UK or 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 dual resident.

2. Rates of Corporation Tax

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The main rate for the financial year ended 31 March 2023 is 19% and from 1 April 2023 will increase to 25%. However, companies with profits of up to £50,000 will continue to pay 19% and with profits between £50,000 and £250,000 will pay a tapered rate between 19% to 25%.

The Government will introduce a set of international reforms to increase the tax take on larger corporates with a minimal UK presence which are known as the OECD's Pillar 1 and Pillar 2. A global minimum tax of 15% will be imposed on the accounting profit of both large companies in the UK (under a domestic minimum tax) and on their foreign operations (under the income inclusion rule) for accounting periods beginning on or after 31 December 2023.

3. Non-resident Companies

Companies that are not resident in the UK are only subject to UK corporation tax if they carry on a trade in the UK through a permanent establishment. If this applies, the company will be subject to UK corporation tax on all business 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. Typically, the business profits article of a double tax treaty will limit the corporation tax charge to the profits that are attributable to a permanent establishment in the UK. 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 and assuming that it has the same credit rating as the non-resident company, and that its equity and loan capital are reasonable in the context of its independence.

4. 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 of 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.

The UK transfer pricing legislation refers to the Organisation for Economic Co-operation and Development's **('OECD's)** Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations **('OECD Guidelines').** With the continued globalisation of business, transfer pricing has become an issue of increasing importance and was one of the key areas of focus for the OECD initiative to counter Base Erosion and Profit Shifting **('BEPS')** practices by multinational corporations.

The OECD Guidelines provide detailed guidance on how the arm's length principle should be applied in relation to related-party transactions, incorporating revisions made as part of BEPS Actions. The OECD Guidelines contain amended and further guidance on applying the arm's length principle, transaction profit split methods, intangibles, low value-adding intra-group services and cost contribution agreements. The UK legislation in Part 4 of Taxation (International and other Provisions Act 2010 **('TIOPA 2010')** has been amended so that it refers to the latest version of the OECD Guidelines.

New transfer pricing rules on financial transactions (developed as part of Actions 4, 8-10 of the BEPS Action Plan) were released by the OECD in February 2020. The guidance clarifies the process of accurate delineation for financial transactions. This is likely to have a significant impact on the practice of pricing financial transactions.

From April 2023 large businesses will be required to keep and retain transfer pricing records in a prescribed and standardised format in accordance with OECD best practice. This applies to both the master file and the local file.

5. Controlled Foreign Companies

The Finance Act 2012 inserted Part 9A into TIOPA 2010, enacting a new regime for controlled foreign companies ('CFCs') for accounting periods beginning or on after 1 January 2013. A CFC is a non-UK resident company that is controlled by a UK resident person or persons. A CFC charge will arise if all of the following apply:

∴ A company resident outside the UK for tax purposes is controlled by a UK resident person or persons

∴ There is a chargeable company (i.e. a UK resident company that has a sufficient interest in the CFC)

∴ The CFC has chargeable profits that pass through 'gateway' tests (that is profits of a specified type that are regarded as sufficiently connected to the UK)

∴ The CFC is not entitled to the benefit of one or more of the entity-level exemptions. (the exempt period exemption, excluded territories exemption, low profits exemption, low profit margin exemption, tax exemption)

There are three alternative tests to determine control

∴ Legal Control (namely the power to ensure the company's affairs are conducted in accordance with the holder's wishes either through holding of shares, possession of voting rights or by virtue of other constitutional documents)

∴ Economic rights (i.e. entitled to the majority of proceeds on a disposal of a company's shares, or income on a distribution of its income, or the company's assets available for distribution on a winding up)

∴ Accounting (the 'parent undertaking' or 'parent' control test for the purposes of Financial Reporting Standard (FRS 2) provided that at least 50% of the non-UK resident company's chargeable profits would be apportioned to the UK company parent)

A UK resident may also have control if the company is at least 40% controlled by a UK person and at least 40% (but no more than 55%) controlled by a non-UK person (the 40% test).

Where a company is a CFC and does not satisfy any of the entity-level exemptions, then the total chargeable profits of the CFC and any creditable tax are apportioned among persons with a relevant interest in the CFC. A sum equal to corporation tax on the apportioned chargeable profits of the CFC (less the CFC's creditable tax on those apportioned chargeable profits) is charged to each chargeable company.

Action 3 of BEPS is aimed at developing recommendations for the design and strengthening of the CFC rules although the Government does not intend to make any further amendments to our domestic CFC rules to comply with Action 3. Section 20 of the Finance Act 2019 inserted, with effect from 1 January 2019, a new section 371RG into TIOPA 2010, containing an extended definition of control to comply with the CFC provisions in the Anti-Tax Avoidance Council Directive 2016/1164/EU ('ATAD').

6. Group Taxation

For corporation tax purposes, a group relationship exists between two companies if one company holds not less than 75% of the other's ordinary share capital or if both companies are 75% subsidiaries of a third company. In addition, a company which is to be included in a corporation tax group must also be an effective 51% subsidiary of a principal company. For group relief purposes, the requirement for a 75% shareholding relationship is extended so that the company owning the shares must also be beneficially entitled to 75% or more of the profits available for distribution to equity shareholders and of assets available for distribution in a winding-up. 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 by several companies between them none of which owns beneficially less than 5% of that capital. It is possible both for non-UK resident companies to be members of a group for group relief purposes and to trace the ownership of one UK resident company by another through a non-UK resident company. Previously, a non-UK resident company could not be the surrendering company or the claimant company unless it carried on a trade in the UK through a permanent establishment. However, in 2006 provisions were introduced that in theory allow group relief for a non-UK resident company's losses but such relief is dependant on various tests which in practice are rarely satisfied.

For accounting periods beginning on or after 1 April 2017, the Finance (No 2) Act 2017 introduced provisions reforming the rules on what companies can do with carried-forward corporation tax losses. The provisions include a new group relief for carried forward losses in respect of losses arising on or after 1 April 2017 only.

7. Tax Depreciation
(Capital Allowances)

Tax allowances, called capital allowances, on certain purchases or investments can be claimed. The general rate is 18% per annum calculated on a reducing balance basis. 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 items such as plant and machinery, buildings and fixtures. The amount of the allowance depends on what is being claimed for. In some cases, the rates are different in the year you make the purchase from those in subsequent years. For certain categories and amounts of qualifying expenditure, 100% first year allowances are available. These are known as first year allowances because they are available in the first year in which expenditure is incurred.

8. Inter-company Domestic Dividends

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

9. Substantial Shareholding Exemption

Capital gains arising from disposals of trading companies in which a company has at least a 10% shareholding held for an uninterrupted period of at least one year beginning no more than six years before the date of disposal are in certain circumstances free of corporation tax on chargeable gains.

10. Tax Incentives

Tax incentives are available for investment in unquoted trading companies providing income tax relief and capital gains tax relief.

11. Corporation Tax Administration

For companies with taxable profits of £1.5m or less, corporation tax is generally payable nine months after the end of the accounting period but large companies (those with taxable profits of over £1.5m) are required to pay in instalments.

Under the Finance (No. 2) Act 2017, the Government's Making Tax Digital ('MTD') project will replace annual returns with digitised tax compliance, quarterly returns and end of year statements. VAT registered businesses with a taxable turnover above the VAT threshold (£85,000) are now required to follow the MTD rules and those below the VAT registration threshold were required to follow MTD for their first return starting on or after April 2022. Self -employed businesses and landlords with annual business or property income above £10,000 will need to follow the rules for MTD for income tax from their next accounting period starting on or after 6 April 2023. The new rules were due to apply to corporation tax from April 2020, subject to certain exemptions. However, the Government is still consulting on the earliest date that the new rules will apply which will not be before 2026.

12. 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.

Other Taxes

1. 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 UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. The old slab system was replaced by the slice system so SDLT for residential property applies to slices of consideration rather than to all the consideration. For transfers of residential freeholds (or leases where the only consideration is a premium with an effective date on or after 23 September 2022 but before 1 April 2025, the rate of duty starts at 0% for transactions not more than £250,000, 5% where the consideration is more than £250,000 but not more than £925,000, 10% where the consideration is more than £925,000 but not more than £1,500,000, rising to 12% for transfers over £1,500,000. Please note that lower rates of SDLT apply for first-time buyers purchasing residential properties worth £625,000 or less, with full relief from SDLT for dwellings up to £425,000. Higher rates of SDLT (applying an additional 3% levy) will apply to purchases of additional UK residential properties in England and Northern Ireland such as second homes and buy to let properties acquired for more than £40,000. A higher rate of 15% may apply to all the consideration where certain non-natural persons (such as a company) purchase an interest in a single residential property for more than £500,000.

Leases are generally chargeable at 1% of the net present value of the rentals under the lease (applying a 3.5% discount rate) where the net present value exceeds £250,000 in the case of residential property and £150,000 in the case of non-residential.

The Finance Bill 2021 included provisions for an SDLT surcharge of 2% for non-residents buying residential property in England and Northern Ireland. The surcharge applied from 1 April 2021 (subject to transitional provisions).

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 other marketable securities (where the consideration is over £1000) at the rate of ½% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of most other assets. There is no capital duty in the UK.

2. 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 all goods and services, and sometimes it is paid at a reduced rate. In some circumstances, refunds of VAT paid may be claimed.

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 is 20 %

∴ Reduced rate. In some cases, for certain fuel and power, some energy saving materials, some residential property works etc. VAT is paid at a reduced rate of 5 %

∴ Zero rate of 0%. There are some goods on which VAT is not paid, like most food items, books, newspapers and magazines and children's clothes.

The Government's MTD project now applies to VAT for businesses with a turnover in excess of the VAT registration threshold, subject to certain exemptions. Those businesses with a turnover below the VAT registration threshold were required to follow MTD for their first return starting on or after April 2022.

3. National Insurance Contributions

Employer's national insurance contributions are payable at the rate of 13.8% on earnings in excess of £170 per week. Employees national insurance is payable at the rate of 12% for earnings between £184.01 and £967 per week and at 2% thereafter.

Personal Taxes

1. Residence and Domicile

An individual's liability to tax in the UK is determined by his residence and domicile status. Up until April 2013, the terms "resident", "ordinarily resident" and "domiciled" were not defined in UK legislation so it was necessary to rely on case law and the practice of HMRC. A Statutory Residence Test ('SRT") was introduced with effect from April 2013. The SRT is quite complex and requires a series of tests to be considered. Under the new rules an individual will be treated as tax resident in the UK if he satisfies one of the Automatic UK Tests or the Sufficient Ties Test, and does not satisfy one of the four Automatic Overseas Tests. In addition, the Government has abolished the concept of ordinary residence although it has been replaced by legislation that allows short-term UK resident, foreign domiciled employees to continue to claim the remittance basis where part of their duties is carried out overseas.

Domicile is a fundamentally different concept from residence. 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 real home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. UK domiciled individuals are assessable on their worldwide income and gains.

Domicile can have a significant effect on UK tax liabilities. Resident non-UK domiciled individuals need not pay UK tax on income and capital gains arising overseas if they are not remitted to the UK. The remittance basis results in an individual paying tax on foreign income and capital gains by reference to amounts brought into the UK. Individuals domiciled outside the UK who use the remittance basis will pay an additional £30,000 charge if they have been resident in the UK for at least seven out of the nine preceding tax years, £60,000 if they have been resident in the UK for at least 12 years out of the 14 preceding tax years and before the April 2017 change in rules, £90,000 if they have been resident in the UK for at least 17 years out of the preceding 20 years. They will pay tax at the normal income tax rates (as opposed to dividend tax rates) on remitted foreign dividends.

The deemed domicile rules changed from 6 April 2017. From that date, those who are not domiciled in the UK will be deemed UK domiciled for tax purposes if they have been UK resident for more than 15 out of the last 20 tax years preceding the tax year in question. An individual who is a 'formerly domiciled resident' for a particular tax year will also be deemed UK-domiciled no matter what their actual domicile. Also the inheritance tax benefit of a non-domiciled individual holding UK residential property through an offshore structure has been removed. As a result of the April 2017 change in rules, the £90,000 charge payable by an individual who meets the 17-year residence test is no longer relevant since the individual will be taxed on an arising basis after 15 years.

2. Individual Tax Rates
(for the tax year 2022/2023)

	Dividends[1]	Savings	Other
£1-£37,700	8.75%	20%[2]	20%
£37,701-£150,000	33.75%	40%	40%
Over £150,000	39.35%	45%	45%

1. Dividend nil rate band on first £2000 of an individual's dividend income (reduced to £1000 from 6 April 2023 and to £500 from 6 April 2024.)

2. Personal savings allowance results in nil rate on £5000 of savings income where taxable income other than savings and dividends is below the upper limit of the starting rate band.

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

3. Inheritance Tax

Inheritance tax is due on an individual's estate on death, on gifts within seven years of 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 2022/2023. To the extent that chargeable transfers exceed the nil rate band, the tax rate is 20% for lifetime transfers where the donor survives seven years and 40% for transfers on death and in the three years preceding death. A tapered inheritance tax charge applies to gifts made between three and seven years before death. Inter spouse transfers are free of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. The rules differ where the transferee spouse is non-domiciled but the transferor spouse is domiciled.

Depending on when an individual dies, an additional residence nil rate band of £175,000 for 2022/23 is available where a residence is passed on death to direct descendants. Any unused nil rate band can be passed to a spouse or civil partner.

4. Capital Gains Tax

Individuals are subject to capital gains tax on their chargeable gains subject to the annual allowance and other exemptions and reliefs. Capital gains tax also applies to other entities that are not companies such as trustees and personal representatives. Gains are taxed for a "year of assessment". Each year of assessment starts on 6 April and finishes on 5 April in the following year. Under the capital gains tax regime, an individual is taxed on gains arising in a year of assessment during any part of which the individual is resident in the UK. The rate of capital gains tax is 10% for basic rate taxpayers and 20% for higher and additional rate taxpayers and trustees and PRs. However, for disposals of UK residential property the rates are 18% and 28% respectively where principal private residence relief is not available. The annual allowance is £12,300 for 2022/23 (and £6150 for trustees) but will be reduced to £6000 with effect from April 2023 and to £3000 with effect from April 2024.

Double Tax Treaties

Treaty and Non Treaty Withholding Taxes ('WHT')

The following chart contains the WHTs 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.

Relief at source may be granted on application. Please note that payments of interest and royalties to any UK resident company can be made free of WHT if the recipient is chargeable to tax on the interest or royalty.

Resident recipients

Resident recipient	Interest (%)	Royalties (%)
Corporations	0/20	0/20
Individuals	20	20

Non-resident recipients

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Non-treaty territories	20	20
Treaty territories		
Albania	6	0
Algeria	7	10
Antigua and Barbuda	20	0
Argentina	12	3/5/ 10/15 (1)
Armenia	5	5
Australia	0/ 10 (2)	5
Austria	0	0/ 10 (3)
Azerbaijan	10	5/ 10 (4)
Bahrain	0	0
Bangladesh	7.5/ 10 (2)	10
Barbados	0	0
Belarus	0	0
Belgium	0/ 10 (5)	0
Belize	20	0
Bolivia	15	15
Bosnia-Herzegovina	10	10
Botswana	10	10
British Virgin Islands	20	20
Brunei	20	0
Bulgaria	5	5
Canada	0/10 (7)	0/ 10 (4)
Cayman Islands	20	20
Channel Islands:		
Guernsey (includes Alderney and Hern)	20	20
Jersey	20	20
Chile	5/15 (2)	5/ 10 (6)
China (excludes Hong Kong)	10	6/ 10 (4)
Colombia (not yet in force)	10	10
Croatia	5	5
Cyprus	10	0
Czech Republic	0	0
Denmark	0	0
Egypt	15	15
Estonia	10	0
Ethiopia	5	7.5
Falkland Islands	0	0
Faroes	0	0
Fiji	10	0/15 (7)
Finland	0	0
France	0	0
Gambia	15	12.5
Georgia	0	0
Germany	0	0

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Ghana	12.5	12.5
Greece	0	0
Grenada	20	0
Guyana	15	10
Hong Kong	0	3
Hungary	0	0
Iceland	0	5
India	10/15 (2)	10/15 (6)
Indonesia	10	15
Ireland, Republic of	0	0
Isle of Man	20	20
Israel	15	0
Italy	0/10 (6)	0/8 (7)
Ivory Coast (Côte d'Ivoire)	15	10
Jamaica	12.5	10
Japan	0/10 (10)	0
Jordan	10	10
Kazakhstan	10	10
Kenya	15	15
Kiribati	20	0
South Korea (Republic of Korea)	10	2/10 (8)
Kosovo	0	0
Kuwait	0	10
Latvia	0/10 (2)	0/5/ 10 (6, 7)
Lesotho (new treaty not yet in force; royalty rate will be 7.5%)	10	10
Libya	0	0
Liechtenstein	0	0
Lithuania	0/10 (2)	0/5/ 10 (6, 7)
Luxembourg	0	5
Macedonian	10	0
Malawi	0/20 (3)	0/20 (4)
Malaysia	10	8
Malta	10	10
Mauritius	20	15
Mexico	5/ 10/ 15 (7)	10
Moldova	5	5
Mongolia	7/ 10 (2)	5
Montenegro	10	10
Montserrat	20	0
Morocco	10 (6)	10
Myanmar	20	0
Namibia	20	0
Netherlands	0	0
New Zealand	10	10
Nigeria	12.5	12.5

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Norway	0	0
Oman	0	8
Pakistan	15	12.4
Papua New Guinea	10	10
Philippines	10/15 (2)	15/25 (9)
Poland	0/5 (2)	5
Portugal	10	5
Qatar	0	5
Romania	10	10/15 (4)
Russian Federation	0	0
St. Kitts and Nevis (St. Christopher and Nevis)	20	0
Saudi Arabia	0	5/8 (6)
Senegal	10	10
Serbia	10	10
Sierra Leone	20	0
Singapore	0/5 (2)	8
Slovak Republic	9	0
Slovenia	0/5 (2)	5
Solomon Islands	20	0
South Africa	0	0
Spain	0	0
Sri Lanka	10	0/10 (9)
Sudan	15	10
Swaziland	20	0
Sweden	0	0
Switzerland	0	0
Taiwan	10	10
Tajikistan	10	7
Thailand	25	5/15 (9)
Trinidad and Tobago	10	0/10 (9)
Tunisia	10/12 (2)	15
Turkey (excludes North Cyprus)	0/15 (2)	10
Turkmenistan	10	10
Tuvalu	20	0
Uganda	15	15
Ukraine	0	0
United Arab Emirates	0	0
United States	0	0
Uruguay	10	10
Uzbekistan	5	5
Venezuela	5	7
Vietnam	10	10
Zambia	10	5
Zimbabwe	10	10

Notes

UK domestic law generally charges WHT on patent, copyright, and design royalties, although there can be definitional uncertainties. Many treaties allow reduced rates for a wider range of royalties. These are mentioned in this table, even though there may be no UK WHT applied under domestic law.

I. 3% for news; 5% for copyright; 10% industrial; 15% other royalties

II. Lower rate for loans from banks and financial institutions

III. Higher rate applies if recipient controls more than 50% of payer

IV. Lower rate applies to copyright royalties

V. 0% on loans between businesses

VI. Lower rate applies to industrial, commercial royalties

VII. Specific additional conditions apply for lower rate

VIII. Lower rate applies for equipment royalties

IX. Lower rate applies to films, TV, and radio

X. Higher rate applies to certain profit related interest

United Kingdom
Labour Law

McCarthy Denning Limited

1. Framework

Employment law in the UK is based on a mix of statute, contract and common law. Although employment law is not generally considered to be as onerous for employers as in many other European countries, employment is nevertheless highly regulated, and in many areas similar to mainland Europe due to the UK implementing EU Directives. In some cases, the UK has 'gold-plated' EU requirements, giving even greater protection to employees.

2. Employment Contracts

An employer is required to provide an employee with a single written statement of specified employment particulars no later than the first day of employment. The particulars should include, amongst other information, the name of the employer, the date when employment began, details of any probationary period, the place of work, the employee's period of continuous employment, the rate and intervals of remuneration, hours of work, holiday entitlement, sick pay, the notice required to terminate, as well as a job title, brief description of duties and any training requirements. Some other particulars may be given by instalments no later than two months after the beginning of employment, including terms and conditions relating to pensions, details of the disciplinary and grievance procedures that apply to the employment and any collective agreements which are applicable.

3. Cost of Dismissal and Notice Periods

When evaluating the cost of dismissing an employee, an employer first needs to consider the value of the employee's notice period. Employees will typically have express contractual notice periods in their employment contracts, which should be at least equal to a statutory minimum notice period.

Contractual Rights

If an employee is dismissed in breach of their contract of employment, the employee may be entitled to claim damages for wrongful dismissal. Damages for wrongful dismissal are calculated to put employees in the position they would have been if the contract had 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 suffered by finding alternative employment. 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.

Statutory Rights

Statute provides for minimum periods of notice. Employees with at least one month but less than two years' continuous employment are entitled to receive one week's notice of termination. Employees with at least two years continuous service are entitled to one week's notice for each complete year of service up to a maximum of 12 weeks' notice for 12 years of employment. The employer is entitled to receive at least one week's notice of termination from the employee, irrespective of the employee's length of service. If an employment contract provides for a period of notice which is shorter than the statutory minimum notice, the statutory minimum notice will prevail.

4. Unfair Dismissal

Employees with two years' continuous employment with an employer qualify for protection against unfair dismissal. This means that an employer must have a "fair reason" to dismiss and must follow a "fair" procedure before deciding to dismiss. However, in some circumstances, the two year qualifying period is not required for an employee to have protection. For example, if an employee is dismissed for family reasons, including pregnancy, statutory maternity, adoption or parental leave, or for whistleblowing, or for exercising a statutory right or for trade union membership, the dismissal may be automatically unfair irrespective of how long the employee has been employed.

There are five potentially "fair" reasons for dismissing an employee: conduct, capability (ie competence or on health grounds), redundancy, illegality or "some other substantial reason" justifying the dismissal of an employee holding the position held by that employee. The procedures to be followed in relation to each category of potentially fair reason for dismissal 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.

In determining whether the employer acted reasonably, the courts and tribunals will have regard for the ACAS Code of Practice and Disciplinary and Grievance Procedures ("ACAS Code"). If employers fail to follow the ACAS Code as a minimum, they risk a finding of unfair dismissal and an uplift to compensation, at the discretion of the Employment Tribunal.

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 their weekly pay. A "week's pay", which is capped at an amount fixed by the Government in April each year. For 2022/23 , the maximum "week's pay" is £571 per week

- a compensatory award which will be assessed on the basis of the losses suffered by the employee. The award is capped at an amount fixed by the Government in April each year (for 2022/23 , the cap is £93,878), or one year's gross salary, whichever is lower)

5. Employment Contracts For Directors

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, and restrictions on activities during employment and possibly post termination restrictive covenants. It is also common for directors to have longer contractual notice periods than other employees. A service agreement usually provides for the director to resign his office of director 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 guaranteed term of a director's service contract to less 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.

6. Employees' Representatives and Union Representation

Collective Consultation with Employee Representatives

In a situation where an employer is proposing to dismiss 20 or more employees by reason of redundancy within a 90-day period, there is a duty to inform and consult with employee representatives of the affected employees, and to notify the Government of the details. The legislation imposes a moratorium on dismissals in these circumstances, meaning that an employer must wait for 30 days between commencing consultation and the first dismissal, or 45 days if the number of dismissals is 100 or more in the 90-day period.

Failure to notify the Government of the proposals is a criminal offence. The penalty for non-compliance with the obligation to inform or consult over 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.

A duty to inform and consult with employee representatives can also arise where there is a transfer of a business (or part of a business), or in an outsourcing scenario. This arises under a piece of legislation known as "TUPE". The penalty for failing to comply with the obligations to inform and consult under TUPE is 13 weeks' actual pay per affected employee.

European Works Councils

The purpose of a 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 EU and at least 150 employees in each of two member states.

Information and Consultation obligations are not automatic; if there is no European Works Council (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 management refuses to commence negotiations for an EWC agreement within six months of the request or when no EWC agreement has been reached within three years of an EWC request, the default model EWC provisions apply and Information and Consultation obligations arise on matters which concern the undertaking as a whole or at least two undertakings in at least two different EEA states.

Union Representation

Almost one in four employees in the UK belongs 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 reasonable 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.

7. Wages And Other Types Of Compensation

The National Minimum Wage Act 1998 specifies a minimum wage for workers over 18. The rates change each April. The hourly rates for the 2022/23 National Minimum Wage are as follows: for 16-17 year olds and apprentices, £4.81; for those aged 18-20, £6.83 ; and for 21-22 year olds, £8.36. . For workers aged 23 or over, the National Living Wage applies, at £9.50. 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.

8. Auto-Enrolment Pensions

All UK employers are required to auto-enrol its eligible workers - referred to as "jobholders" - in a pension scheme meeting specific standards unless the jobholders are already active members of the employer's qualifying pension scheme. Jobholders can opt out of the pension scheme in which he has been auto-enrolled, but if they do not do so the employer will be obliged to pay minimum pension contributions as long as the worker remains an active member. Under the auto enrolment scheme, the pension must be 8% of salary, comprising an employer contribution of 3% and employee contribution of 5%.

9. 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.

10. 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

Full time employees are entitled to 28 days' paid holiday each year (including bank and public holidays) under the Working Time Regulations 1998. There are usually eight recognised public holidays per year which are included in this minimum entitlement. Employers are free to agree a more generous contractual entitlement and in the UK and 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 under the Social Security Contributions and Benefits Act 1992. The rates change in April of each year. For 2022/23 , the statutory sick pay rate is £99.35 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

Employees with two or more years' continuous employment who are dismissed by reason of redundancy, are entitled to receive a statutory redundancy payment from their 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, in 2022/23 , of £571 per week). The maximum statutory redundancy payment (or basic award) for 2022/23 is £17,130.

Discrimination

Currently under English law, discrimination is unlawful on the grounds of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation.. Compensation for workers who successfully bring discrimination claims against their employers is comprised or two parts: economic loss arising from the discrimination, which is uncapped, and injury to feelings, which are awarded by reference to so-called Vento bands. For 2022/23: the lower band for less serious cases, such as an isolated incident, is £990 - £9,900; the middle band, for serious cases which do not merit an award in the highest band, £9,901 - £29,600, and the top band, for the most serious cases, such as a lengthy campaign of discriminatory harassment, £29,601 - £49,300.

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

The GDPR and Data Protection Act 2018 govern how employers process data about their employees. Employers are required to comply with a set of principles for processing personal data and are required to show how they have complied with the principles. For example, employers will not only need to have policies which demonstrate that they comply with the principles but they will also need to be able to show how the policies have been implemented.

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 also entitled to statutory maternity pay which is pay of up to 90% of the employee's salary for the first six weeks of maternity leave and then for the next 33 weeks, the lower of 90% of normal weekly earnings or £156.66 (in 2022/23).

Paternity Rights

Employees with more than 26 weeks' employment may take up to two weeks' paternity leave. Employees who take this leave are entitled to all benefits except pay but they are entitled to statutory paternity pay which is currently £156.66 (in 2022/23) per week or 90% of normal weekly earnings if lower.

Shared Parental Leave Rights

Employees who are parents (whether by birth or adoption), may take shared parental leave (SPL) in the first year of their child's life or in the first year after their child's placement for adoption.

The shared parental leave scheme makes up to 50 weeks of SPL and 37 weeks of shared parental pay available for eligible parents to take or share (that is, everything other than a two week compulsory maternity leave period or an equivalent two-week period in adoption cases). A mother or primary adopter is able to end their maternity or adoption leave, or commit to ending it at a future date, and share the untaken leave with the other parent as SPL. This enables mothers and primary adopters to return to work before the end of their leave without sacrificing the rest of the leave that would otherwise be available to them. SPL can either be taken consecutively or concurrently, as long as the total time taken does not exceed what is jointly available to the couple.

Adoption Rights

The adoption regime provides essentially the same rights as those available to natural parents. The qualification provisions are the same as those applying to the maternity provisions. Statutory adoption leave (SAL) is available for up to 52 weeks', 39 weeks paid and 13 weeks unpaid. Statutory adoption pay (SAP) is paid at a flat rate which is £156.66 (for 2022/23) per week for the 39-week pay period, or 90% of average weekly earnings if lower. There is no enhanced pay for the first six weeks of SAL. Under the system of shared parental leave, eligible adoptive parents can share the statutory adoption leave and pay that was available only to the primary adopter. The parent who is not the primary adopter is entitled to take two weeks' ordinary paternity leave.

Parental Leave

Employees with one year's employment can take up to 18 weeks' unpaid parental leave for each child up to the child's eighteenth birthday. This is not to be confused with shared parental leave. 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

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 been in 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 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.

11. Health and Safety

An employer is under a common law duty to have regard to the safety of his employees. The employer must provide a safe place of work and safe access thereto, he 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 his 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.

12. 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. The TUPE regulations also apply to outsourcing arrangements but they do not apply to situations where the shares of a company are sold.

TUPE imposes a duties on employers to inform and consult with employee representatives before a 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 as a going concern, the employment rights and obligations of the employees of the business or the part of the business being transferred will be automatically transferred to the new owner of the business who will automatically assume those rights and obligations instead of the vendor.

Any pre or post transfer dismissal in connection with the transfer will be automatically unfair unless it is for an economic, technical or organisational reason which entails changes in the workforce. TUPE also makes it very difficult to change the existing terms and conditions of employment of transferring employees.

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.

13. Social Security

The UK operates a pay as you earn ("PAYE") tax deduction system which must be operated by all employers. There are currently three rates of tax: basic (20%), higher (40%) and additional rate (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.

14. Claims

Employment disputes are normally heard in an Employment Tribunal, which have exclusive jurisdiction to hear statutory employment claims.

It is significant to note that for claims in the Employment Tribunal, each party generally bears their own costs; so costs are not typically 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.

1. 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 commonly used to describe land or property included in a lease.

There are three types of ownership in the UK. They are freehold, leasehold and commonhold.

Freehold is absolute, unlimited ownership. 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.

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. 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. Some leases are extremely long (say 999 years) and these are sometimes referred to as virtual freeholds although that is not strictly a legal term. There are legal reasons why sellers will sometimes prefer to grant extremely long leases or virtual freeholds rather than selling a freehold.

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 with lots of units. At the time of publication, the use of this new system of ownership is very rare.

Properties can be owned in a number of different ways, including by indivduals, companies, general partnerships, limited liability partnerships, charities and trusts. Professional advice should always be sought on the most efficient way of owning property in the United Kingdom and the tax implications of any option.

2. 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 via the internet. 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 vast majority is, especially in urban areas. The government is also committed to introducing a system whereby land can be transferred electronically. At present, that is not possible although the actual process of registration of land is usually now carried out 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 definitive proof of ownership and most matters affecting the title to properties. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. Overriding interests include matters like rights of way where there might for example be a footpath crossing a property but no express registered right on the title. Many but not all such rights and obligations will be apparent by a proper inspection of the land in question or by making enquiries of the current land owner/occupier.

3. Transfer and Contract

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 (Stamp Duty Land Tax) has been paid on the documents. This is commented on further below.

It is important to understand in the United Kingdom that verbal agreements in relation to land and even some written agreements are not always legally binding. There is usually a period after terms have been agreed during which either party can decide not to proceed if they want. It is usually only when contracts "have been exchanged" that a binding obligation arises and invariably time and costs have to be incurred before that stage is reached.

4. 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. 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 or facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry.

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 (by way of a document called a Debenture) but only restrict dealings with those assets if the borrower is in default.

5. Restrictions on Acquisition

There are no restrictions on foreign ownership of UK property but the way in which property ownership is structured is critical and different types of ownership have different implications – including practical, fiscal and regulatory and professional advice should always be obtained. Any new person or body acquiring property in the United Kingdom will have to provide identification evidence and comply with the increasingly complex due diligence requirements imposed by the money laundering regulations.

6. 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. The Latin phrase "Caveat Emptor" or "Let the buyer beware" is the fundamental principle: it is the responsibility of the buyer to ensure that it and its professional advisers carry out all appropriate due diligence to ensure that they understand exactly what it is that they are buying and all the implications which ownership of the property will entail before they commit to its purchase.

7 .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. Some types of development are permitted without planning permission. Specialist advice needs to be sought on this as what is and is not allowed is tightly controlled.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent. That 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 times and at their conclusion. All local authorities prepare plans for how they want different parts of their areas to be used and developed. Those plans are available to the public. They will set out areas or zones where the local authority wishes to encourage (and only allow) particular uses (eg: retail, residential or industrial) and not permit 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 save in exceptional circumstances.

8. 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 is in a form which might be granted by a major financial institution such as an insurance company, investment trust or property company. Institutions sometimes look for longer leases of 10 years or more (though terms of 5 years or less are becoming increasingly common. Sometimes, landlords or tenants are given a right to terminate a lease before it expires. The rent will usually be subject to review, perhaps most commonly at 5 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 rental level. In recent years, it has become increasingly common for rent to be reviewed annually by reference to an Index, for example the Retail Prices Index. It is very common for no rent to be payable for a short time at the beginning of a new lease in recognition of the fact that tenants will usually want to fit-out their new premises and not be able to trade from them for a while.

An institutional lease will also be a "clear" lease. 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 be paid to the local authority which are called business rates. These can be quite significant, particularly in cities.
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 and so on). 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.
Some of the other important provisions in a typical commercial lease are as follows:

A. Restrictions on use

B. Restrictions on alterations to the property

C. Restrictions on disposing of the property

D. VAT is often payable on the rent of commercial property

Any lease granted for more than 7 years must be registered at the Land Registry.
Tenants of property used for business purposes will often (but not always) 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 however quite common for the statutory rights to be excluded by agreement between the parties.

9. 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 can potentially give rise to SDLT. The tax is payable by the buyer or the tenant. The legislation is complex and frequently changing and professional advice should always be taken on the amount of tax payable on a transaction. The method of ownership as well as a number of other factors can have a bearing on the amount of tax payable.

10. 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 and charged to tenants. Professional advice should be sought in every instance.

11. Setting Up in Business in the UK

The property choices for a business setting up in the UK include:

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 photocopies and fax machines), telephones and telephone answering, internet usage, conference facilities and secretarial services.

The commitment is short term and the cost is relatively high. Such arrangements can however be extremely flexible.

Short Term Licence

This is similar to a lease but are often used in preference to a lease for very short terms. Or where occupation or facilities are shared. An occupier under a genuine licence, unlike a tenant, can never have security of tenure when the licence comes to an end. It is not uncommon however for arrangements which were supposed to be licences to be construed by the Courts as leases. Professional advice should therefore always be taken. Sometimes arrangements are granted on a rolling basis, so that they continue indefinitely until brought to an end by notice.

Lease

The minimum commitment would typically be for between three and 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 or some other form of collateral security.

Buy a Freehold

This would involve a major capital commitment and may be inappropriate for smaller businesses. It does however avoid entering into longstanding obligations with landlords and avoids an ongoing obligation to pay rent and usually means there is more control over when expenditure is incurred, for example to repair buildings.