


compendium

2008

 e-iure.com

# United Kingdom

FASKEN MARTINEAU STRINGER SAUL LLP

FASKEN MARTINEAU  
STRINGER SAUL 

# United Kingdom

FAKSEN MARTINEAU STRINGER SAUL LLP





# content

page 04>	<b>introduction</b>
page 06>	<b>corporate and personal taxes</b>
page 10>	<b>individual taxes</b>
page 15>	<b>corporate law</b>
page 23>	<b>labour law</b>
page 30>	<b>foreign investment law</b>

Fasken Martineau Stringer Saul LLP  
United Kingdom

**Email:** Paul Yerbury [pyerbury@fasken.co.uk](mailto:pyerbury@fasken.co.uk)

**Web:** [www.fasken.co.uk](http://www.fasken.co.uk)

## **Introduction**

Through the combination of two like-minded, culturally compatible commercial law firms who share many of the same corporate focus areas, we have created the first ever full-service Canadian-UK law partnership – Fasken Martineau Stringer Saul (FMSS).

The firm is part of Fasken Martineau DuMoulin LLP which has nine offices. In addition to London, there are offices in Vancouver, Calgary, Toronto, Ottawa, Montréal, Québec City, New York and Johannesburg. In total the firm has 650 lawyers worldwide of whom 272 are partners. The London office, in Hanover Square, now has a total staff of 80 which includes 42 fee earners, many of whom are recognised specialists in their field of expertise.

Our predicted global turnover in 2007 is £150 million.

### **Sector Specialisms**

- The LSE Securities Market and AIM
- Pharmaceuticals, Biotechnology and Medical Devices
- Natural resources
- Oil & Gas
- Publishing
- Retailing

### **Principal Areas of Practice**

- Banking
- Corporate Finance and Company Law
- Intellectual Property
- Information Technology including E-commerce
- Employment
- Commercial Law
- Commercial Property
- Competition Law
- International Trade and Transport
- Commercial Litigation and ADR
- Taxation
- M & A
- Notary Services
- Private Equity

## **Our Culture**

FMSS has a practical, creative and business-oriented approach that is results driven. Our clients range from entrepreneurs to public companies and we believe FMSS is unique in adopting a team-based approach to solving their problems. This collaborative culture is based on the following key points:

- Liaison between members in working for the best interests of all clients
- The development of long term, broadly based client relationships
- Team working in a friendly and co-operative atmosphere
- A healthy work/life balance

## **Client Support**

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

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

## **Professional Development**

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

## **Management Structure**

Norman Ziman, managing partner of the UK office, has a seat on the Fasken Martineau partnership board giving the London office a voice on the strategic decisions affecting the future of the firm. In London, the practice is managed by a committee of seven members, including the Managing Partner, which is elected by the other members, serving for a term of three years. The committee is responsible for developing the strategy, goals and policies of the Hanover Square office which it manages and coordinates business development in concert with its colleagues in Canada.

## **Marketing**

The firm's global marketing department supports all practice groups. In addition, internal and external marketing advisors in London and Canada work with the teams to ensure that the firm's combined strengths and achievements are recognised by external audiences.

## **Administration**

FMSS has a strong administrative support structure. In London we have a qualified Director of Finance who is supported by a team of accounts and administrative assistants. We also have an in-house IT department. FMSS's UK office is proud to hold Lexcel quality accreditations.

## 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 dually resident.

## 2. Rates of Corporation Tax

---

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The rates for the financial year ended 31 March 2008 and 31 March 2009 are as follows:

Band of Taxable Profit	% (2008)	% (2009)
£0-£300,000	20	21
£300,001-£1,500,000	32.5	32.2
over £1,500,000	30	28

## 3. Non-resident Companies

---

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

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

## **5. Controlled Foreign Companies**

---

There are controlled foreign companies ('CFC') rules which apply to non-UK resident companies controlled by UK residents and be subject to a tax charge which is less than 75% of the corresponding tax charge in the UK. The rules are aimed at "money-box" companies, "dividend trap" companies etc. There are a number of defences to an assessment one of which is an acceptable distribution policy which in essence is remitting 90% of the net chargeable profits to the UK. In the 2007 budget the Government announced that it would issue a consultation paper to consider the CFC rules. A discussion document has now been published, with the proposed new regime for the taxation of foreign profits most likely to be implemented under the Finance Bill 2009

## **6. Group Taxation**

---

In groups of companies where subsidiaries are owned as to 75% of the ordinary share capital beneficially together with 75% entitlement to income and assets it is possible to surrender current year trading losses and other amounts eligible for group relief to a profit making company within the same group. In many cases a payment for group relief is made by the claimant company to the surrendering company as consideration for the surrender. Consortium group relief is also available where a company is owned by a consortium where 75% or more of the ordinary share capital is beneficially owned between them by companies of which none owns beneficially less than 5% of that capital. UK legislation requires that both companies must be UK tax resident or non-resident companies carrying on a trade through a permanent establishment. Following the ECJ ruling in the Marks & Spencer case the Finance Act 2006 included provisions enabling EU companies in certain cases to offset losses against a UK parent's profits.

## **7. Tax Depreciation (Capital Allowances)**

---

Writing down allowances of 25% on a reducing balance basis are available on plant and machinery and 6% on a reducing balance for long life plant and machinery. For small and medium businesses an allowance of 50% and 40% respectively is available. Industrial buildings, hotels and agricultural holdings and intangible assets for companies are written down on a 4% straight line basis. Research and development allowances are currently 100% as are enterprise zone buildings, certain energy saving technologies, water efficient technology and the renovation/conversion of flats over shops.

## **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 trading company has at least a 10% shareholding held for at least one year 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**

---

Corporation Tax is generally payable nine months after the end of the accounting period but large companies are required to pay quarterly instalments in the 7th, 10th, 13th and 16th months after the commencement of the accounting period.

## **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 is a transfer tax charged on transfers of all UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. For transfers of freeholds the rate of duty is 4% for transactions in excess of £500,000 with reduced rates for transfers below this threshold. [Leases are generally chargeable at 1% of the net present value of the rentals under the lease where the net present value exceeds £125,000 in the case of residential property and £150,000 in the case of non-residential.] 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 0.5% of the consideration. Stamp duty is payable on the transfer of UK shares and securities at the rate of 0.5% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of other assets. There is no capital duty in the UK.



## **2. Value-Added Tax**

---

Value-added tax (VAT) is a tax charged on the supply of goods and services provided for consideration in the UK. The qualifying level of turn-over is £64,000 for the year beginning 1 April 2007. VAT is also charged on the importation of goods from non-EU countries into the UK, receipt of some international services in the UK, and acquisition in the UK of goods from other EU Member States. There are three rates of VAT in the UK; 0% in general applies to various foodstuffs, public transport, exports and sales of newly built private residences; 5% applies to some qualifying uses of fuel and power; whilst 17.5% is the standard rate. Insurance, education, finance and health services are all exempt from VAT, as is land although it is possible to elect to charge VAT on supplies of land to recover any relevant input VAT.

## **3. National Insurance Contributions**

---

Employer's national insurance contributions are payable at the rate of 12.8% on earnings in excess of £100 per week. Employees national insurance is payable at the rate of 11% for earnings between £100 and £670 per week and at 1% thereafter. For higher paid employees therefore their highest rate of tax is 41% being 40% income tax and 1% employee's national insurance.

## 1. Residence and Domicile

An individual's liability to tax in the UK is determined by his residence, ordinary residence and domicile status. The terms "resident", "ordinarily resident" and "domiciled" are not defined in UK legislation and so it is necessary to rely on case law and the practice of the Inland Revenue. The following is the broad position. An individual is treated as being resident in the UK for any fiscal year (6th April in one year to 5th April in the next year) if he is present in the UK for 183 or more days; or he visits the UK regularly and after four years his visits average 91 days or more; or he comes to the UK with the intention of making regular visits; or his home has been abroad and he intends to come to live in the UK permanently, or to remain in the UK for three years or more. Ordinary Residence is roughly equivalent to habitual residence, and an individual is treated as being ordinarily resident in the UK from the date of arrival, if it is clear that he intends to remain in the UK for three years or more; or from the beginning of the tax year in which a decision is made to remain in the UK for three years or more; or from the beginning of the fifth year, if he visits the UK regularly, and after four years his visits average 91 days or more. Unlike residence, it is not possible to have more than one domicile at any one time, and it is not the same as nationality. Essentially, it is the place where an individual has his permanent home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. Domicile can have a very significant effect on UK tax liabilities, as it enables resident, but non-UK domiciled individuals, to legally avoid UK tax on income and capital gains arising overseas if they are not remitted to the UK. However, the Government has released a consultation paper in which these rules are subject to significant modifications commencing on 6 April 2008. Subject to the special residence rules, non-UK domiciled individuals are not chargeable to inheritance tax on non-UK situated assets. UK domiciled individuals are however assessable on their worldwide income.

## 2. Individual Tax Rates (for the tax year 2007/2008)

Band of Taxable Income	%
£1-£2,230	10
£2,231-£34,600	22 (1)
over £34,600	40 (2)

**(1)** UK dividends are taxed at 10%. Other savings income is taxed at 20%

**(2)** UK dividends are taxed at 32.5%

There are a number of tax allowances available which are dependent on marital status, age, and the blind.

### 3. Inheritance Tax

Inheritance tax is due on death and on certain lifetime gifts. It is charged at the rate of 40% on transfers in excess of £300,000 for the tax year 2007/2008. Inter spouse transfers are free of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. Where the transferee spouse is non-domiciled but the transferor spouse is domiciled there is an exemption limit of £55,000. Certain lifetime transfers are tax free if the donor lives seven years.

### 4. Capital Gains Tax

This tax is charged on the disposals and deemed disposals of assets and can apply to individuals, trusts and companies. There are exemptions of £9,200 for individuals including personal representatives, and £4,400 for trusts for the tax year 2006/2007. The rates of tax for individuals vary between 10% and 40% dependant on the level of income and for personal representatives and trusts 40%. Tapering relief is available on business and non business assets dependant on the number of years the asset has been held. Business assets held for two years are charged at 25% of the gain accruing, ie for a higher rate tax payer at the rate of 10% (being 25% of 40%) and for non business assets a much reduced relief is obtained after three years. However the Government has released a consultation document and it is proposed to abolish taper relief and replace a new flat rate tax of 18% for capital gains with effect from 6 April 2008. There is also a proposal for a reduced rate of half this new flat rate for the sale of certain business assets including shares of up to £1,000,000.

## DOUBLE TAX TREATIES

### Treaty and Non Treaty Withholding Taxes

The rates in the table below reflect the lower of the treaty rate and the rate under domestic tax law. The table is for general guidance only.

#### Payments by UK Companies of

	Dividends (a)	Interest %	Royalties %
Non treaty countries	-	20	22
Treaty countries			
Antigua and Barbuda	-	20 (s)	0
Argentina	-	0/12 (i)	3/5/10/15 (j)
Australia	-	10	5
Austria	-	0	0/10 (o)
Azerbaijan (c)	-	10	5/10 (b)
Bangladesh	-	0/7.5/10 (q)	10
Barbados	-	15	0
Belarus (c)	-	0	0
Belgium	*	15	0
Belize	-	20 (s)	0
Bolivia	-	15	15
Botswana	-	0/15 (r)	15
Brunei	-	20 (s)	0
Bulgaria	-	0	0
Canada	-	10	0/10 (b)

	Dividends (a)	Interest %	Royalties %
China, PR	-	0/10 (r)	7/10 (b)
Croatia (d)	-	10	10
Cyprus	-	10	0
Czech Republic (e)	-	0	0
Denmark	-	0	0
Egypt	-	0/15 (r)	15
Estonia (c)	-	10	5/10 (b)
Falkland Islands	-	0	0
Fiji	-	10	0/15 (r)
Finland	-	0	0
France	-	0	0
Gambia	-	0/15 (r)	12.5
Germany	-	0	0
Ghana	-	12.5	12.5
Greece	-	0	0
Grenada	-	20 (s)	0
Guernsey	-	20 (s)	22 (s)
Guyana	-	15	10
Hungary	-	0	0
Iceland, Rep of	-	0	0
India	-	0/15 (p)	10/15 (t)
Indonesia	-	0/15 (p)	10
Ireland	-	0	0
Isle of Man	-	20 (s)	22 (s)
Israel	-	15	0
Italy	*	10	8
Ivory Coast	-	15	10
Jamaica	-	0/12.5 (r)	10
Japan	-	10	10
Jersey	-	20 (s)	22 (s)
Kazakhstan (c)	-	0/20 (r)	10
Kenya	-	0/15 (r)	15
Kiribati	-	20 (s)	0
Korea, Rep of	-	0/10 (r)	2/10 (f)
Kuwait	-	0	10
Latvia (c)	-	0/10 (p)	5/10 (g)
Lesotho	-	10	10
Lithuania	-	10	5/10
Luxembourg	*	0	5
Macedonia (d)	-	10	10
Malawi	-	0/25 (u)	0/25 (u)
Malaysia	-	10	8
Malta	-	10	10
Mauritius	-	0/20 (p)	15
Mexico	-	15	10



	Dividends (a)	Interest %	Royalties %
Mongolia	-	0/7/10 (n)	5
Montserrat	-	20 (s)	0
Morocco	-	10	10
Myanmar (Burma)	-	20	0
Namibia	-	20 (s)	0/5 (b)
Netherlands	*	0	0
New Zealand	-	0/10 (r)	10
Nigeria	-	12.5	12.5
Norway	-	0	0
Oman	-	0	0
Pakistan	-	15	12.5
Papua new Guinea	-	10	10
Philippines	-	0/10/15 (m)	15/22 (l)
Poland	-	0	10
Portugal	-	10	5
Romania	-	10	10/15 (b)
Russian Federation (c)	-	0	0
St Kitts and Nevis	-	20 (s)	0
Sierra Leone	-	20 (s)	0
Singapore	-	10	10
Slovak Republic (e)	-	0	0
Solomon Islands	-	20 (s)	0
Slovenia (d)	-	10	10
South Africa	-	0	0
Spain	-	12	10
Sri Lanka	-	0/10 (k)	0/10
Sudan	-	15	10
Swaziland	-	20 (s)	0
Sweden	*	0	0
Switzerland	*	0	0
Thailand	-	0/20 (p)	5/15 (b)
Trinidad and Tobago	-	0/10 (r)	0/10 (b)
Tunisia	-	10/12 (k)	15
Turkey	-	15	10
Tuvalu	-	20 (s)	0
Uganda	-	20 (s)	15
Ukraine (c)	-	0	0
USSR (c)	-	0	0
United States	*	0	0
Uzbekistan (c)	-	5	5
Venezuela	-	0/5 (p)	5/7 (h)
Vietnam	-	10	10
Yugoslavia,			
Fed Rep of (d)	-	10	10
Zambia	-	0/10 (q)	10

## Notes

- (a)** A foreign shareholder may claim payment of part or all the tax credit that would have been available to a UK individual if provided for in a relevant double tax treaty. However, after 5 April 1999 in practice there are no longer tax credit refunds due under the dividend article of most tax treaties concluded by the UK. This is because of changes under UK domestic law. There may however be a small “half credit” refund due to companies in countries marked with \*, provided they control 10% or more of the share capital of a UK company.
- (b)** The lower rate applies to copyright royalties.
- (c)** The USSR treaty applies to all of the republics of the former USSR other than Azerbaijan, Belarus, Estonia, Kazakhstan, Latvia, the Russian Federation, Ukraine, and Uzbekistan, which have concluded separate tax treaties with the UK. The USSR treaty ceased to apply in April 2002 to Armenia and Kyrgyzstan, but applies still to Tajikistan and Turkmenistan.
- (d)** The treaty with the former Yugoslavia now applies, from a UK point of view, to the independent states that previously comprised Yugoslavia.
- (e)** The treaty with former Czechoslovakia applies to both the Czech Republic and the Slovak Republic.
- (f)** 2% - payments for the use of, or right to use, industrial, commercial or scientific equipment.  
10% - other royalties.
- (g)** 5% - payments for the use of industrial, commercial or scientific equipment. 10% - other royalties.
- (h)** 5% - royalties for patents, trademarks or processes as well as royalties for know-how concerning industrial, commercial or scientific experience. 7% - royalties for copyrights of literary, artistic or scientific works.
- (i)** The standard rate of withholding tax on interest is 12%. However, interest is exempted from withholding tax in certain specified circumstances, including where the state is the payer of interest or where a loan is insured or guaranteed by a state or on certain preferential loans or in connection with arrangements involving industrial, commercial or scientific equipment.
- (j)** 3% - royalties for the right to use news, trademarks, designs, or the right to use industrial or scientific equipment. 5% - royalties for copyrights of artistic works. 10% - royalties for patents. 15% - other royalties.
- (k)** The lower rate applies to interest paid to banks and other financial institutions.
- (l)** The lower rate applies where the paying enterprise is registered with the Philippines Board of Investments and engaged in preferred areas of activity.
- (m)** The rate is nil interest paid to certain government bodies. The 10% rate applies to interest on listed bonds.

- (n)** The rate is nil on interest on loans insured by the government; 7% on bank loan interest.
- (o)** The higher rate applies if paid to a company controlling more than half of the voting power of the paying company.
- (p)** The rate is nil on interest on loans made, guaranteed or insured by certain government bodies, and on interest paid to banks and other financial institutions.
- (q)** The rate is nil on interest paid to certain government bodies and 7.5% on interest paid to banks and other financial institutions.
- (r)** The rate is nil on interest on loans made, guaranteed or insured by certain governments' bodies.
- (s)** The domestic rate; there is no reduction under the treaty.
- (t)** The lower rate applies to royalties for industrial, commercial or scientific equipment.
- (u)** The rate is 25% if paid by a company controlling more than 50% of the voting power of the paying company.

Additionally, Algeria, Brazil, Cameroon, Ethiopia, Iran, Jordan, Lebanon, Saudi Arabia, and Zaire have signed tax treaties with the UK dealing with international traffic, shipping and air transport. As these treaties do not have articles covering dividends, interest or royalties, payments made to them are subject to withholding tax at the non treaty countries' rates.

## **1 Framework**

---

UK corporate law is based on both common law and statute. The principal legislation relevant to companies is the Companies Act 1985. There are a number of other statutes to be considered depending on the activity the 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.

On 8 November 2006, the Companies Act 2006 (the "2006 Act") received Royal Assent. The 2006 Act is intended to simplify and modernise the existing company law rules. Many of the provisions of the 2006 Act are expected to come into force by October 2009 however some sections will be effective sooner, and will come into force during the course of 2007, with additional sections set to activate in April 2008. The information contained in this section is based on the law as correct at 1 January 2008, and where this is likely to change under the 2006 Act, this has been highlighted. If relevant, advice should be sought as to when a particular provision of the 2006 Act comes into effect.

## **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 corporate structure is the one which is most widely used, there are a variety of other structures available to overseas investors including setting up a branch or place of business of an overseas company, a partnership or joint venture or a limited liability partnership.

Overseas companies can register as a branch or as a place of business. 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 under UK law. 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 for public subscription or private, which means that they are not allowed to offer their shares 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, both under the Companies Act 1985, 2006 Act and, if they are quoted, the regulations and codes of practice applicable to the relevant trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs can be obtained very quickly with a “same day” service being generally available. There are no requirements for local shareholders or directors and no minimum capital rules apply. Certain documents, for example the memorandum and articles of association, which form the company’s constitution, must be filed with the Registrar of Companies to form a company.

The memorandum of association sets out information on the company’s name, objects, share capital and whether the liability of the members is limited or unlimited. 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 form of articles of association, known as Table A, which many UK private companies follow to some extent.

When forming a company under the 2006 Act, a statement of capital and initial shareholdings must be delivered to the Registrar on an application for the registration of a company having a share capital, and the requirement for an authorised share capital in the company’s memorandum is abolished. The statement of the objects clause in the memorandum is also abolished meaning that the objects of the company are unlimited unless the articles specifically restrict them. The premise is that a company’s constitution should be contained in a single document, its articles of association. The memorandum under the 2006 Act is only required to state that its subscribers wish to form a company and they have agreed to become its member(s).

No government or other permission is required to establish a company, although there is some regulation of the use of business and trading names. Once registered, the name of a company can be changed by special resolution (75% majority) of the shareholders but care must be taken to check that the desired name is available for use by the company.

Under the 2006 Act, there is a new right for a person to 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. Any change of name may be effected by special resolution or by way of any procedure set out in its articles.

## **4 Liability of Shareholders**

---

Every private company must have at least one shareholder and every public company must have at least two shareholders. There are no rules relating to residency of shareholders. Under the 2006 Act each private and public company need only have one shareholder.

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 must state its authorised share capital in its memorandum or articles of association. This provides the maximum number of shares which the company can issue. Changes to the authorised share capital can be made by an ordinary (50% majority) resolution of the shareholders.

Under the 2006 Act, the requirement for a company to state its authorised share capital in its memorandum has not been retained, with the result that the requirement for a statement of the authorised share capital is abolished, although the shares must still have a nominal value. If the company wishes to restrict the number of shares it can allot, such restriction must be contained in its articles.

## **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, in 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.

Under the 2006 Act directors of private companies with only one class of share are free to allot shares without the prior authorisation from the members, subject to any restriction on this power in the company's articles. These allotments are still subject to rights of pre-emption in favour of existing shareholders although as before this may be disapplied by the company's articles or by special resolution.

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

## **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 would be expected to be a requirement of the UK markets. However, this is without prejudice to agreements restricting transfer, eg by way of a lock-up or to comply with the requirements of overseas securities laws.

Shares in UK companies are generally in registered form, although there is an electronic system known as CREST through which shares in quoted companies can generally be traded without paper documentation. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate issued.

## 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 specified matters.

The Companies Act 1985 includes a number of matters which require shareholder approval. In the case of a company with few shareholders or which is a wholly-owned subsidiary, shareholder approval can be obtained by written resolution, or otherwise by the shareholders in a general meeting.

Shareholder meetings require a prior period of notice to shareholders of not less than 14 days in the case of an ordinary resolution (50% majority) and 21 days in the case of a special resolution (75% majority) or an annual general meeting. Where not less than 95% of the shareholders agree, however, these requirements can be dispensed with and the meeting (other than an annual general meeting) held on short notice. In the case of an annual general meeting, all the shareholders must agree to it being held on short notice.

Under the 2006 Act, the notice requirement for all meetings of private companies is 14 days and the majority of members required to agree to shorter notice is reduced from 95% to 90%.

Matters reserved to the shareholders by statute include authorisations in relation to share capital issues, certain categories of related party transactions, amendments to the company's objects clause (ie the corporate purpose) and articles of association and the decision to liquidate the company. If a company wishes to reduce its share capital then it must be authorised to do so by its articles of association and a specific procedure must be followed, designed to protect creditors, which requires shareholder approval as well as the sanction of the court.

Under the 2006 Act, directors of private companies with only one class of share are free to allot shares without the prior authorisation from the members, subject to any restriction on this power in the company's articles. If a private company wishes to reduce its share capital, the need for prior authorisation of the articles is no longer required and the company can undertake a reduction of capital by means of a special resolution, supported by a solvency statement. Private companies may still use the existing court approval procedure, though public companies remain restricted to using the court procedure.

A general meeting of shareholders, known as the annual general meeting, must be held 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 meeting.

## 9 Directors and Officers

---

### Appointment and Removal

A company may, if its articles of association permit, have only one director. If this is the case then the company secretary must be someone else. Where there is more than one director, then a person who is a director may also be the secretary.

Under the 2006 Act, a company must have at least 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 sign a form of consent and provide specified information to the Registrar of Companies. It is usual for the shareholders to have this right and for the directors to be able to fill any vacancy on the board subject to the right of shareholders to confirm the appointment at the next annual general meeting. Similarly, the articles of association would set out the circum-

tances 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**

Directors have fiduciary duties to act in the best interests of the company and its shareholders and with reasonable care, not to act for any improper purpose nor for their personal gain. The rules relating to these matters have evolved over a number of years. The articles of association normally make provision for directors not to be allowed to participate in decisions relating to any matter in which they have an interest and there is a statutory requirement to declare all interests to the company. In addition, certain types of contract between the company and its directors must be approved in advance by shareholders.

There are a number of statutory requirements and restrictions placed on the powers of directors, which may need to be considered in the light of the proposed activity.

The 2006 Act codifies the general duties of directors to the company in statute and replaces the existing common law rules and equitable principles. The potential long-term effect of the 2006 Act will be that company directors can be made 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 conflict of interest, there is no general legal requirement for independent directors not for a supervisory board. However, quoted companies will be expected to comply with best practice in relation to corporate governance, which includes the requirement for independent directors.

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

## **Secretary**

In addition to directors, the company must appoint a company secretary who has an administrative function and who should be familiar with filing and other requirements of the Registrar of Companies. Accordingly, it would be usual for the secretary to be based in the UK.

Under the 2006 Act, the requirement for a private company to have a company secretary has been abolished. If the private company chooses not to have a secretary, anything which is required or authorised to be done by the secretary is validly done by a director or person authorised by a director.



## **10 Annual Return**

---

Companies must complete an annual return each year, which gives details of their share capital, shareholders, charges, registered office, directors and secretary.

## **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. 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.

## **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 otherwise it will be void against a creditor or liquidator.

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**

---

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

## **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 private equity, a stock exchange listing or loan finance, and within these broad categories there are a number of variations.

## **1 Framework**

---

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

## **2 Employment Contracts**

---

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

## **3 Cost Of Dismissal And Wrongful Dismissal**

---

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

### **Contractual Rights**

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

### **Statutory Rights**

Statute provides for minimum periods of notice which are one week's notice for each complete year of service by the employee up to a maximum of 12 weeks' notice for 12 years of employment. However, usually the contract provides for a period of notice which can be more generous (but not less generous) than the statutory minimum.

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

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

## 4 Unfair Dismissal

---

For employees who have one year's continuous employment with the employer, it is open for such employees to bring a claim for unfair dismissal in the employment tribunal. It should be noted that certain unfair dismissal claims (for example, dismissal by reason of pregnancy, for whistleblowing, for exercising a statutory right or for trade union membership) do not require a qualifying period of employment to be able to bring a claim.

In order to avoid claims for unfair dismissal, an employer should ensure that employees are only dismissed for a "fair" reason, following a "fair" procedure. The six potentially "fair" reasons for dismissing an employee are conduct, capability (ie competence or on health grounds), redundancy, statutory bar, retirement 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.

Since October 2004 there are statutory minimum discipline, dismissal and grievance procedures to be followed when dismissing employees. An employer's failure to follow these procedures will result in a finding of automatically unfair dismissal and can result in an increase in the compensation to be awarded to the employee by between 10% and 50%. Even where the statutory minimum procedures are followed, the dismissal can still be unfair unless the employer has followed guidelines set down by ACAS and behaved fairly and reasonably in all circumstances.

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

- a basic award which is calculated in the same way as a statutory redundancy payment depending on the age and length of service of the employee and a week's pay, which is currently capped at a maximum of £330 per week;
- a compensatory award which will be assessed on the basis of the losses suffered by the employee. The maximum award is currently £63,000 (this figure is reviewed annually on 1 February).

Since October 2006, specified procedures have been introduced which an employer must follow if he wishes to retire an employee. This procedure should be commenced 12 months before the proposed retirement date. There is a default retirement age of 65. A retirement age of less than 65 must be objectively justified or the employer will risk claims of unfair dismissal as well as age discrimination.

## 5 Employment Contracts For Directors

---

The employment contracts for directors are commonly referred to as service agreements and should be approved by the board of directors of the company before they are entered into. They usually contain more onerous provisions specifying the director's duties to the company as well as protection for the company's confidential information, "garden leave" provisions, intellectual property rights, restrictions on activities during employment and possibly post termina-

tion restrictive covenants. It is also common for directors to have longer notice periods than other employees. A service agreement usually provides for the director to resign his office on termination of the employment. There is no special regime for the employment of directors. However, there are requirements in the Companies Act 2006 which limit the period of a director's service 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 20 or more employees are being dismissed by reason of redundancy within a 90-day period, or where a transfer of a business (or part thereof) is proposed, employers have a statutory duty to carry out collective consultation and to inform (with specified information) and consult with the affected employees either through a trade union (if that is appropriate) or through their own elected representatives. The penalty for non-compliance with this obligation to inform or consult over collective redundancy is up to 90 days' actual pay for each affected employee if an affected employee or his representative brings a successful claim for a protective award in an employment tribunal. The penalty for failure to comply with the obligation to inform or consult over a TUPE transfer is 13 weeks' actual pay.

#### **European Works Councils**

The Information and Consultation Directive came into effect in the UK on 5 April 2005. This currently only applies to employers with more than 100 staff but it will be extended to cover business with more than 50 staff from April 2008. The Directive will require 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. An employer will have an obligation to enter into negotiations for the establishment of a European Works Council if it receives a valid request from specified proportions of employees.

#### **Union Representation**

Almost one in three workers 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 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 recognised, 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 Rights Act 1999. The recognition machinery is contained in The Trade Union and Labour Relations Consolidation Act 2002.

## **7 Wages And Other Types Of Compensation**

---

The National Minimum Wage Act 1998 specifies a minimum wage for employees over 18. Currently, the rates are as follows: for employees over school age but under 18 the minimum wage is £3.40 per hour, for employees aged 18-21 it is £4.60 per hour and for employees aged over 22 it is £5.52 per hour.

These rates are reviewed annually on 1 October.

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 Stakeholder Pensions**

---

Employers who have five or more employees and do not operate a qualifying pension scheme, are required under Section 3 of the Welfare Reform and Pensions Act 1999 to designate a stakeholder pension scheme and offer their employees the opportunity to contribute to such a scheme. The obligation is simply to identify a scheme and collect any contributions the employees wish to make and pay them into the scheme. There is currently no obligation for the employer to contribute to a pension scheme for his employees. Failure to comply with this obligation can render the employer liable to civil penalties.

## **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**

Employees are entitled to 24 days' paid holiday each year (including bank and public holidays) under the Working Time Regulations 1998. This will increase to 28 days from 1 April 2009. There are 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 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 current statutory sick pay rate is £72.55 per week but will increase from 6 April 2008. The first three days of any sickness are "waiting days" when no sick pay will be payable. It is open to employers in the UK to agree a more generous contractual sick pay arrangement and it is common practice to do so.

## **Redundancy**

If an employee with two or more years' continuous employment is dismissed by reason of redundancy, he is entitled to receive a statutory redundancy payment from his employer. The amount of the redundancy payment is calculated by reference to the employee's age, length of service and weekly pay (subject to maximum of £330 per week). The maximum statutory redundancy payment (or basic award) is currently £9,900.

## **Discrimination**

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

## **Protection for Part-Time and Fixed Term Employees**

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

## **Data Protection**

Employers have a duty to notify their staff as to the personal and sensitive personal data they hold, tell them how it will be processed and obtain their consent to process the data. Such data must be kept securely. Data must be processed in accordance with the provisions of the Data Protection Act 1988 and the various Data Protection Codes issued by the Information Commissioner's Office. Failure to comply carries civil penalties. Workers have the right to request copies of personal data held in relation to them by the employer.



### **Maternity Rights**

All pregnant women have the right to paid time off for antenatal care in preparation for the birth of their baby. Pregnant employees are entitled to six months ordinary maternity leave from work and then an additional maternity leave period of six months, regardless of their length of service with their employer.

Employees on maternity leave who meet the eligibility requirements are entitled to statutory maternity pay which is pay of up to 90% of the employee's salary for the first six weeks of maternity leave and either £112.75 per week or 90% of normal weekly earnings if lower for the next 33 weeks. A high percentage of this payment is recoverable by the employer out of his National Insurance contributions.

### **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 £112.75 per week or 90% of normal weekly earnings if lower.

### **Adoption Rights**

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

### **Parental Leave**

Employees with one year's employment can take up to 13 weeks' unpaid leave for each child up to the child's fifth birthday. 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 with children aged up to six (or aged 18 if they are disabled) 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 Dependents**

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 do apply to the transfer of employees under outsourcing arrangements but they do not apply to situations where the shares of a company are sold.

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

The main effect of the TUPE regulations is that in the event of a transfer of a business 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: starting (10%), basic (22%) and higher (40%). These percentages are applied to a portion of an employee's taxable income subdivided into three 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 the Inland Revenue 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. There are six different classes of 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 12.8% of the employee's earnings as employer's National Insurance contributions. Again employers have duties to keep records and account to the Inland Revenue 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.

Foreign investment is much encouraged in the UK and there are very few provisions which distinguish between UK and overseas investors.

## **1 Registration with Government, authorities and permits**

---

There are no requirements for overseas investors in the UK to register with the Government or obtain any authorisation for the making of any investments nor are there any restrictions on the foreign ownership of UK-incorporated companies. There are no exchange controls on investment into or out of the UK or the inward or outward movement of funds from the UK.

Specific authorisations may be required to carry on certain types of business in the UK, but there is no difference in the application of these rules to UK and overseas investors.

## **2 Transfer of dividends, interest and royalties abroad**

---

There are no restrictions in the UK on the transfer of dividends, interest and royalties abroad, but withholding taxes are sometimes applicable dependant on any relevant double tax treaty and whether the recipient is resident in an EU country or not and consent will normally have to be obtained to make such payments gross.

## **3 Repatriation procedures and restrictions**

---

There are no repatriation restrictions or procedures in the UK.

## **4 Foreign personnel (permits etc)**

---

To work in the UK, nationals of other European Economic Area (EEA) countries need not obtain work permits, and must be allowed access to employment on equal terms with British nationals, except for government jobs. An EEA national who accepts employment automatically receives a residence permit issued by the Home Office. There are additional registration rules for workers from the New Member States, who are required to apply to register with the Home Office under the new 'Worker Registration Scheme' as soon as they find work.

Non-EEA nationals must have a work permit issued by the Home Office's Immigration and Nationality Directorate. The prospective employer must obtain it for a named overseas worker and for a specific job. Depending on the kind of permit being applied for, work permits can be issued for up to a maximum of 5 years. Companies wishing to employ foreign workers are advised to apply for permits in advance. The proposed salary must not be below the rate prevailing in the UK, and there must be no EEA resident available to fill the post. Employers recruiting for jobs on a list of 'shortage occupations' maintained and regularly reviewed by the Home Office, are not required to advertise in the UK before recruiting abroad.

There is also a scheme (Highly Skilled Migrant Programme - "HSMP") which enables highly qualified individuals to come to the UK for work without having a prior offer of employment. These applications are made by the individual, not the employer.

The Government has recently introduced changes to the HSMP. This was the first step in the implementation of the new points based immigration system which forms part of the Government's five year plan for immigration. The changes to the immigration rules relating to highly skilled migrants will be implemented by March 2008.

As a result of the changes introduced by the new points based system, entrepreneurs and professionals wanting to come to the UK will have to meet a mandatory English language requirement and will be scored against criteria including qualifications; previous earnings; prior UK experience as a student or employee; age; and participation in an MBA scheme.

A minimum of 75 points must be scored within the HSMP categories and the mandatory English language requirement must also be satisfied.

A successful HSMP applicant is permitted to undertake any employment or self-employment in the UK. Entry clearance must normally be obtained before the highly skilled migrant travels to the UK.

Those who are applying to extend their existing leave under the HSMP will also be scored against points based criteria and will have to comply with a mandatory English language requirement.

Investors wishing to set up in business in the UK can, in addition to HSMP applications, make an application to enter the UK as a 'business person' or under 'the investor category' provided they are able to meet the various eligibility and investment requirements. Furthermore, a senior employee of a company based outside the EEA which does not have a UK subsidiary can apply to act as a sole representative (someone who will establish a wholly owned subsidiary or register a branch in the UK for an overseas parent company).

Detailed advice should be taken if you wish to submit any of these applications. It should also be ensured that such an application is made in plenty of time

## **5 Grants**

---

It should also be noted that there are a number of grants available, particularly in relation to certain regions of the UK and in certain sectors of business activity.

## **6 Penalties**

---

It is a criminal offence for an employer to employ any person aged 16 or over who does not have the right to live and work in the UK. Employers who negligently hire illegal workers face a fine of up to £10,000 for each offence, and those who knowingly hire illegal workers risk an unlimited fine and a prison sentence.



United Kingdom

## **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 correctly used to describe land or property included in a lease.

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

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 by the owner or any former owner.

Freehold ownership is most common for residential houses, large estates and investment property.

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

The third form of ownership is commonhold which has been introduced recently. This new system of ownership was designed primarily for blocks of residential flats and other developments with lots of units. At the time of publication, the use of this new system of ownership is very rare.

## **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 government is committed to making it so. The government is also committed to introducing within the next three to five years a system whereby land can be transferred electronically.

All registered land has its own "title number" and plan which identifies the land in question. The entries which appear on the register against a particular title number are guaranteed by the state as accurate. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. In theory, such rights and obligations should be apparent by a proper inspection of the land in question or making enquiries of the current owner/occupier.



Land which is not registered at the Land Registry is increasingly rare particularly in urban areas.

### **3 Transfer**

---

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

### **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. The expressions "mortgage" and "charge" mean the same thing. A commercial mortgage will normally involve two key documents. The first is a loan agreement which can be in the form of a formal agreement or a letter (sometimes called an offer letter or a facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry. The mortgage usually incorporates the loan agreement.

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

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

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

### **5 Restrictions on Acquisition**

---

There are no restrictions on foreign ownership of UK property. In practice, it should not be possible to acquire property in the UK or to borrow money on the security of property in the UK without complying with the identification requirements of the money laundering regulations.

### **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.

## **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 minor development are permitted without planning permission. For example, minor works and changes of use where the new use is similar to the old use. However, this area is very tightly controlled and professional advice is advisable.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent. 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 moments.

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 particular uses (eg shopping, residential or industrial) and discourage other uses. The local government will consider any application for planning permission in the light of these plans so that, for example, applications for industrial development in residential areas will not succeed.

## **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 would be granted by a major financial institution such as an insurance company, investment trust or property company. Institutions tend to look for longer leases, eg 15 years or more (though terms of 10 years and even 5 years are available). The rent will be subject to review 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 rent level.

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 as much as the rent again.

The lease will impose obligations and restrictions on the tenant. The obligation which is most significant from a financial point of view is the obligation to repair, decorate and if necessary re-build or pay towards the cost of rebuilding. In an office block for example the tenant will be responsible for maintaining, repairing and decorating his own property. He will also be responsible through the service charge to contribute towards the cost of repairing and maintaining the building of which his offices form part including all services to the building (eg lifts, air-conditioning and heating plant and systems 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:-

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

Any lease granted for more than 7 years must be registered at the Land Registry.

Tenants of property used for business purposes will normally have statutory rights to remain in the property when the lease comes to an end. They will have to negotiate a new lease and pay a commercial rent but the landlord cannot insist that they vacate unless special circumstances apply. It is also quite common for the statutory rights 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 gives rise to SDLT. The tax is payable by the buyer or the tenant. Tax is payable on a sliding scale up to a maximum of 4% of the either capital amount paid by the buyer or the capitalised value of the rent.

## 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.

## 11 Setting Up in Business in the UK

---

The choices for a business setting up in the UK are:

**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, conference facilities and secretarial services. The commitment is short term and the cost is relatively high.

**Short Term Licence** – This is similar to a lease but very short term (i.e. 6 months to a year). It would generally give the new business the space only. The tenant would have to supply furniture, equipment and personnel. There would be no security when the licence comes to an end.

**Lease** - The minimum commitment would be three to five years. Shorter periods are sometimes available from tenants who themselves have surplus space (i.e. by taking an underlease). Landlords will wish to be satisfied above all that the incoming tenant is able to pay the rent and fulfil the tenant's obligations in the lease. They will want to see accounts and references that demonstrate this. They may also require a guarantor or a rental deposit of between six months and two years rent.

**Buy a Freehold** – This would involve a major capital commitment which is likely to be inappropriate for smaller businesses.

