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DOING BUSINESS IN THE UK

A GUIDE TO THE LEGAL AND COMMERCIAL CONSIDERATIONS FOR OVERSEAS COMPANIES

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DOING BUSINESS IN THE UK

The UK has a long history of international trade and, for many overseas companies with international aspirations, remains the first stop on their journey of global expansion. With its combination of trading history, world-class universities and strengths in key sectors such as life sciences and technology, the UK continues to attract investment from all over the world.

Its time zone, close proximity to Europe and the fact that English is still the common language of international trade are key factors in the UK's continuing success in attracting and retaining international investment and talent.

Despite economic and constitutional change, a diverse range of overseas companies and entrepreneurs continue to identify the country as an attractive place to conduct their operations.

London continues to hold a prominent position for financial and professional services in terms of an overall offer when compared to other global destinations, including New York, Singapore, Hong Kong, Paris and Frankfurt.

London is also Europe's capital for tech and innovation, home to more than a quarter of Europe's unicorns.

The UK's strength and depth of innovation and development, together with its international links, provide a reassuring familiarity that appeals to companies throughout the world with international aspirations. It is and will continue to remain a key location for expansion, with access to a diverse and exciting market and acting as a gateway to many jurisdictions where it has strong links.

This guide provides a general overview of the ten areas of most relevance for companies looking to establish a presence in the UK.

- **Setting up a corporate structure**
- **UK tax regime**
- **Intellectual property rights in the UK**
- **Data protection**
- **Visas and immigration**
- **UK employment law**
- **Trading and regulation in the UK**
- **Property: setting up an office**
- **Pensions**
- **Environmental, Social and Corporate Governance**

SETTING UP A CORPORATE STRUCTURE

There are a number of different types of entities that can be set up in the UK, depending on the overseas company's goals. The three most common are a limited company/subsidiary, a branch, and a limited liability partnership (LLP).

LIMITED COMPANY/SUBSIDIARY

- A limited company is a separate entity with its own independent legal identity. The company will be owned by its shareholder(s) and many international companies use this route to create a UK subsidiary. It will have a distinct board of directors and be able to enter into contracts in its own right. A limited company, as the name suggests, provides limited liability, which serves to protect both directors and shareholders. A limited company will be liable for UK corporation tax on its profits.
- There are two principal types of limited liability companies: public and private. Given the lighter regulatory regime that applies to private limited companies, most wholly-owned subsidiaries are incorporated in this way, unless there are special circumstances. An example would be if the subsidiary is a financing subsidiary and intends to issue bonds.
- There are a number of filing obligations on limited companies, which are maintained on public record at the UK's registrar of companies (Companies House). These include annual accounts, confirmation statements and maintaining up-to-date records for persons with significant control over the company.
- Formation of a company can be done quickly and typically takes one to two days.

UK ESTABLISHMENT (BRANCH)

- If an overseas company is carrying on business in the UK from the establishment of a fixed or permanent base (which constitutes a taxable presence or 'permanent establishment') but does not wish to set up a separate legal entity, it will be required to register the UK establishment (branch) at Companies House.
- In legal terms, a UK branch is considered the same entity as the parent company. There is therefore no independent legal personality and, as such, all profits and losses of the UK branch are incorporated with those of the overseas parent. All debts and liabilities of the UK establishment will also be attributed to the parent company.
- A UK establishment will need to file annual accounts that will be publicly available.
- Establishing as a branch does include certain benefits. For example, the overseas entity may be able to directly offset costs or losses in its own jurisdiction.
- A UK branch is generally more complicated to establish than a limited liability subsidiary.

LIMITED LIABILITY PARTNERSHIP (LLP)

- An LLP is an incorporated partnership governed by the Limited Liability Partnerships Act 2000. It also has a separate legal identity, like a limited company. Each partner's liability is, in general, limited to their agreed contribution to the partnership.
- LLPs can be efficient structures for repatriation of profits and include straightforward incorporation procedures.
- An LLP is not as well recognised as a limited company and it requires at least two people to set one up. Additionally, each member (partner) must file UK tax returns on the profits that the LLP derives from UK activities, which may become burdensome.

Other business structures are available, though these tend to be less popular as, generally, members are more exposed to the firm's liabilities. For instance, owners of unincorporated businesses (such as sole traders and partnerships) have unlimited liability for the debts and obligations of the business; this is also the case for general partners in limited partnerships (**LPs**). Moreover, while the liability of limited partners in LPs is capped at the amount of capital that they have contributed, limited partners do not take an active role in the management of the LP, which could create tensions between partners and hamper the effective running of the business.

> **A limited company is a separate entity with its own independent legal identity [...] many international companies use this route to create a UK subsidiary.**

CONSIDER YOUR IMMIGRATION STRATEGY EARLY ON

Companies and individuals looking to set-up or expand a business in the UK should consider their immigration options early on - the category of visa(s) that a company will need to acquire for its individuals will depend upon the type of business and what the company wants to achieve.

For some immigration categories company incorporation in the UK is a pre-requisite for hiring/transferring international employees to the UK. Please refer to our *'Visas and Immigration'* section later in this guide for more information.

SUSTAINABILITY

For any business entity which is established, an area that is gaining increased importance is sustainability; this is becoming central to corporate competitiveness and businesses' continued ability to operate.

The way in which businesses govern themselves, manage risk and engage with their stakeholders is under unprecedented scrutiny. Amid the introduction of numerous legislative requirements by regulators, investor pressure, workplace issues and increasing accountability to those outside the organisation, businesses are faced with mounting challenges.

We advise a range of clients across the full spectrum of governance-related risks and compliance matters and are well-equipped to help businesses proactively manage sustainability issues.

For further details, please see our '*Environmental, Social and Corporate Governance*' section in this guide.

UK TAX REGIME

Regardless of the corporate structure chosen, the company, branch or LLP must register with His Majesty's Revenue & Customs (HMRC) to pay all of the business's tax liabilities.

Below is a brief overview of the main taxes and incentives relevant to businesses establishing a presence in the UK.

CORPORATE TAX

- UK resident companies are generally liable to pay corporation tax at 25% on their worldwide profits. UK resident companies (other than close investment holding companies) with taxable profits up to £250,000 are generally liable to pay corporation tax at between 19% and 25%, depending on the level of their taxable profits and the number of companies which are under the same control.
- Non-UK resident companies are liable to corporation tax at the same rate on profi ts or gains made in the course of carrying on a trade in the UK through a 'permanent establishment' and on gains made on the sale of UK residential and commercial property. Non-UK resident companies attempting to trade in the UK without a 'permanent establishment' may be subject to the diverted profits tax, generally at a rate of 31%.
- Non-residents who make a profit on the sale of a substantial interest in a company (or other entity) that derives 75% or more of its gross value from UK land are also liable to UK tax.
- Companies which are based or trading in the UK are required to calculate their own corporation tax liability and file an annual corporation tax return with HMRC on a self-assessment basis. Similar returns are required from non-UK residents disposing of UK property and entities owning UK property as described above.

VALUE ADDED TAX (VAT)

- VAT is a form of consumption or indirect tax (akin to sales taxes in the US). It is charged on the provision of most goods sold and services provided in the UK.
- A UK resident company, or UK branch of a non-UK resident company, must generally register with HMRC for VAT where the turnover exceeds £90,000 per annum. The business will then generally need to charge VAT to customers, although supplies to non-UK customers may not be subject to VAT. A VAT-registered UK business must submit VAT returns to HMRC on a periodic basis, generally every quarter.
- A non-UK resident company with no UK branch must register with HMRC for VAT where it makes taxable supplies of any value in the UK. It must then charge VAT and submit VAT returns as described in the previous paragraph.
- There are three rates of VAT: a standard rate of 20% for most goods and services; a reduced rate of 5% for domestic fuel and power, certain UK property-related supplies and certain welfare supplies; and a zero rate (0%).
- Zero rated goods and services (such as children's clothes and shoes and certain UK property-related supplies) are still subject to VAT, but the rate that a business must charge customers is 0%. This means that the company must still report these items on its periodic returns and that it can reclaim VAT it pays on costs which relate to the items.

INCOME TAX (PAYE)

- Income tax is deducted from an employee's salary on a monthly basis through a system known as 'Pay as you Earn' (PAYE). An employer must automatically pay this tax to HMRC.
- Most employees in the UK are eligible for a personal allowance of tax-free income. There are varying levels of income tax rates in the UK, with the highest band attracting tax at 45% (and 48% in Scotland). For more information visit https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2024-to-2025.

NATIONAL INSURANCE

- National Insurance is the UK's version of social security. Employees and employers make contributions to qualify for certain benefits and a state pension. Both employers and employees must make a contribution to the National Insurance scheme. This is a percentage of the gross earnings paid to the employee.
- It is generally the employer's responsibility to calculate the amount due for each employee and to pay it to HMRC on a monthly basis, together with the PAYE income tax.
- Employer's NIC is chargeable at 13.8% on an employee's annual earnings above £9,100 but will increase from 6 April 2025 to 15% on annual earnings above £5,000. The different bands of earnings are subject to differing rates of employee's NIC, the rates 0%, 8% and 2%.

STAMP DUTY LAND TAX

- SDLT is charged on purchases and leases of commercial and residential property in England and Northern Ireland, with similar taxes being charged for purchases in Scotland and Wales. In England the rates on purchases generally vary with the amount of the price, with the highest band being taxed at 5% for commercial property and, depending on the status of the purchaser, 12-19% for residential property.

TAX INCENTIVES

- The UK has a number of appealing tax incentives, which can be offset from a business's corporation tax liabilities. These include Research & Development reliefs and the Patent Box.

RESEARCH & DEVELOPMENT EXPENDITURE

- Research and development (R&D) relief is available for companies that work on innovative projects in the science and technology fields. A company can claim R&D relief on work which matches the requirements set out by HMRC.
- In order to be eligible for R&D relief, a business must be able to explain how the particular project looked for an advance in science and technology, how they experienced and tried to overcome uncertainty, and that the project solved uncertainties which could not easily have been worked out by a professional in the field.
- For accounting periods commencing on or after April 2024, loss-making R&D intensive small and medium sized companies are eligible for a deduction from the business's taxable income at a rate of 186% of the qualifying R&D expenditure and can claim a tax credit of up to 14.5% of the deductible amount. Companies are considered to be 'R&D intensive' if their qualifying R&D spending makes up at least 30% of their total expenditure during their financial year. All other companies can claim an expenditure credit for 20% of their qualifying R&D expenditure, though this credit is itself subject to corporation tax meaning that it is generally worth 15% of the qualifying expenditure.

UK PATENT BOX

- The Patent Box is a government scheme set up to enable companies to apply a lower rate of corporation tax (10%) to profits earned from patented inventions and certain other innovations. The scheme is very attractive to businesses in a range of sectors including life sciences, manufacturing and electronics.

CAPITAL ALLOWANCES

- Businesses can claim 100% tax relief for their investment in qualifying expenditure incurred on plant or machinery up to a maximum of £1m per year. In addition, companies can claim 100% allowances on further capital expenditure on the provision of most plant and machinery, though this does not apply to "special rate" expenditure on such items as integral features of buildings and structures and long-life asset expenditure – an initial allowance of 50% is available for such expenditure with allowances of 6% per annum on the remaining 50%.

INVESTMENT ZONES

- Investment zones are being established to incentivise investment in specific areas of England and the UK. Such investments are expected to benefit from 100% relief from business rates on newly occupied business premises, enhanced capital allowances, no NIC on salaries of any new employee working in the zones for at least 60% of their time on earnings up to a certain amount and full SDLT relief for land and buildings bought for use or development for qualifying commercial purposes.

INTELLECTUAL PROPERTY RIGHTS IN THE UK

The UK consistently ranks highly in global intellectual property indices for offering businesses a well-developed regime for the protection and monetisation of intellectual property rights (IPR). Many aspects of the UK IPR regime will be familiar to businesses operating internationally, particularly for those (including the US) that are cosignatories to the relevant international conventions on IPR. However, there have been some recent changes to various aspects of intellectual property protection in the UK arising as a result of its exit from the European Union.

TRADE MARKS AND PASSING OFF

- As in the US, a UK trade mark registration offers monopoly protection for brand names, logos and other signs indicating trade origin. Provided that the mark sought is not identical or confusingly similar to an existing mark, or similar to an earlier mark with a reputation, then a registered UK trade mark may be obtained relatively inexpensively for an initial term of 10 years and the trade mark may subsequently be renewed indefinitely for further terms of 10 years each.
- As the UK is no longer a member of the European Union, EU trade marks ("EUTMs") are no longer enforceable in the UK before the Courts or Registry and, similarly, UK trade marks can no longer be relied upon in proceedings before the EU Intellectual Property Office.
- For EUTMs (and international trade marks designating the European Union) that were registered as of 1 January 2021, the UK created a "comparable UK right" – effectively a clone of the EUTM with the same filing date, priority date and registration date which is enforceable in the UK. This 'clone' is a separate UK right that must be renewed independently of the EUTM/International Registration from which it was cloned.
- After a UK trade mark is registered, the owner may use the "®" symbol when using the mark in connection with the goods/services for which it is registered. However, using the "®" symbol for a mark that is not registered can amount to a criminal offence, and owners of unregistered trade marks may use the "TM" symbol to indicate their claim to own rights in the trade mark.
- The law of passing off prevents others from benefiting from an established trader's goodwill and causing damage by misrepresenting their goods/services as those of the established trader (or vice-versa).
- Key brands and logos should be protected as registered trade marks since these can be enforced without needing to prove goodwill and misrepresentation, as is necessary in relation to passing off.

COPYRIGHT

- Copyright protects an author's original intellectual creation from being copied by others. Literary works, graphical designs, photographs, artistic and musical works, films and computer programs are all within the scope of copyright protection.
- The term of copyright protection is generally 70 years from the end of the last year of the author's life. Certain sorts of copyright may have more limited durations: for instance, copyright in computer-generated works is limited to 50 years.
- First ownership of copyright generally vests in the author upon creation of the work. If the work is created by an employee in the course of their duties, then copyright vests automatically in the employer. Where copyright works are commissioned from non-employees such as independent contractors or design agencies or works are created outside an employee's normal duties, then copyright stays with the author. The commissioning party will have an implied licence, which will not necessarily be exclusive. It is therefore necessary to ensure by way of contract that copyright in any commissioned works passes to the commissioner.
- Works created outside the UK (including in the US) are subject to reciprocal protection under international treaties. Unlike the US, there is no system of copyright registration in the UK. Copyright applies automatically once the work is recorded in physical/electronic form.
- It is good practice to put others on notice of copyright by placing a copyright message in the form "© [owner name] [year]" on works in order to create a presumption of copyright.

PATENTS

- As in the US, patents protect new inventions that are capable of industrial application. Patents give a monopoly right to work the invention, i.e. to use a patented process or to make a patented product, and are generally available for a period of up to 20 years from the original filing date. Patent rights must currently be secured in individual territories, although progress towards a European unitary patent is ongoing notwithstanding the UK's departure from the EU.
- Where a patent has originally been filed in the US, provided that the application is made within 12 months of the date of the US filing, then it is possible to apply in the UK (and elsewhere) for a patent for the same invention. The filing date of the US patent will be treated as the 'priority date' for the UK application. If the

application is not made within 12 months, then patent protection will become unavailable for lack of novelty.

- Although the inventor(s) will be named on the patent, any person may make an application for a patent. However, patent rights can only be granted to (in most circumstances) the inventor, their employer, or any successors in title to either or the foregoing (s 7(2) Patents Act 1977).

DESIGN RIGHTS

- Following the UK's departure from the EU, there are four design right regimes that apply in the UK to protect product designs that are new, have individual character, and are not commonplace. These are UK unregistered design rights, Continuing Unregistered Community Design ("CUD"), Supplementary Unregistered Designs ("SUD"), and UK Registered Designs. Registered Community Designs ("RCDs") are no longer enforceable in the UK, however, these continue to be valid throughout the remaining 27 member states of the EU.
- Registration means that others are prohibited from making products to the registered designs. Unregistered design right protection is available without formality but offers lesser protection, prohibiting actual copying of the designs. CUDs, SUDs and UK Registered Designs protect the overall impression created by the product – the product's 'look and feel'. UK unregistered design rights protect the shape and configuration of the design only (not surface decoration). Design protection does not extend to aspects of the design that are dictated by technical function or the need for the product to match or fit another product.
- For RCDs that were registered on 1 January 2021, the position is similar to that of EUTMs set out above i.e. the UK created an equivalent "clone" with the same filing date, priority date and registration date. Equally, the UK has created the CUD and SUD regimes in order to prevent designs that are eligible for Unregistered Community Design protection from losing rights in the UK.
- UK unregistered design rights last for the shorter of: 15 years from the date of creation of the first design drawing (or, if earlier, the date the first object is made to the design) or 10 years from the end of the calendar year when articles made to the design were first made available for sale or hire. During the last five years of the term of protection, a licence must be granted on reasonable terms to any party that requests one.
- CUDs and SUDs last for a period of three years from the date the design is first disclosed to the public (e.g. at a trade show or by being made available for sale). UK registered designs may be obtained for an initial term of five years from the filing date and renewed for a total of up to 25 years. The application for a UK Registered Design must be made by the end of the period of one year from the date that the design is first disclosed to the public. Businesses may use this period to test the market for their products. If design registration is not applied for during the grace period then the design will be deemed no longer to be new and hence registration will become unavailable, leaving only the unregistered rights in place.
- It should be noted that not all overseas jurisdictions allow a grace period, so testing the market in this way could be deemed to be a disclosure that makes design protection unavailable in those jurisdictions. It is also possible to apply for a deferred registration in order to secure a particular filing date without the design being published on the register, although full enforcement rights are not triggered until the registration is published.

DATABASE RIGHTS

- Database rights protect certain qualifying databases, subject to a number of conditions as to the extent and nature of investment into the creation of those databases. It is, in practice, a fairly narrow right. It protects against extraction or re-utilisation of the protected database or a substantial part of it. This right can be useful in certain circumstances but generally does not apply in cases in which the investment of time and resources was directed into the creation and verification of the data itself rather than the database.
- Protection lasts for a period of 15 years from the end of the year in which the arrangement of the database was completed.
- Database rights that existed in the UK or EEA before 1 January 2021 (whether held by UK or EEA persons or businesses) will continue to exist in the UK and EEA for the rest of their duration.
- Database rights created on or after 1 January 2021 will continue to exist in the UK only under the Copyright and Rights in Databases Regulations 1997.

CONFIDENTIAL INFORMATION AND TRADE SECRETS

- Trade secrets and other confidential information are protected without further formality by an enforceable equitable duty of confidence, but are more commonly protected on a contractual basis through non-disclosure agreements (NDAs).

DATA PROTECTION

In the UK, the collection and use of personal data is governed by an adapted version of the EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018. The UK GDPR broadly mirrors the EU GDPR, but has been amended to allow it to operate effectively post-Brexit.

The legislation sets out seven principles that govern the processing of personal data (i.e. data relating to an identifiable living person):

- personal data shall be processed lawfully, fairly and transparently
- personal data shall be obtained only for a specified and lawful purpose, and shall not be further processed in a manner that is incompatible with the original purpose
- personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is being processed
- personal data shall be accurate and, where necessary, kept up to date
- personal data processed for any purpose shall not be kept for longer than is necessary for that particular purpose
- appropriate security measures shall be in place to protect the personal data against unauthorised or unlawful processing and against accidental loss or destruction
- organisations must have appropriate measures and records in place as proof of compliance with these data protection principles.

Organisations that regularly monitor personal data on a large scale (or whose core activities consist of large-scale processing of 'special' categories of data (please see below) and/or personal data relating to criminal convictions) must appoint a Data Protection Officer (DPO).

There are enhanced obligations under UK GDPR for certain 'special' categories of personal data. Special category data encompasses data relating to an individual's race or ethnicity, politics or religion or philosophical beliefs, trade union membership, genetic or biometric data, health data, and data relating to sex life or sexual orientation.

An organisation should carry out a Privacy Impact Assessment (PIA) for processing that is likely to result in a high risk to individuals.

Under the UK GDPR personal data must not be transferred to a country or territory outside the UK unless an adequate level of protection for the rights and freedoms of the data subject is in place in relation to the processing of that personal data. The UK has recognised EU/EEA member states, as well as other jurisdictions such as Canada and Japan (for commercial or private sector organisations only) as providing an adequate level of protection, so data transfers from the UK to the EU/EEA can flow without the need to meet international data transfer requirements. Organisations that transfer data outside the EU/EEA, to countries not deemed to provide an adequate level of data protection will need to put in place a valid data transfer mechanism (such as standard contractual clauses).

> In the UK, the collection and use of personal data is governed by an adapted version of the EU General Data Protection Regulation with some specific local requirements.

The Information Commissioner's Office (ICO - the UK supervisory authority) has released UK standard contractual clauses, known as the International Data Transfer Agreement (IDTA) for transfers of personal data from the UK. For organisations that are subject to both the EU and UK GDPR, the ICO also released an Addendum to be used for UK data transfers alongside the EU standard contractual clauses, instead of the IDTA. The UK government has also established a UK/US 'data bridge', which is an extension of the EU-US Data Privacy Framework. The data bridge entered into force on 12 October 2023, allowing personal data to flow from the UK to US organisations that have certified under the UK extension to the Framework.

An organisation intending to transfer personal data outside the EU/EEA should consider whether it is necessary to carry out a Transfer Impact Assessment.

The UK GDPR applies to organisations with no business presence in the UK that offer goods or services to individuals located in the UK or that monitor UK residents' behaviour. Such organisations will need to appoint a representative within the UK to deal with any queries relating to data breach or subject access requests.

The UK GDPR places a duty on all organisations to report certain personal data breaches to the ICO without undue delay and where feasible within 72 hours of becoming aware of the breach. If the data breach is likely to result in a high risk of adversely affecting individuals' rights and freedoms, the organisation must also notify those individuals without undue delay.

The maximum level of fine in the UK for a serious data breach is up to 4% of annual worldwide turnover or £17.5 million, whichever is the higher.

The ICO has issued a guide [https://ico.org.uk/for-organisations/guide-to-data-protection/] to the UK GDPR, which explains in detail the general data protection regime that applies to UK organisations.

EU GDPR

The EU GDPR, like the UK GDPR, has extra-territorial effect. This means that it continues to apply to UK organisations that offer goods or services to individuals located in the EU or that monitor EU residents' behaviour. Such organisations will need to comply with both the UK GDPR and the EU GDPR. UK organisations that do not have a business presence in the EU will need to appoint a representative there to deal with any queries relating to data breach or subject access requests.

The EU has recognised the UK as providing an adequate level of protection for data transfers from the EU to the UK (except for transfers for the purposes of UK immigration control) under the EU GDPR. This decision is expected to last until 27 June 2025 and means that, except for data transferred for the purposes of immigration control, personal data can continue to flow freely from the EU/EEA to the UK post-Brexit.

In June 2021, the EU Commission published EU standard contractual clauses for international data transfers from the EU/EEA. Organisations that transfer personal data from the EU/EEA should ensure that they are using the correct version of EU standard contractual clauses, as previous versions will not provide the required safeguards.

> THE UK GDPR APPLIES TO ORGANISATIONS WITH NO BUSINESS PRESENCE IN THE UK THAT OFFER GOODS OR SERVICES TO INDIVIDUALS LOCATED IN THE UK

PECR

In addition to the UK GDPR obligations, UK organisations that send telephone and electronic marketing communications, use cookies on their websites or provide electronic communication services to the public must comply with the Privacy and Electronic Communications Regulations (PECR). The ICO has the power under PECR to impose monetary penalties of up to £500,000.

PECR prohibits the making of marketing calls to consumers who have opted out of receiving such communications. It also prohibits the sending of electronic marketing communications to consumers unless they have consented (the UK GDPR standard of consent applies under PECR), or have previously bought or sought to negotiate with the trader for similar goods/services. This is a complex area and specific advice should be sought for any proposed electronic marketing campaign, to ensure it complies with the law.

PECR requires that those using cookies on their websites provide details of the cookies used and do not collect cookies (other than 'strictly necessary' cookies) until consent has been obtained. The ICO has issued guidance (https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/guidance-on-the-use-of-cookies-and-similar-technologies, which sets out in detail the steps organisations need to take to ensure their use of cookies complies with PECR.

ARTIFICIAL INTELLIGENCE

The UK government has said it is taking a "pro-innovation" approach to AI regulation and its white paper published in March 2023 suggested that there would be no new legislation (although this may change). Instead, it proposes to govern AI through sector specific regulatory guidance, with key regulators (including the ICO, the FCA, the CMA and the MHRA) having published outline guidance setting out their strategic approach and how it aligns with the five principles of AI governance in the white paper, which are:

- safety, security and robustness
- appropriate transparency and "explainability"
- fairness
- accountability and governance
- contestability and redress.

The EU, on the other hand, has taken a "risk-based" legislative approach with the EU AI Act becoming law in 2024. This approach allocates AI systems to one of four risk categories which determines the regulatory approach that will apply. Some AI will be banned entirely where the risk associated with it is deemed to be unacceptable whereas certain high risk AI technology may be subject to increased restrictions on its use and implementation. A new central European AI Board will be introduced that will oversee the implementation of the AI Act by competent authorities in member states.

Organisations looking to deploy AI solutions are recommended to:

- identify what AI solutions are being used in their organisation, and for what intended purposes;
- consider where they are in the supply chain in relation to the AI, as this will be important in understanding compliance obligations and risks;
- understand how the AI solutions have been trained and whether there are any obvious gaps in training data which could result in inherent system bias. This will also be necessary to ensure explainability, fairness and the safeguarding of rights of individuals;
- consider and document appropriate risk assessments, using existing compliance frameworks if they are helpful. This will need to take into account:
  - the AI Act's risk classifications and associated compliance obligations, as well as the UK's white paper principles;
  - risks that could potentially exist through the use of outputs from any AI system, including how this can be mitigated by improving inputs or introducing additional safeguards to ensure fairness;
  - that the approach to compliance with AI principles and regulation must be looked at side by side with other factors such as data protection compliance and mandatory impact assessments under the UK and EU GDPR (and other privacy laws if relevant), the need to update privacy or other notices to individuals, and a review of intellectual property and liability issues relevant to use of AI systems.

VISAS AND IMMIGRATION

The UK has a points-based immigration system which can be complex to navigate. Often, immigration advice is required in conjunction with other legal advice, e.g. company set up, tax and employment advice. Therefore, those looking to set-up or expand a business to the UK should consider immigration options early, to avoid any surprises or delays.

The category of visa(s) that a company will need to acquire for its individuals will depend upon the type of business and what the company wants to achieve. One of the first considerations should be whether the individual relocating to the UK already has the right to work, through a British passport for example, UK Ancestry, EU settlement scheme or a visa through a family member, as this could save time and costs.

Outlined below are the most commonly used immigration routes for those intending to do business in the UK.

TYPES OF VISAS

BUSINESS VISITOR

Prior to obtaining a long term visa or setting up a company in the UK, it may be beneficial to consider the business visitor route as an initial short term entry to the UK.

- Business visitors are allowed to enter the UK for the purpose of transacting business (which includes attending meetings, negotiating or entering into contracts), but they are not allowed to undertake paid or unpaid work.
- Individuals may be allowed to remain in the UK for a period not exceeding six months, although in principle it is not expected that they will remain in the UK for the full six months.
- Non-visa nationals, which includes nationals from the US, Canada, Australia and the EU do not need to apply for a business visit visa before travelling and can be as a visitor upon arrival to the UK. Visa-nationals, which include nationals from India, will need to apply for and obtain the visa before travelling to the UK.

Prior advice should be taken to ensure that the activities being carried out in the UK are 'permissible'.

UK immigration routes are mainly categorised as sponsored or non-sponsored routes, although some non-sponsored routes may require an endorsement.

NON-SPONSORED ROUTES

HIGH POTENTIAL INDIVIDUAL (HPI)

The High Potential Individual visa (HPI) is aimed at attracting international talent to the UK. It allows **international graduates** who have graduated from a top 50 global university in the last five years (as published in the Global Universities List by the Home Office[1]) to come and live and work in the UK. Under this category:

- Those eligible can come to the UK unsponsored for up to two years, or three years if they hold a UK PhD equivalent.
- Dependants are eligible to apply to join/accompany the main applicant.
- Those on this route can be employed or self-employed.

HPI visa holders will not be eligible for an extension and the route will not lead to settlement (indefinite leave to remain).

GRADUATE ROUTE

This route is open to UK graduates, who successfully complete at least an undergraduate degree from an eligible institution in the UK. Under this category;

- Those eligible can remain in the UK for two years, or three years if they have successfully completed a PhD.
- Only those dependants who are already in the UK as dependants under the student route are eligible to switch into this category.
- Those on this route can be employed or self-employed.

Graduate visa holders will not be eligible for an extension and the route will not lead to settlement (indefinite leave to remain).

INNOVATOR FOUNDER

This route is for people who want to set up and run an innovative business in the UK. The business idea will need to be endorsed by an approved endorsing body[2]. Under this category:

- **New** - you cannot join a business that is already trading.
- **Innovative** - you must have an original business idea which is different from anything else on the market.
- **Viable** - with potential for growth.
- **Scalable** - you must give evidence of how you plan to grow the business.

Those eligible will be granted a three-year visa and can apply for settlement after three years.

[1] High Potential Individual (HPI) visa: Eligibility - GOV.UK (www.gov.uk)
[2] Innovator Founder and Scale-up visas endorsing bodies - GOV.UK (www.gov.uk)

- Endorsement must be held throughout the three-year period and regular meetings after 12 months and 24 months are held with the endorsing body to show that the business is making progress. Withdrawal of endorsement will lead to the visa being cut short.
- Dependants are eligible to apply to join/accompany the main applicant.
- An application can be made from either outside the UK or by switching in the UK from a different immigration route.

GLOBAL TALENT VISA

This category is for leader and emerging leaders in the fields of **science, engineering, medicine, humanities, digital technology and arts and culture** who wish to bring their expertise to the UK.

Those applying will either be leaders in their field (exceptional talent) or have the potential to be leaders (exceptional promise). Under this category:

- An endorsement from the relevant endorsing body is required.
- Those endorsed have the flexibility to work or be self-employed, so long as they remain active in the field they have been endorsed.
- An application can be made from either outside the UK or by switching in the UK from a different immigration route.
- Dependants are eligible to apply to join/accompany the main applicant.

SCALE-UP VISA

The Scale-up visa is intended to assist UK scale-up's in recruiting talented individuals, who have the skills to enable scale-up businesses to continue growing. Under this route;

- Those with the relevant skillset will be able to obtain sponsorship from a UK company, which meets the definition of a 'qualifying scale-up sponsor'.
- A 'qualifying scale-up sponsor' must either be a company who has had an annualised growth of at least 20% for the 3-year period based on employment or turnover and have had a minimum of 10 employees at the start of the three-year period or have been endorsed by an endorsing body.[3]
- The route has both a sponsored and un-sponsored stage. For the first six months, the visa holder will be required to work for the company which has sponsored the visa, unless permission is obtained from the Home Office. After the initial six-month period the visa holder is free to take up employment elsewhere.
- Dependants are eligible to apply to join/accompany the main applicant.
- The initial visa will be granted for two years, after which an extension for three years can be applied for. An application for settlement (Indefinite leave to remain) can be applied for after five years.

SPONSORED ROUTES

GLOBAL BUSINESS MOBILITY VISA

The Global Business Mobility routes are designed to help both UK businesses, who are looking to expand their workforce, and overseas businesses looking to set up operations/send workers to the UK.

Prior to using one of these routes, the business may need to set up an entity in the UK and apply for a licence to sponsor non-UK workers. Prior advice should be taken to check which route is most suitable.

The visa routes under this category do not lead to settlement. Dependants are eligible to apply to join/accompany the main applicant.

There are 5 categories under this route:

The **Senior or Specialist Worker route** – this route is for overseas workers who are undertaking temporary work assignments in the UK. The worker is a senior manager or specialist employee and is being assigned to a UK business linked to their employer overseas.

The **Graduate Trainee route** – this route is for overseas workers who are undertaking temporary work assignments in the UK. The worker is on a graduate training course leading to a senior management or specialist position and is required to do a work placement in the UK.

The **UK Expansion Worker route** – this route is for overseas workers who are undertaking temporary work assignments in the UK. The worker is a senior manager or specialist employee and is being assigned to the UK to undertake work related to a business's expansion to the UK.

The **Service Supplier route** – this route is for overseas workers who are undertaking temporary work assignments in the UK. The worker is either a contractual service supplier employed by an overseas service provider or a self-employed independent professional based overseas. They need to undertake an assignment in the UK to provide services covered by one of the UK's international trade agreements.

The **Secondment Worker route** – this route is for overseas workers who are undertaking temporary work assignments in the UK. The worker is being seconded to the UK as part of a high value contract or investment by their employer overseas.

[3] Guidance for sponsors: Sponsor a Scale-up Worker (workers and temporary workers) (accessible version) - GOV.UK (www.gov.uk)

SKILLED WORKER VISA

The skilled worker route remains the main work route to the UK.

Under this route:

- A Company will need to have established a trading presence in the UK and have applied for and obtained a skilled worker licence before it can sponsor workers under this route.
- There is no limit on the number of skilled workers a company can hire.
- To be eligible for a skilled worker visa certain criteria including minimum salary, relevant skill level and English language requirements will need to be met.
- Settlement (indefinite leave to remain) can be applied for after 5 years.
- Dependants are eligible to apply to join/accompany the main applicant.

CONCLUSION

Other temporary routes may be able for example the GAE schemes, for those looking to gain work experience in the UK or the Youth Mobility Schemes, which allow individuals from certain countries to live and work in the UK on a temporary basis.

The UK immigration system can be complicated to navigate and penalties for getting it wrong can be severe; entry-bans for individuals and fines for companies. The expert immigration team at Penningtons Manches Cooper can help businesses and individuals navigate the complexities and provide tailored advice.

> IT IS IMPORTANT TO CONSIDER IMMIGRATION OPTIONS EARLY TO AVOID ANY SURPRISES OR DELAYS.

UK EMPLOYMENT LAW

Like the rest of the English legal framework, English employment law is derived from common law, domestic legislation and, prior to Brexit, European law. European law, in particular, was the source of a number of employee-friendly protections within the UK, notably in the areas of discrimination, equal pay, "family-friendly" rights and working time. The Retained EU Law (Revocation and Reform) Act 2023, ended the supremacy of EU law in the UK from 1 January 2024. It also gave the government the power to revoke, restate or vary by regulation any retained EU law. In the short term, there have been few changes in English employment law as a result of Brexit, but its full impact is yet to be seen.

In comparison with many European countries, the UK has less labour regulation and a more flexible labour market, which makes the UK an attractive location for both businesses and talented individuals to thrive.

- Individuals providing services to a business are, in basic terms, classified into three categories: employees, workers, and self-employed or independent contractors. These categories determine, among other things, their statutory rights.
- All UK employees must have a written contract of employment, containing the minimum terms set out in section 1 of the Employment Rights Act 1996. This must be provided to each employee by the beginning of their employment. The terms of the contract of employment are typically supplemented by an employer having non contractual policies and procedures for the workplace which are contained in its staff handbook.
- Employees are entitled to a statutory minimum period of notice of one week per year of service, up to a maximum of 12 weeks. Many employment contracts will provide for a greater period of notice than the statutory minimum, particularly for senior employees. Unlike the US, there is no 'employment at-will'.
- A national minimum wage (NMW) applies for all workers over compulsory school leaving age up to and including the age of 20. The NMW rates differ depending on the age of the worker and whether or not they are in training or undertaking an apprenticeship. For those workers aged 21 and over, the national living wage applies (and from April 2025, all workers aged 18 and over will be entitled to the national living wage).
- Workers' hours are currently regulated by the Working Time Regulations 1998 (WTR). Workers may not work, on average, for more than 48 hours a week, although workers can opt out of this limit. The WTR also provides workers with rights to daily, weekly and in-work rest periods, as well as a minimum of 5.6 weeks' paid holiday a year (which can include public holidays).

"...employers should protect their business interests by adding an express contractual term restricting the employee's right to use or disclose the employer's confidential information ...

- Employers are required to pay statutory sick pay (SSP) to employees who are off work due to illness or injury after the third day of continuous absence (subject to certain qualifications). The Labour government has committed to introducing SSP from the first day of absence, although it is not yet clear when this change will be implemented.
- Broadly, employees are bound by an implied duty of fidelity and good faith which encompasses a duty not to disclose the employer's confidential information. After termination of employment, this implied duty is limited to information which is sufficiently confidential to amount to a trade secret. Given this limited duty, employers should protect their business interests by adding an express contractual term restricting the employee's right to use or disclose the employer's confidential information after the employment relationship has ended.
- Notwithstanding any obligations of confidentiality to their employer, employees are entitled to make a disclosure of confidential information to the extent that such disclosure amounts to a protected disclosure which qualifies for protection under the Public Interest Disclosure Act 1998. Employees who "blow the whistle" and meet the statutory requirements have significant protection under the law.
- An employer can include post termination restrictions (PTR) in an employee's contract of employment provided the employer can demonstrate that the PTRs are reasonable and that there is a legitimate business interest to protect. These clauses prevent the employee from doing something that may be harmful to the former employer for a period of time following their departure, for example, by joining a competitor or approaching clients.
- An employee who has been continuously employed for two years has a statutory right not to be unfairly dismissed. However, there is no requirement for qualifying service where the dismissal is for certain grounds, including trade union membership or activities, or blowing the whistle. An eligible employee who is dismissed will have a successful claim for unfair dismissal unless the employer can prove that the principal reason for the dismissal was one of the five reasons set out below, and that the employer has followed a fair procedure prior to dismissal:the employee's capability or qualifications for performing work of the kind which that employee was employed to do
  - the employee's capability or qualifications for performing work of the kind which that employee was employed to do
  - the employee's conduct
  - the employee's job was redundant
  - the employee could not continue to work in the position which they held without contravention of a duty or restriction imposed by or under an enactment; or
  - there was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- The Labour government has committed to making unfair dismissal protection a 'day one' right, although employers will be able to dismiss employees using a simplified capability process during a probationary period, likely to be six months. These changes will be subject to consultation and will not be introduced until 2026. Once in force, however, this will be a significant change in English employment law.
- Employees and applicants for employment have statutory protection against discrimination on
- a number of grounds: age; disability; gender reassignment; marriage and civil partnership;
- pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Since the abolition of the default retirement age in April 2011, the compulsory retirement of employees (at any age) will be unlawful age discrimination unless it can be justified as a proportionate means of achieving a legitimate aim. From October 2024, employers are under a duty to take reasonable steps to protect workers against sexual harassment in the workplace, including by third parties.
- Equality clauses are implied into all contracts of employment by the Equality Act 2010. They operate when an employee is employed on: like work (that is work which is the same or broadly similar); work which has been rated as being equivalent under a job evaluation scheme; or work which is of an equal value to that performed by a member of the opposite sex in the same employment.

"UNLIKE THE US, THERE IS NO 'EMPLOYMENT AT-WILL'.

- If any of these three situations exist, any term in a woman's contract (for example) which is less favourable than a man's contract shall be modified so as to be not less favourable, unless the employer can show that the reason for the difference in pay or conditions is a material factor other than sex.
- When control of a company is acquired by way of a share sale, there is no change of employer and all contractual and statutory rights of the employees are preserved. However, on the transfer of a business as a going concern i.e. an asset sale, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply, which means all employees of the seller (the transferor) who are employed in the "organised grouping of resources or employees" immediately before the transfer automatically become employees of the buyer (the transferee) on their existing terms of employment without breaking their continuity of service. TUPE can apply in a range of other situations also, such as when services are contracted out, contracted back in or where a service provider changes.
- On a TUPE transfer, employers must consult with employee representatives on a range of matters, otherwise affected employees will be entitled to a protective award. Similar consultation requirements apply in a collective redundancy situation..
- Any dismissals will be automatically unfair if the sole or principal reason for the dismissal is the transfer itself. If, however, the transferee's reason is an economic, technical or organisational reason entailing changes in the workforce (an ETO reason), a dismissal may be classified as fair, subject to a fair process being followed. Employers are similarly restricted from making changes to the transferring employees' terms and conditions of employment unless there is an ETO reason.

"In comparison with many European countries, the UK has less labour regulation and a more flexible labour market, which makes the UK an attractive location for both business and talented individuals to thrive.

TRADING AND REGULATION IN THE UK

Some industries in the UK are heavily regulated including, notably, the financial services sector. When establishing a business in the UK, it is important to ensure that the company has obtained all the requisite licences to trade.

Below is an overview of the key issues and regulations relevant to trading in the UK.

FINANCIAL SERVICES

- The UK competent authority for regulating the financial services sector is the Financial Conduct Authority (FCA). All "regulated activity" carried out in the UK needs to be done by someone who is either authorised by the FCA or otherwise exempt.
- Regulated activities include (but are not limited to) various activities under the following broad categories: consumer credit, designated investment business, electronic money, cryptoasset services, insurance business and distribution, regulated home finance, and claims management. It is the responsibility of the business to establish whether its business activities require FCA authorisation to carry on regulated activities.
- In relation to investment business the regulated activities include: dealing in investments, arranging deals in investments, deposit taking, safekeeping and administration of assets (including acting as a custodian), managing investments, providing investment advice and fund management.
- Generally speaking, lending is not a regulated activity in the UK. However, if a business lends money or offers credit to individuals or small partnerships, this will likely constitute "consumer credit" and will fall within the remit of the Consumer Credit Act 1974.
- There are also restrictions and requirements around offering securities within the UK (including to employees), which are governed by, among other things, the retained EU law version of the Prospectus Regulation (EU) 2017/1129 (to be replaced by the Public Offers and Admissions to Trading Regulations 2024, once the EU prospectus regime is repealed under the Financial Services and Markets Act 2023)the Financial Services and Markets Act 2000 and the Companies Act 2006.
- International financial services firms need to be authorised and regulated by the Prudential Regulation Authority (PRA) and/or the FCA in order to establish a presence or carry out permitted regulated activities in the UK. Similarly, international investment funds also require a licence.

TRADING CONTRACTS

Any business that wishes to operate in the UK will need to enter into trading contracts with suppliers, customers and other third parties. Below are some key issues to consider:

- **Unfair contract terms:** The Consumer Rights Act 2015 (CRA) applies to consumer contracts for services, goods or digital content and aims to protect the consumer from the perceived imbalance of power in the contract bargaining process. The CRA requires that all contract terms must be fair. Terms will be viewed as unfair if they give rise to a significant imbalance in the rights and obligations of the parties under the contract and that imbalance is to the detriment of the consumer. Under the CRA, a trader must ensure that the terms of its written contracts are expressed in plain and intelligible language. The CRA also gives UK consumers a statutory right to return goods bought online or in store and get a full refund within a set time period (normally 30 days). For services and purchases of digital content (such as music, games and apps) consumers have similar rights of redress (repeat performance, repair or refund). Under the CRA all goods supplied, must be of satisfactory quality and fit for purpose. Services must be carried out with reasonable skill and care or as agreed. The Sale of Goods Act 1979 (as amended) sets out rules for business to business contracts and provides that goods must correspond with the seller's description and implies a term that goods must be of satisfactory quality and fit for purpose.
- **Unfair commercial practices:** The Consumer Protection from Unfair Trading Regulations 2008 (as amended) prohibits unfair commercial practices in dealings with consumers. The regulations apply both before, during and after a consumer contract is formed. They protect consumers from unfair or misleading trading practices and ban misleading omissions and aggressive sales tactics. They place an obligation on traders to trade fairly and honestly with consumers. When advertising to other businesses, traders need to be aware of the Business Protection from Misleading Marketing Regulations 2008. The general rule derived from these regulations is that advertising should not be misleading.
- **Information and cancellation rights**: The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) set out the information a trader must give to a consumer before and after making a sale. The CCRs also give consumers buying at a distance (such as online) the right to cancel the contract and return the goods within a 'cooling off' period (normally 14 days), whether or not they are faulty.
- **Trading online:** The E-Commerce Regulations 2002 impose a range of obligations on businesses that trade online or provide online services, in particular obligations to provide users with certain information about the business and its services. The Provision of Services Regulations 2009 impose obligations on traders that provide services, in particular, obligations to provide specified information, meet certain standards when handling complaints and the prohibition of discrimination.

PRODUCT LIABILITY:

The Consumer Protection Act 1987 imposes strict liability on a producer for damage caused by a defective product. Producers, manufacturers and importers all have a statutory duty to ensure that products sold to consumers are safe. As failure to adhere to the duty can lead a business to be exposed to the risks of civil litigation or criminal fines and, in some severe cases, imprisonment of company officers, businesses should, as a minimum, undertake the following to satisfy this duty:

- Warn consumers about any potential risks associated with the product
- Provide information to consumers in clear language to help them understand the risks
- Monitor the safety of the product
- Take immediate action if a safety problem is discovered.

LIMITING LIABILITY:

There are certain exclusions and limitations of liability that are never permitted by law in the UK. These are:

- death or personal injury caused by negligence
- fraud or fraudulent misrepresentation
- implied terms as to title
- liability for damage caused by defective goods under the Consumer Protection Act 1987.

The CRA limits the extent to which a trader can exclude or restrict liability to a consumer. Certain limitations and exclusions are banned under the CRA and are automatically unenforceable. Any limitation or exclusion of liability is subject to the fairness test discussed above.

The Unfair Contract Terms Act 1977 (UCTA) limits the extent to which a party in a business to business contract can exclude or restrict liability to the other. UCTA provides that the following types of liability can only be excluded to the extent that such term is reasonable:

- negligence other than negligence resulting in death and personal injury
- misrepresentation or any exclusion of any remedy available for misrepresentation, in either case other than for fraudulent misrepresentation
- implied terms as to conformity of goods with description or sample, or relating to their quality or fitness for purpose, and
- when dealing on one party's written standard terms of business, any liability for breach of contract or claim to be entitled to render no performance at all or performance substantially different from that which was reasonably expected.

> THERE IS A GENERAL BAN ON COMPANIES PERFORMING MISLEADING ACTS, OMISSIONS AND AGGRESSIVE COMMERCIAL PRACTICES ON THE GROUNDS THAT THEY ARE UNFAIR.

ANTI-BRIBERY

- Companies and individuals can be liable for offences under the Bribery Act 2010 and a conviction under the legislation can have serious ramifications. The Act defines bribery as an offer, promise or giving of a financial or other advantage, or requesting, agreeing to receive, or receiving the same, intending to induce or reward "improper performance" of a public or private function.
- The offences contained in the legislation apply to acts or omissions in the UK, as well as acts or omissions outside the UK by persons with a close connection to the UK. Breaching the legislation can result in imprisonment (for an individual) for up to 10 years or unlimited fines (for either an individual or company).
- Commercial organisations have a defence to the offence of failing to prevent bribery if they can prove that they had adequate procedures in place designed to prevent such conduct by those associated with that commercial organisation. UK companies will typically have an anti-bribery policy in place (which is kept up to date and supported by periodic training of staff) in order to meet the requirements of this defence.

MODERN SLAVERY ACT

Under the UK's Modern Slavery Act 2015, a commercial organisation must publish an annual modern slavery statement if all the following apply:

- It is a body corporate or a partnership, wherever incorporated or formed.
- It carries on a business, or part of a business, in the UK.
- It supplies goods or services.
- It has an annual turnover of £36 million or more.

The statement **must** include either a statement:

- Of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business; or
- That the organisation has taken no such steps.

As well as publishing the statement on the organisation's website, the government encourages organisations to publish their statements on the government run modern slavery statement registry. The Home Office uses the information submitted to the service to publish a summary of the statement and include a link to the full statement on the organisation's website.

Many organisations voluntarily publish a statement to comply with UK public sector procurement expectations.

In February 2024, the House of Lords Committee on the Modern Slavery Act 2015 published a call for evidence into the impact and effectiveness of the Act, which closed on 27 March. Its inquiry will consider how the Act's provisions have been implemented, the impact of recent political developments and whether it requires improvement.

PROPERTY: SETTING UP AN OFFICE

When a company decides to set up operations in the UK, it will inevitably need a space in which to do business. The UK has a number of different options to offer companies, depending on the business's needs and its flexibility in location and costs.

POPULAR MODELS OF OFFICE SPACE

The four main models of office space available for companies are:

- long-term locations (freehold or long-term leasehold spaces)
- serviced office locations (usually short-term leasehold spaces)
- co-working spaces (usually licences to occupy or, in the case of particular business models, services agreements or personal licences)
- in-house at various accelerators and incubators (usually licences to occupy).

PROPERTY RIGHTS IN THE UK

The right that a company acquires will depend on the model of office space adopted. The four main models are freehold, leasehold, short-term leasehold and licences.

LONG-TERM LOCATION: FREEHOLD SPACES

- The freehold owner of a property will own the premises outright and in perpetuity, including the land that it is built on and is responsible for maintaining all the property and the associated land. It will therefore be necessary to factor these costs into the business's budget.
- The title of a freehold property may be subject to restrictions on use, or to rights which favour other land (ie easements). Acquiring a freehold title can be time-consuming and could take a number of months. It will be necessary to instruct a number of industry professionals such as property agents and lawyers to assist.
- Freehold property is routinely accepted as security by lending institutions, with the lending institution taking a legal charge (mortgage) over the freehold title.

The benefit of these shorter-term leases is that they allow newly formed UK companies flexibility to relocate as they expand.

LONG–TERM LOCATION: LEASEHOLD SPACES

- A long-term leasehold title in property is for a limited period of time, subject to the terms of the lease which is granted by the freehold title owner. In the UK, it is common for freehold owners to grant leasehold titles on property for 99 years or more. As with freehold title, the long-term leasehold title will be subject to any existing restrictions on use and rights which have been granted to other properties. A premium is usually payable for the acquisition of a long-term leasehold interest but usually with the benefit of having a much lower rental price, and the ability to transfer the lease without the need for the landlord's consent.
- It is advisable to seek assistance from specialists when entering into a long-term lease to assist in negotiations and the mandatory registration with the Land Registry. As with freehold land, long-term leasehold interests are commonly accepted as security by lending institutions.

SHORT-TERM LEASEHOLD

- While most companies run their businesses from premises under a lease of between five and 20 years, there is no maximum or minimum length of lease and short-term leases are becoming increasingly common. The benefit of these shorter-term leases is that they allow newly formed UK companies flexibility to relocate as they expand and can include within them determination rights subject to meeting certain pre-conditions as well as options to renew.
- Premiums are not usually payable for the acquisition of a short-term leasehold interest and rent free periods to allow fit out of the space is often granted. The rent is commonly subject to review at the current open market rate every five years or with reference to inflationary indices (or both). Many landlords may seek a guarantee (or lsecurity deposit) from the parent corporation when the company acquiring the lease is a newly formed UK entity and would likely want a UK address for service. Under a short-term lease, rent is usually payable quarterly in advance, and the title can be transferred with the landlord's consent. Certain statute in England and Wales may allow a business tenant to secure a lease renewal on similar terms, subject to certain restrictions.

LICENCES TO OCCUPY

- Licences are usually used for the co-working and inhouse accelerator/incubator models of office space.
- Unlike a leasehold or freehold interest, a licence does not grant a proprietary right in property, but it does grant permission to occupy the property. Unlike a lease, the occupier of a property under a licence does not have exclusive possession of the property and it cannot transfer the licence to a third party. The period of occupation under a licence does not have to be fixed.

A licence does not grant a proprietary right in property, but it does grant permission to occupy the property.

ASSOCIATED COSTS

When considering which model is suitable, the business will need to consider the costs involved. The typical costs associated with obtaining freehold and long-term leasehold title to real estate in the UK are legal costs, surveying costs, Land Registry fees, stamp duty land tax (SDLT), and local searches and enquiries.

- Subject to various reliefs and exemptions, stamp duty land tax (SDLT) is payable on 'land transactions' in England, Wales and Northern Ireland whether or not the person acquiring or taking an interest in the property is resident or non-resident. SDLT is payable on property or land over a certain price and the applicable rates at the time of your transaction would need to be checked
- For commercial leasehold property, the SDLT is payable on the purchase price of the lease premium and the value of the annual rent payable (which represents the net present value of rent (NPV)). It is worth bearing this in mind when considering the term of the lease you are taking.
- Local searches and enquiries - prior to committing to the purchase of freehold title or acquisition of leasehold title, searches will be carried out with the local authority to confirm whether there are any issues (including use restrictions) which may affect the property.

FREEHOLD PROPERTY IS ROUTINELY ACCEPTED AS SECURITY BY LENDING INSTITUTIONS.

> ELIGIBILITY OF WORKERS NEEDS TO BE CONTINUALLY ASSESSED (EACH PAY REFERENCE PERIOD)

PENSIONS – REQUIREMENTS AND REGULATION IN THE UK

TYPES OF PENSION SCHEME

UK pension requirements are constantly evolving. Employer compliance with pensions obligations is regulated by The Pensions Regulator. Employees and pension scheme members may make pension-related complaints against their employer (and certain other respondents, such as pension scheme trustees and administrators) to the Pensions Ombudsman or through the civil courts. If the pensions complaint relates to discrimination in the course of employment, this may be pursued to the Employment Tribunal. The Pensions Regulator may also investigate breaches of pensions legislation and exercise its enforcement powers.

In the past, pension provision in the UK was primarily under "final salary" / "defined benefit" pension scheme arrangements whereby employees' retirement benefits were calculated by reference to their years of service with the employer and their salary at the date of retiring/ leaving (DB Scheme). Employers bear the risk and cost of funding the generous benefits under DB Schemes. With many such schemes facing significant finding deficits, many employers have taken steps to close them: (a) to new members; and/or (b) to accrual. However, funding DB Schemes, even where these are closed to accrual, can be prohibitively expensive.

Companies are very unlikely to set up new DB Schemes for their workers, but you may well come across them if looking to acquire a business with a (particularly well-established) UK presence. If you are engaged in corporate activity with a company which currently uses/ or has previously used a "final salary" / "defined benefit" for pension provision, we would urge you to seek professional legal advice from an experienced pensions specialist. Note also that certain significant DB Scheme obligations can survive a Tupe transfer (i.e. when a business is transferred from one employer to another or a service is transferred to a new provider). In addition, The Pensions Regulator has wide anti-avoidance powers relating to scheme deficits which it can enforce against associated and connected parties - including individuals. You may also need to consider whether any employees may have transferred to the Target from the public sector, since the Target (if a private sector employer) may have to participate in the applicable public sector pension scheme under so-called "Fair-deal" arrangements.

Pension provision is now most commonly provided under a "money purchase" / "defined contribution" (DC Scheme) arrangement whereby the employer and the employee pay contributions into the arrangement, which is then invested. The benefits received by the member depend on the fund value taking into account investment returns– the employer doesn't bear any funding risk over and above its commitment to pay employer contributions and to ensure that it pays across any employee contributions to the DC Scheme.

TAX EFFICIENT RETIREMENT SAVINGS

Pension schemes are an incredibly tax-efficient way of helping your employees save towards their retirement:

- pension contributions are usually tax-relievable for
  - employees (income tax) up to certain annual (and, until recently, lifetime) limits; and
  - employers (corporation tax)
- employers don't pay National Insurance Contributions on their employer pension contributions
- members are usually able to take up to 25% of their benefits as a tax-free lump sum at the point of starting to receive their benefits, within income tax being due when the remaining pension benefits are paid

AUTO-ENROLMENT

Up until 2012 there were requirements make a "stakeholder" pension scheme available for employees who wanted to contribute. These schemes did not result in a significant increase in pension savings in the UK. Stakeholder Schemes were replaced with "auto-enrolment" arrangements. Auto-enrolment was introduced to encourage UK workers to save more towards their retirement. Under standard auto-enrolment, minimum contributions currently total 8% of a band of earnings known as "Qualifying Earnings", of which the employer must pay at least 3% (but can pay more if it wishes). Employers can choose to auto-enrol on a number of specified alternative bases (e.g. 9% of basic pay).

WHICH WORKERS DOES AUTO-ENROLMENT APPLY TO?

Any employer of a UK employee with an employment contract (which doesn't need to be in writing) is required to assess all its workers for auto-enrolment eligibility. Depending on the outcome of that assessment the employer may need to auto-enrol and/or pay pension contributions in respect of workers. The three categories of worker are:

ELIGIBLE WORKERS: TYPE 1*	NON-ELIGIBLE WORKERS: TYPE 2*	ENTITLED WORKERS: TYPE 2*
Aged 22 to State Pension Age. Earns at least £10,000 (annually) / £833 (monthly)	Aged 16 to 75. Earns at least £6,396 (annually) / £533 (monthly)	Any worker earning under £6,396 (annual) / £533 (monthly)
Must auto-enrol (unless an exception is being operated)	Employee may opt-in (and must be informed of this right)	Employee may opt-in (and must be informed of this right)
Employer must pay contributions unless worker opts-out	If worker opts-in **employer** must pay contributions	**No** duty on employer to pay contributions even if worker opts-in

*The Pensions Regulator recently introduced these references to describe the categories:

- Type 1 - staff who must be put into a pension scheme
- Type 2 - staff who do not need to be put int a pension scheme unless they ask

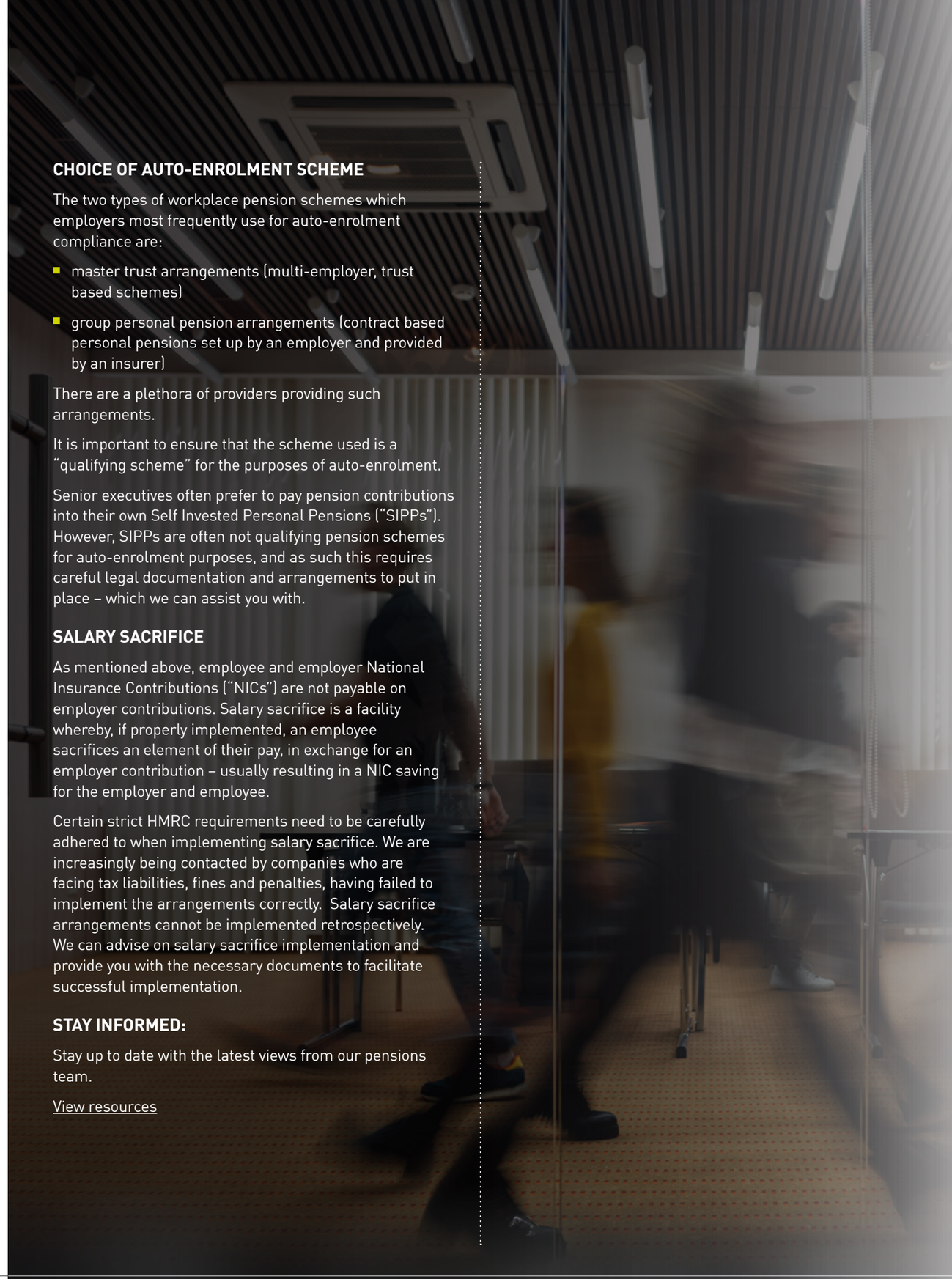
Where there is an overseas element (for example, if the employer or worker is based outside the UK) we would recommend you seek advice to ascertain whether the worker is indeed "wholly or ordinarily working in the UK" – they may not need to be auto-enrolled!

OVERVIEW OF EMPLOYER AUTO-ENROLMENT DUTIES

- assess workers
- consider availability of exceptions
- consider employees with tax protection
- auto-enrol eligible workers
- communicate opt-in option to non-eligible, entitled workers and certain individuals in respect of whom the Target operates an exception
- manage opt-outs and make prompt refunds
- re-enrol eligible staff every 3 years
- maintain pension contributions
- complete declarations of compliance with The Pensions Regulator
- keep records

EMPLOYER DUTIES IN MORE DETAIL

- consider whether standard auto-enrolment contributions will be used; and if not, consider self-certification on another basis,
- eligible workers must be auto-enrolled (they can't opt-out in advance of being auto-enrolled)
- all new employees need to be informed of their pension eligibility (non-eligible workers and entitled workers need to be informed of their right to opt-in)
- eligibility of workers needs to be continually assessed (each pay reference period)



CHOICE OF AUTO-ENROLMENT SCHEME

The two types of workplace pension schemes which employers most frequently use for auto-enrolment compliance are:

- master trust arrangements (multi-employer, trust based schemes)
- group personal pension arrangements (contract based personal pensions set up by an employer and provided by an insurer)

There are a plethora of providers providing such arrangements.

It is important to ensure that the scheme used is a "qualifying scheme" for the purposes of auto-enrolment.

Senior executives often prefer to pay pension contributions into their own Self Invested Personal Pensions ("SIPPs"). However, SIPPs are often not qualifying pension schemes for auto-enrolment purposes, and as such this requires careful legal documentation and arrangements to put in place – which we can assist you with.

SALARY SACRIFICE

As mentioned above, employee and employer National Insurance Contributions ("NICs") are not payable on employer contributions. Salary sacrifice is a facility whereby, if properly implemented, an employee sacrifices an element of their pay, in exchange for an employer contribution – usually resulting in a NIC saving for the employer and employee.

Certain strict HMRC requirements need to be carefully adhered to when implementing salary sacrifice. We are increasingly being contacted by companies who are facing tax liabilities, fines and penalties, having failed to implement the arrangements correctly. Salary sacrifice arrangements cannot be implemented retrospectively. We can advise on salary sacrifice implementation and provide you with the necessary documents to facilitate successful implementation.

STAY INFORMED:

Stay up to date with the latest views from our pensions team.

View resources

ENVIRONMENTAL, SOCIAL AND CORPORATE GOVERNANCE (ESG)

There is a growing school of thought that organisations cannot focus solely on profit as a measure of success.

With looming crises such as climate change, loss of biodiversity, pandemic risks and societal polarisation, organisations cannot think and operate in isolation from sustainability and ethical concerns. Environmental, Social and Governance (ESG) refers to the three key themes that need to be considered when measuring an organisation's impact on society and the environment.

ESG can be very broadly broken down into a number of examples:

ENVIRONMENTAL	SOCIAL	CORPORATE GOVERNANCE
▪ environmental policy ▪ climate change impact ▪ resource depletion ▪ biodiversity	▪ working conditions ▪ health & safety ▪ employee relations & diversity ▪ supply chain auditing	▪ board diversity & structure ▪ tax strategy ▪ bribery & corruption ▪ executive pay

WHY IT MATTERS

INCREASED FOCUS BY THE UK GOVERNMENT

The UK government has set out ambitious targets in regard to ESG. The UK's Nationally Determined Contribution to the Paris Agreement temperature goal already has one of the most ambitious 2030 targets for reducing emissions in the world. Additionally, the UK government has set out a roadmap to make the UK the best place in the world for green and sustainable investment. Whilst these are only in their initial phases and there is much to be agreed politically and commercially, we anticipate that these requirements will become more stringent and additional legislation will be introduced to address environmental areas as well.

INCREASED CUSTOMER AWARENESS

ESG matters are increasingly becoming far more important to customers, with many requiring organisations to show evidence of compliance with ESG criteria before entering into contracts.

INVESTOR FOCUS ON ESG

Given the increased focus by all stakeholders in this area, it is now extremely common for investors to seek out companies fulfilling certain ESG criteria, or to include penalties for companies that fail to meet certain ESG thresholds.

ATTRACTING THE BEST TALENT

Finally, employees are no longer just concerned with salary; other considerations, such as environmental impact and diversity in the workforce are playing a much more prominent role in the decision-making process for potential employees.

OUR ESG CHECKLIST

With ESG matters becoming more important, organisations who fail to keep up with change, whether legislative or less formal, face a mounting business risk.

We have created a list of questions to help you identify which ESG areas your organisation will need to focus on.

To download our checklist please click here.

STAY INFORMED:

Stay up to date with the latest views from our ESG team.

View resources

ABOUT PENNINGTONS MANCHES COOPER

Penningtons Manches Cooper is a leading UK and international law firm which provides high quality legal advice tailored to both businesses and individuals. We address the specific objectives of each client through our flair and technical expertise and offer a personal service founded on a strong team ethic.

With 130 partners and over 880 people in total, our main areas of practice are dispute resolution, corporate and commercial, real estate, private client and family. Today, we have UK offices in the City of London, Basingstoke, Birmingham, Cambridge, Guildford, Oxford and Reading while our overseas network stretches from Asia to South America through our presence in Singapore, Piraeus, Paris and Madrid.

We have established a strong reputation in a variety of sectors, particularly private wealth, shipping, technology and property. Our lawyers are also recognised for their expertise in life sciences, education, retail, sports and entertainment and international trade. In these areas, we're acknowledged for our unparalleled market insight.

Our broad international focus is supported by well-established links with law firms throughout the world. Penningtons Manches Cooper is a member of Multilaw and the European Law Group. The firm has networks with representatives in over 100 countries, and many of our lawyers play leading roles in various international bodies.

Among our clients we count multi-national corporations, public companies, professional partnerships, banks and financial institutions as well as private individuals, owner managed businesses and start-ups.

Through our active involvement with the Department for International Trade (DIT) and its UK Advisory Network (UKAN), we are well placed to advise on all aspects of inward investment, from technology start-ups to large international relocations. We have particular expertise in supporting US clients seeking to do business in the UK and Europe. In addition, our India group provides expert advice on entry and exit strategies for the Indian market and investments from India into the UK and Europe. Where problems occur, in any jurisdiction, our international litigation lawyers are able to recommend effective strategies at an early stage.

FIND OUT MORE

For further information, visit us at **www.penningtonslaw.com** where you will find comprehensive contact details for all our lawyers as well as our latest news, insights and publications. Alternatively, e-mail us at **info@penningtonslaw.com**.

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