The complete guide to Doing business in the UK
Companies with International aspirations

The United Kingdom remains a key location for companies with international aspirations.
Compelling reasons for establishing a commercial base here include:

• a new and distinct market for your goods or services
• a skilled workforce
• proximity to continental Europe and ready access to the European market
• access to UK know-how and technology
• excellent employee relations
• familiarity of the English language
• a government keen to attract inward investment.

Following the result of the EU Referendum in June 2016, the UK government is expected to serve formal notice to exit the EU pursuant to article 50 of the Treaty of the European Union.

The UK government will have two years from the date of the article 50 notice in which to negotiate the terms of its exit and this period could be extended with the agreement of all the remaining Member States.

Until such time as the UK formally leaves the EU, the “Four Freedoms” (free movement of goods, services, persons and capital) continue, EU regulations with direct effect in the UK continue to apply, new EU directives will be transposed into UK law (assuming the date for implementation is within the exit timeframe) and the UK courts will continue to have regard to decisions of the EU courts.

To take full advantage of what the UK has to offer you will need to understand the commercial environment in which you will operate.

Our guide gives you a general overview of some of the key considerations when deciding whether to establish a business presence in the UK.

The guide covers seven key areas:

• business structure – options available
• key features of private limited companies – disclosure, directors’ liability, finance and role of auditors
• location – property issues
• management and staffing – human resource issues
• intellectual property rights
• trading activities – trading contracts and compliance issues
• taxation – the UK corporate tax regime.

The UK comprises four nations: England, Wales, Scotland and Northern Ireland. England and Wales are a single legal jurisdiction and Scotland and Northern Ireland each have their own separate legal jurisdictions. This guide applies to England and Wales only except where otherwise stated, and references to the UK should be understood accordingly. Shoosmiths has offices in Edinburgh and Northern Ireland. Should legal advice on either of these jurisdictions be required we can refer you to an appropriate person.

The Channel Islands (Jersey and Guernsey mainly) and the Isle of Man are not part of the UK and have separate legal systems.
Choice of business structure

There are a number of alternatives open to an overseas business which wishes to do business in the UK.

These alternatives include:
- establishing a branch office
- incorporating a UK subsidiary company
- acquiring an existing UK company
- entering into a joint venture or partnership arrangement
- putting in place an agency, distributorship or franchise arrangement.

As well as legal, tax and regulatory considerations, there are a number of commercial factors to consider when deciding which of these alternatives is the most appropriate, such as, product origin, available funding/resources, size and permanency of the UK operation and the level of risk to be incurred.

The majority of overseas entities wishing to do business in the UK set up a branch or incorporate a subsidiary. Further details on each of these are set out below and a comparison of the two business structures can be found in the Appendix.

Branch office
In the early stages of expansion into the UK, an overseas company may choose to use the branch office route. A branch is relatively easy to establish providing the overseas entity has a fixed or permanent base from which it conducts its business in the UK. Certain particulars of the foreign company and details of the UK establishment have to be registered with the Registrar of Companies. If any of the original information filed changes, an amended return must be filed.

The main point to note about operating a branch is that it is not a separate legal entity. This means that the overseas company is directly responsible for the operations and liabilities of the UK establishment.

The UK establishment is subject to certain trading disclosures and will usually be required to file annual accounts with the Registrar of Companies. These will be the accounts of the overseas entity and, after filing, these are open to public inspection. The branch may also be subject to UK tax.

Subsidiary company
It is quite likely that an overseas investor will at some point wish to form, acquire or participate in a UK limited liability company.

The main benefit of a company limited by shares is that the liability of the shareholders is limited to the amount unpaid on their shares in the company. It follows that if the shares are fully paid, shareholders will not normally be liable to contribute further amounts in the event of the company becoming insolvent, although of course the initial investment would be lost.

A company is a separate legal entity, distinct from its shareholders and directors. This makes it an attractive proposition for an overseas company looking to establish a business in the UK. Separate legal entity status enables the company to enter into contracts directly and offers the parent company protection from the subsidiary’s liabilities.

On incorporation, all companies must be registered as either private or public. This guide deals only with private companies, since a public limited company is generally only established where it is intended to offer securities to the public.

Incorporating a private limited company is a straightforward process which can usually be completed within one business day. Certain forms need to be completed, signed and filed with the Registrar of Companies along with a fee. Companies can be formed online, either at Companies House, or using law firms and company formation agents.
The following details are currently required to set up a company:

- a suitable name for the company. There are some restrictions on the choice of name and a company cannot use a name that is already registered at Companies House.
- full name, date of birth, nationality, address and occupation of at least one director. (A company can have just one director. The director does not have to be a UK national.)
- the official address of the company, called a ‘registered office’. If the company is set up in England, the registered office must also be in England. This will usually be the principal place of business but it can be the office of the company’s accountants or lawyers.
- the names and addresses of the company’s shareholders. Shareholders can be individuals or other legal entities, such as another limited company.

The company’s constitution is set out in its articles of association. A company can choose a simple set of articles of association (called ‘Model Articles’) or can create its own articles of association. Many companies start off with the Model Articles and change them later on.

A UK company has to maintain certain registers and records as well as being subject to stringent filing and reporting requirements. Whilst a private company is no longer required to have a ‘company secretary’, a foreign parent company may want to consider appointing one for a UK subsidiary company, as the company secretary can then ensure these registers are kept up to date and all statutory filing requirements are complied with.

The directors are responsible for the day-to-day management of the company’s affairs and may be salaried executives or have non-executive status. The directors are appointed by and are accountable to the shareholders.

Decisions relating to the corporate structure such as share issues and constitutional matters are the responsibility of the shareholders. Although decisions (including the appointment of directors) can be made by a majority of the shareholders, a few critical decisions require the support of 75% of the shareholders. It is possible to form private companies with only one shareholder and this is often convenient for wholly-owned subsidiaries.
Private limited company issues

Some key issues relating to private limited companies.

Disclosure obligations
Companies incorporated in the UK are obliged to file information with Companies House, the official registry of companies. A company’s incorporation and constitutional documents have to be filed, along with particulars of directors and company secretary, information regarding ownership of shares and “persons with significant control” over the company, copies of security granted by the company and certain shareholder resolutions.

Every year a company must file a confirmation statement confirming various details including who the shareholders and directors are, as well as audited accounts. Small companies below a certain threshold are entitled to file abbreviated accounts and are not subject to the same auditing obligations.

All information filed at Companies House is available to the public, with some limited exceptions.

The company must update Companies House whenever certain details change, for example if a new director is appointed or resigns or if new shares are issued. These updates (or “filings”) can be made using Companies House forms, or, more conveniently, using the online filing system at Companies House. Many companies use experts in law firms to send these updates to Companies House.

Failure to make filings on time can result in heavy fines on the company and the directors.

Directors’ liability
Although a company is treated as a distinct legal entity, UK law imposes personal liability on the directors of a company in a number of ways. Areas where such liability can arise include:

- breaches of the rules outlawing trading whilst insolvent
- breaches of statutory and fiduciary duties
- breaches of environmental or product safety legislation
- breaches of health and safety legislation.

Individual directors are generally advised to take out insurance against liabilities, but legal advice should be taken on the extent of cover afforded by such policies.

Directors should also be aware that personal criminal liability can attach to them for a range of breaches and offences committed by the company in trading.

Finance
There are two main types of finance available to a private company:

- Equity finance – whereby shareholders invest funds in return for shares. These may be individuals or institutional investors who become members by subscribing to the company or trading with existing shareholders. When issuing shares in return for finance, a company has various options as to the rights attached to those shares.
- Debt finance – this is often preferable to companies for tax reasons. A company’s assets may be used as security for borrowings to fund the business. Typically, a bank will take a fixed charge (a mortgage) over the company’s premises, and a debenture (combining fixed and floating charges) over the remainder of its assets, such as the trading stock of the company. In addition, a guarantee from the parent company may be required.

Role of auditors
Qualified auditors have to report to the shareholders of a company on whether, in their opinion, its accounts show a true and fair view of the company’s position at the end of a financial year. This annual audit is designed to protect shareholders from financial misreporting. Before investing in an existing business it is vital to ensure full legal and accounting due diligence work is undertaken to establish the current financial position of the business and to ensure that warranties are obtained from the vendors before any investment is made.
Property issues

The following is a broad overview of the property issues relevant to establishing business operations in the UK.
Ownership
In England and Wales there are two types of property ownership:
• freehold title (outright ownership)
• leasehold title (ownership for a limited period of time, subject to the terms of the lease which is granted by the owner of the freehold title or the owner of a superior leasehold title).

There are two stages to the ‘purchase’ process: exchange and completion.

Exchange
Property contracts are negotiated on a ‘subject to contract’ basis, enabling the parties to withdraw from the transaction up until the time of formal exchange. Prior to exchange the buyer carries out an investigation into the ownership and characteristics of the property. This investigation includes making enquiries of the seller and third party agencies such as the local authority, investigating the seller’s title to the property to establish what rights, covenants etc affect the title, and a site inspection/survey.

The seller/landlord will normally require the buyer/tenant to take the property as he finds it and will exclude all liability for its repair and condition. The buyer/tenant should therefore consider commissioning a full structural survey and a ground/environmental report prior to exchange.

Once the buyer/tenant is ready, the contract is formally exchanged and a deposit is paid. Typically, the deposit is 10% of the purchase price, though this figure is negotiable. Once the contract is exchanged it is binding on both parties. The buyer is likely to be responsible for insuring the property from exchange.

Completion
Completion is far more of a formality than the exchange process. On completion, the balance of the purchase price becomes payable. The period between exchange and completion is subject to negotiation and it is possible for completion to take place at the same time as exchange.

Leasehold
The length of the lease or ‘the term’ is a matter for negotiation and there is no minimum or maximum. Leases for a term of more than seven years must be registered at the Land Registry. The length of the term will directly affect the value of the landlord’s interest in the property. The landlord will usually want the longest possible term in order to maximise its investment. The tenant needs to weigh the benefit of the security offered by a longer term against the flexibility provided by a short term. Short term leases – five years or fewer – are now far more common than they used to be.

Effectively, there are two types of occupational lease:
• full repairing and insuring lease, where the tenant is responsible for the building as if it were his own
• internal only repairing, where the tenant is normally only responsible for decoration, including fixtures and fittings, but will be indirectly responsible for contributing towards the repair of the structure and other parts of the building, the insurance and other management costs, by way of a service charge.

When a buyer purchases an existing lease from the current tenant it is known as an ‘assignment’.

It is not normally possible to negotiate the terms of the lease on an assignment, as it is already in existence.

The landlord’s consent to an assignment will normally be required, and this is granted by way of formal licence. References and financial information will normally be required before consent is given, and in many cases, security in the form of guarantees or rent deposits will be required by the landlord.

On the grant of a new lease the tenant can usually negotiate the specific terms of the lease. Any alterations to the property that the tenant wishes to carry out will normally require the landlord’s approval. This is usually granted by way of formal licence following the provision of drawings and specifications. In the case of an assignment, the tenant will usually be responsible for the landlord’s costs for dealing with the licence. On the grant of a new lease, the landlord would usually be responsible for its own costs but this is subject to negotiation.

If the landlord or tenant is a foreign company, a legal opinion may be required as to the proper formation of the company and its ability to enter into the lease. Such opinions are obtained from lawyers in the foreign company’s country of incorporation and are usually expensive to obtain.

Requirements for surety
Often, if the tenant is a new UK limited company, the landlord will require a guarantee from a third party. Therefore, the foreign parent company may need to act as surety for its subsidiary's liabilities and obligations under the lease.

Alternatively, the landlord may be prepared to accept other forms of security. These may include a bank guarantee or the provision of a rent deposit. The deposit is usually refundable to the tenant either at the end of the lease or when the landlord is satisfied that the tenant has reached certain financial criteria, such as having made profits for three consecutive years equal to or in excess of three times the current rent.

Planning law and environmental law
Local authorities have the responsibility for the development, maintenance and enforcement of planning law, subject to the direction of central government. Any negotiations to purchase or lease a property must include a full review of the planning permissions for the property. Environmental law provides for the remediation of contamination in respect of land, water and air.

A local authority has power in certain circumstances to serve a notice on an owner of contaminated land, specifying the steps it requires the owner to take to remedy the contamination. Therefore any property purchased or leased must be surveyed to establish its history and to identify whether there could be any environmental concerns. In addition, any environmental licences or permits required for activities on the property must be transferred or obtained.

Stamp Duty Land Tax (SDLT)
Subject to reliefs and exemptions, SDLT is payable on most land transactions. On the sale of commercial freehold land it is payable by the buyer at rates of between 1% and 5% depending on the value of the consideration. On the grant of a lease SDLT is payable by the tenant at 1% or 2% of the ‘net present value’ of the total rent payable over the term of the lease, although there is a nil rate band of £150,000 for commercial leases.
Human resource issues

In the UK, employees’ legal rights and protections are defined by a combination of their contract of employment and statutory rules and regulations.
The law imposes certain minimum requirements; for example, the national minimum wage, which an employer must observe, although it is free to improve it. It is unlawful for an employer to attempt to provide less than the prescribed minimum.

Where there is no legal minimum requirement, the parties are free to agree their own terms.

Not everyone who works for you will necessarily be an employee. The law recognises further categories of individuals: workers who have some but not all of the legal protections applicable to employees; and the self-employed, who have very few employment rights.

The employment contract
All employees are entitled to receive a written statement of their terms and conditions of employment from their employer within the first two months of employment. Most employers comply with this obligation by including the necessary terms in the employee’s contract of employment.

This statement must contain some key terms such as the name of the employer, the employee’s job title, the rate of the employee’s pay, and any details relating to sick pay, hours of work, details of disciplinary and grievance procedures, holiday entitlement, notice periods, place of employment and any pension provision.

Any other terms and provisions regulating the relationship with the employee should also be contained in the employee’s contract of employment.

It is not a legal requirement to reduce the employment contract to writing, but this is obviously advisable to avoid disputes later on.

It is also advisable to have non-contractual policies, procedures and rules governing the relationship between the employer and employees. These are usually contained in a separate staff handbook and include procedures and policies on matters such as absence reporting, expenses, company car entitlements, equal opportunities, health and safety, and any other matters particularly relevant to the employer’s business.

There are some other restrictions on the terms which can be included in an employee’s contract of employment.

For example, an employer may wish to limit the ability of an employee to work for a competitor in a specified place or for a specified period of time after termination of employment.

Such a clause is known as a post-termination ‘restrictive covenant’. There are public policy restrictions on such covenants in the UK and they will only be enforceable if the employer can show that they are reasonable and necessary to protect their legitimate business interests. In addition, should the employer breach the employee’s contract of employment, such covenants will fall away and not be enforceable.

Statutory rights
Employees have certain employment rights and protections, which are set out in legislation including:

- limits on the number of hours worked per week
- entitlement to a minimum amount of notice on termination
- entitlement to a minimum number of paid holidays per year
- entitlement to rest periods
- entitlement to a minimum rate of hourly pay
- entitlement to family leave and pay (including maternity, paternity and adoption)
- entitlement to parental leave
- time off for family emergencies
- entitlement to request flexible working
- protection from discrimination, harassment and victimisation on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- protection from unfair dismissal
- entitlement to a statutory redundancy payment

Some, but not all, of these legal rights are subject to qualifying periods of employment.
Termination of employment
On termination of employment by an employer, an employee may have a claim for wrongful dismissal if the employer has terminated the employee's employment in breach of the contract of employment, i.e. by not giving (or paying in lieu) of the amount of notice provided for under the contract. An employee may also be entitled to claim unfair dismissal if they have not been dismissed for a fair reason or a fair procedure has not been followed. If the employee is dismissed because of redundancy they may also be entitled to a statutory redundancy payment.

Employee data
The Data Protection Act 1998 governs the way employers collect, store and process personal information concerning their employees. Issues around the processing of employee data are increasingly in the media spotlight. The Information Commissioner can take action against organisations which fail to meet their data protection obligations, for example, if there is a breach of security regarding data and this can result in negative publicity as well as, ultimately, criminal penalties.

Employers must comply with eight ‘principles’ when processing personal data and must register with the Information Commissioner if they process personal data. On payment of a fee, employees have a right of access to information about them held by their employer.

Discrimination and equal pay
Employees, workers and self-employed contractors are protected against discrimination, harassment and victimisation on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Note that both older and younger people are protected against age discrimination. Discrimination can take place at any stage of the employment process – in advertising and recruiting, in the terms of employment offered, promotion, training, and discipline and dismissal.

Where an individual successfully brings a claim for discrimination the employer can be ordered to pay unlimited compensation.

The individual who carried out the act of discrimination may also be personally liable. An employer may be vicariously liable for the discriminatory acts of its employees in the course of their employment as well as harassment against its own employees by third parties if it does not take all reasonably practicable steps to prevent that discrimination. A well publicised and properly implemented equal opportunities policy can help mitigate such liability.

In respect of disabled employees, an employer has a special duty to make reasonable adjustments for them to help them overcome the disadvantage caused by their disability in the workplace. Women are entitled to be paid the same as men doing the same work (and vice versa), Employers should ensure that there is an equal, fair and transparent pay structure in place.

From April 2018, organisations with 250 or more employees will be required to publish prescribed information relating to their gender pay gap i.e. the difference in average pay between men and women in the organisation.

Business transfers
The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (TUPE) protect employees where the business in which they work is transferred from one owner to another. Employees employed in a business immediately before a transfer automatically transfer to a purchaser of the business on the same terms and conditions upon which they were previously employed (and these cannot be changed after the transfer except in very limited circumstances).

It is not possible for parties to contract out of their obligations under these regulations. Purchasers of a business therefore need to be aware of TUPE, as they will have an effect on the financial attractiveness of a business acquisition. TUPE also applies where there is a service provision change. Broadly, this occurs where services are outsourced to a contractor, bought back in-house or transferred from one contractor to another.

TUPE does not apply where the shares of a business are being sold, as the employees’ employer remains the same.

Migrant workers
The UK has strict requirements in relation to the employment of workers who are immigrants from outside the European Economic Area and Switzerland, and operates a points-based immigration system. Employers who wish to employ such workers need to become licensed sponsors.

Penalties for employing workers who are in the UK illegally are substantial – up to £20,000 per worker – and it is a criminal offence to employ someone knowing that they do not have the legal right to work in the UK.
An employer can provide itself with a defence against a civil penalty if it carries out checks on certain documents before employing the worker and keeps copies of these on file. It is advisable for employers to build such checks into a recruitment procedure which is applied to all applicants, not just foreign workers. Where a worker has only limited leave to remain in the UK the employer is responsible for ongoing checks on their immigration status.

Self-employed contractors
UK law makes a distinction between employees who are employed under a contract of employment and subject to the control of an employer, and other individuals, such as consultants, who provide services to a company on a self-employed basis.

Whether a particular individual is employed or self-employed can be a complex question and ultimately is a matter for the employment tribunal: the label applied by the parties to the relationship is often of little relevance. It can be difficult to determine this distinction. However, it is an important distinction due to differences in the tax treatment of these groups of people and their rights under employment legislation.

Pensions
Under rules which came into force in June 2012 all employers in the UK must automatically enrol eligible jobholders in a pension scheme. Under a five-and-a-half-year staging process, with larger employers being affected before smaller employers and new businesses, employers must enrol eligible jobholders in a qualifying workplace pension scheme or the National Employment Savings Trust (NEST), unless they are already members of a qualifying scheme. The new duties will eventually apply to all employers in the United Kingdom. Broadly, employers with between 50 and 249 workers were assigned revised staging dates running from 1 April 2014 to 1 April 2015. Employers with fewer than 50 workers have been given staging dates between 1 June 2015 and 1 April 2017. New businesses have staging dates between 1 May 2017 and 1 February 2018.

Eligible jobholders have the right to opt out, but if they do not then the employer will eventually be obliged to pay minimum contributions of 3% of a jobholder’s earnings that fall within the qualifying earnings band each year, with combined contributions due (from employers and jobholders) of 8% of band earnings.

In most cases, therefore, jobholders will be expected to pay the balance of 5% contributions, though it is possible for the employer to pay the entire 8% if it chooses. The minimum contribution requirements are being phased in over two transitional periods. Until 5 April 2018, the statutory minimum contribution for an employer is 1% of a jobholder’s qualifying earnings, on the basis that the jobholder also pays 1%. The employer can, however, pay the entire minimum 2% contributions if it chooses. The 2% contribution will be phased in between 6 April 2018 and 5 April 2019.

Every year, the Department for Work and Pensions (DWP) reviews the earnings thresholds for automatic enrolment. The earnings thresholds for the current tax year can be found on the Pensions Regulator’s website –

www.thepensionsregulator.gov.uk/employers/automatic-enrolment-earnings-threshold.aspx#s16563
Intellectual property rights

The UK has detailed rules dealing with the full range of intellectual property rights. The main types of intellectual property rights in the UK are summarised below:

Copyright
Copyright is perhaps the most diverse intellectual property right, protecting works from books to computer software and from symphonies to broadcast transmissions. It protects original works against copying, sharing copies, selling copies, renting copies, lending copies, performing, showing in public and making adaptations of the work.

Trade Marks
Trade marks, logos, brands, trading names - call them what you will, but most businesses will have one or more of them. They are how we distinguish one person’s goods or services from another and depending on how well we do that, it can result in that trade mark being worth millions. Trade marks can protect words, names, images, sounds, slogans and logos.

Trade marks can be registered, either as a UK trade mark or as an EU-wide trade mark. Once registered a trade mark can be renewed indefinitely (subject to renewal fees). We provide a fixed-fee service to apply to register your trade mark and deal with the process through to acceptance.

Patents
Patents protect new inventions and are normally something that can be made or used in industry. Compared to other intellectual property rights patents are expensive to obtain and take a long time to be granted but are still very valuable rights. The initial discussion is normally about whether your idea is patentable or not. If not, it may still be protected as a trade secret. However, if it is patentable the first thing to do is ensure the idea has not got out into the public domain. The reason being that if the idea is already known to the public it is not new and therefore cannot be patented.

Patents must be registered and can last up to 20 years (subject to payment of renewal fees).

UK and European Designs
It is possible to protect designs through registration in both the UK and in the EU. UK Registered Designs protect the overall visual appearance of a product or part of a product. Registration is required and can last 25 years (subject to payment of renewal fees).

EU Registered Designs will protect the visible appearance of the whole or part of a product resulting from features of, in particular: lines; contours; colours; shape; texture and materials; and ornamentation. The design must be original and of individual character. The design cannot have been made available to the public. The right lasts 25 years (subject to payment of renewal fees).

Designs may also benefit from automatic (unregistered) protection in both the UK and the EU.
In the UK, designers may benefit from automatic protection for the internal or external shape of an original design. If applicable, this right arises automatically; there is no need to register. The right lasts the shorter of 15 years from the end of the year of creation/recording or 10 years from the end of the year of first sale/hire.

In the EU, unregistered design right protects a design in much the same way as an EU registered design, except that the protection only lasts for three years from the point the design is first disclosed or made available to the public with the EU.

Database Rights
Database rights are not widely known but are incredibly valuable. Companies with customer lists, tables of historic information or marketing mailing lists have databases which can be protected not only by database rights but also with copyright. Where we advise that the database does not fall within the definition required to be protected by database rights we will consider if copyright protection is available (see our earlier section on Copyright).

Databases are not just lists of names and addresses. They can include spreadsheet data, technical specifications, research and databanks. You will want to keep some of your databases secret (e.g. your own customer lists). However, there are an increasing number of situations where you may wish to make some of your databases available to third parties through web sites or in published directories either for free or under a ‘paid for’ subscription.

Where a third party fails to abide by your restrictions for the use of your database and starts using it for its own commercial advantage, we can advise you how to enforce your database rights.

Confidential Information
It can be possible to protect information that is disclosed in circumstances in which an obligation of confidence arises. Such information is known as confidential information. To be protected, the information must satisfy the following conditions:

1. it must be confidential in nature, for example it cannot apply to information already in the public domain;
2. it must have been disclosed in circumstances in which an obligation of confidence arises. This can be implied or expressly stated in a contract;
3. its unauthorised use would be to the detriment of the person disclosing it.
Trading contracts and compliance issues

Key legal, regulatory and compliance issues relevant to trading in the UK.
Trading contracts

Clearly, any UK operation will need to put in place trading contracts with its customers, suppliers and other third parties.

Companies dealing with other businesses in the UK are broadly free to agree the terms of their trading contracts (for example, relating to the purchase and supply of goods and services) as they think fit. However, consumers are afforded certain protections by law and it is important to ensure any trading contracts/terms with consumers comply with the legal requirements. The requirements extend to all advertising and marketing and sales promotions as well as rights and remedies for defective goods and services.

Typical protections include:

- **Unfair contract terms** - there are controls on the terms which can be imposed when dealing with consumers to reflect the difference in bargaining power between the two parties. In general, terms must be clear, fair and not misleading. The ability of a business to exclude or limit its liability is also severely restricted in contracts with consumers.

- **Provision of services** - there are regulations which apply specifically to businesses providing services in the UK. They impose obligations in relation to making certain information available to customers, complaints handling, and abiding by the principles of non-discrimination in the provision of services.

- **Unfair commercial practices** - there is a general ban on unfair commercial practices relating to consumers and misleading acts and omissions, and aggressive commercial practices are outlawed.

- **Product liability** - manufacturers have a statutory obligation to ensure that their products are safe, with increased rights for consumers.

It is worth noting that any business which is the first importer into the EU assumes greater responsibilities which cannot be completely contracted out of in the event that unsafe products are placed on the market. Beyond general product safety, market specific regulations apply to labelling and safety for Pharmaceuticals, Toys, Food, Medical Devices, Electrical goods, etc.

It should be noted that there are some overarching limitations on the ability of UK contracting parties to agree their terms freely.

There is an absolute ban on attempts to exclude or restrict liability for death or personal injury caused by negligence, and certain exclusions or limitations of liability have to be reasonable to be enforceable, for example, any provision excluding or restricting liability for negligently caused loss or damage to property.

Therefore, to ensure terms are enforceable, it is important for businesses to review their standard form contract documentation before doing business in the UK.

Regulated and licensable activities

In the UK some industry sectors are more heavily regulated than others, including: banking and financial services, professional advisory services, life sciences and pharmaceuticals, gambling, energy and utilities, media, broadcasting and telecommunications, defence, waste disposal and food and drink production.

Some trading activities require a licence, such as the sale of alcohol, provision of late night refreshment and gambling activities. Requirements for licences can differ substantially between each local authority. Businesses operating without a licence can face large fines. Consequently, before operating a business in the UK it is important to check that the business has all the requisite licences.

Controls over trading activity

There are a number of general controls over trading activity in the UK which also require consideration. These include:

Sales and marketing agreements

Agency agreements are regulated by the Commercial Agents (Council Directive) Regulations 1993. These protect commercial agents by providing, among other things, minimum notice periods for terminating indefinite term agency contracts; rules on the validity of post-termination restrictions; and either indemnity or compensation for agents on termination. Distribution and franchise agreements are subject to both UK and EU competition law.
Data protection

The collection and use of personal and certain other data is strictly governed in the UK under the Data Protection Act 1998. Provisions under the Act put significant obligations on any person or company collecting or processing data.

These provisions are designed to address, among other concerns, security of data and the purposes for which the data is used. Sanctions for breach of the data protection provisions include both financial penalties and criminal sanctions. Parliamentary discussions have considered the introduction of custodial sentences for offenders who deliberately or recklessly misuse personal information, and the Information Commissioner continues to press for their introduction.

A new General Data Protection Regulation will apply in the EU from 25 May 2018 and will bring with it some important changes to data protection law, including significantly larger fines in the event of a data protection breach.

Advertising

As well as the consumer protection laws mentioned above, there are certain advertising codes enforced by the Advertising Standards Authority. These codes set out general advertising rules, including a requirement that all adverts are legal, truthful, honest and decent. There are more detailed rules relating to advertising in particular industries.

Health, safety and environmental compliance

Health, safety and environmental protection is a fundamental cornerstone of UK law. Any overseas investor considering either investing in property or establishing a UK business should evaluate carefully the health, safety and environmental record of the property or business concerned.

Regulators have significant powers to control activities and impose significant financial penalties (unlimited in most cases) on those in breach of legal requirements. Importantly, in some instances, directors or employees can face personal prosecution for breach of health, safety and environmental legislation.

Competition or antitrust law

There are detailed UK and EU competition laws that apply to business activities in the UK. The relevant UK and EU laws adopt a similar approach to the competition laws in many other jurisdictions around the world, by prohibiting anti-competitive agreements and the abuse of a dominant market position.

How the rules apply in practice has been developed through a significant amount of published guidance and decisional practice by the competition authorities, as well as through judgments of the courts.

As well as prohibiting anti-competitive agreements between competitors (e.g., cartels), the laws also apply to other aspects of trading arrangements (including, for example, contractual restrictions in supply agreements). Additional rules apply to businesses that have strong (dominant) market positions.

Competition law is a constantly developing area on which specialist legal advice should always be sought. The sanctions for breach of competition law are severe and can include both civil and, in the UK, criminal law liabilities. Civil fines can be up to 10% of group worldwide turnover and legislation has been introduced in both the UK and the EU to encourage and simplify damages claims.

In addition, the competition authorities have the power to review corporate transactions (e.g., mergers and acquisition) on competition grounds under the merger control rules.

There are also rules that require certain ‘public’ contracts to be competitively tendered (referred to as the ‘public procurement rules’) and that limit public bodies’ ability to offer funding (and other advantages) to businesses (‘State aid’).
Bribery
UK has anti-corruption legislation in force. There are four criminal offences, including the 'Corporate Offence' of failure by relevant commercial organisations to prevent bribery by those working on behalf of the organisation. A maximum of 10 years’ imprisonment is allowed for all offences, while corporate failure could involve an unlimited fine. In addition, senior managers may be personally liable if bribery committed by companies was done with their consent or collusion.

Practical considerations
There will be any number of practical matters which have to be addressed when doing business in the UK but a few key ones are specifically worth mentioning:

Insurance
You should seek insurance advice. It is compulsory to have certain insurance protections before doing business in the UK, and it would be prudent to consider additional insurance cover in areas where it is regarded as common and best practice to have insurance cover in place to protect your business.

Bank accounts
If a UK bank account or other bank finance is required, the bank will have to comply with the UK’s strict ant-money laundering legislation before the account can be opened. You will be asked to produce certain documents to verify the UK entity’s existence, such as the company’s certificate of incorporation and articles of association, as well as personal identity documentation for the directors, for example their passports and documents to verify their address (a similar procedure has to be followed when instructing third party professional advisers, such as lawyers and accountants).

The bank will also have to comply with FATCA regulations in relation to disclosure of information if there is a US connection. For a company account, the board of directors will need to approve the bank mandate and designate authorised signatories on the account. There are no exchange control restrictions in the UK that would restrict cash leaving the UK but there might be issues with getting cash from the country of origin of the group into the UK (some countries do have exchange control restrictions in place).

Stationery and website
Whether operating as a limited company or a branch, there are statutory requirements in relation to trading disclosures. The name of the business, together with other prescribed information has to be disclosed on business correspondence (including letterhead, business cards, order forms, invoices, delivery notes and email footers) and any website.
**Taxation**

The following is a broad overview of the tax issues relevant to establishing business operations in the UK.

**UK corporation tax**
Over recent years the UK has changed the basis on which it taxes overseas profits. It used to be the case that UK companies were liable to corporation tax on worldwide profits but, broadly speaking, the UK has now shifted to a territorial system whereby profits arising in the UK are subject to UK tax and profits arising outside the UK are subject to tax in that other country.

A non-UK resident company is liable to UK corporation tax on the profits of a trade carried on by it through a permanent establishment in the UK, and on capital gains realised on the disposal of capital assets used or held by it for the purposes of that UK permanent establishment.

Profits that are attributable to the permanent establishment are those that it would have made if it were a distinct and separate UK enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the rest of the non-resident company of which it is a part. In applying the legislation, the permanent establishment is to be treated as having equity and loan capital in the proportions relevant for an independent company operating in the UK.

A non-UK resident company which carries on a trade in the UK other than through a permanent establishment is liable to UK income tax rather than corporation tax on the profits attributable to that trade.

**Rates of tax**
The current main rate of corporation tax is 20%. It is to be reduced to 19% from 1 April 2017 and 17% from 1 April 2020.

A system of quarterly accounting for corporation tax exists for larger companies (i.e., companies with profits of at least £1.5m).

**Exemptions and reliefs**
There are a number of tax incentives to doing business in the UK. Most notably, where certain criteria are satisfied, substantial shareholding relief provides a corporation tax exemption on the sale of an interest of 10% or more in a trading company. There are also significant reliefs available for qualifying spending on research and development, and for investment in unquoted trading companies.

**Inter-company trading/transfer pricing**
It is generally not possible to reduce the amount of UK taxable profits by means of adopting artificial pricing methods. Under both UK tax law and the UK’s double tax treaties, the UK Revenue is able to ignore actual prices and charge tax as if arms length prices had been paid. This would catch, for example, excessively high interest and management charges, and royalties that are paid to the non-resident parent of a UK subsidiary with a view to reducing the profits subject to UK tax.

Payments of interest, royalties etc by a UK permanent establishment to its overseas head office are not deductible for UK tax purposes.

**Stamp duty**
Stamp duty is a tax on documents and is charged on the transfer of stock and marketable securities at a rate of 0.5% of the chargeable consideration. Transfers with consideration of £1,000 or less and which do not form part of a larger transaction or series of transactions are exempt from stamp duty. There are also various other exemptions including intra-group transfers, transfers on divorce or death and transfers from share incentive plans.

**Value added tax**
Value Added Tax (VAT) is a form of consumption or indirect tax. It is charged on the supply of goods and services made in the UK where the taxable supply is made by a taxable person in the course of business.

A UK-established person must register for VAT where its taxable turnover is over the threshold for compulsory registration (currently £83,000 per year). A person may voluntarily register if it makes taxable supplies and/or carries on a business and intends to make taxable supplies (even if its taxable turnover is below the threshold
for compulsory registration). Two or more bodies corporate can be registered as a single taxable person for VAT purposes (ie a VAT group).

The general rule is that all supplies of goods and services are subject to VAT at the standard rate unless they are exempt or subject to VAT at a lower rate. There are three rates of VAT: the standard rate (applies to most goods and services – currently 20%); the reduced rate (applies to some goods and services such as home energy and children’s car seats – currently 5%); and the zero rate (such as most foods and children’s clothing – 0%).

There are some goods and services on which VAT is not charged – known as exempt supplies. These include (among others) postage stamps, a number of financial products and land and buildings (where no option to tax has been made). Other supplies are outside the scope of VAT, such as certain supplies made between landlords and tenants.

In light of the above, where a person sells assets to another person, VAT will usually be payable on the purchase price. However, where the assets of a business are transferred as a going concern and certain conditions are met, this will be treated as neither a supply of goods nor a supply of services for VAT purposes.
Similarly, we have helped provide many UK businesses with legal services across most jurisdictions in the world. We do this through our unique network of personal relationships with professional services firms around the world to ensure our clients get the best and most appropriate advice from people who know the local culture, are specialists in their field, treat clients the same way that we do and are able to communicate at all levels in whatever language is suitable.

We can locate the right legal experts for you, manage the project if you wish and ensure that the work is carried out efficiently and within your budget.

Our network is complemented by our longstanding membership of the World Services Group (WSG), a multi-disciplinary professional services organisation, which brings together leading advisers in over 145 countries.

We are involved in European wide practice groups formed with lawyers from our WSG firms covering Banking, Corporate, Data Protection/Privacy, Employment, Family, Intellectual Property, Litigation, M&A, Private Equity, Private Client, Real Estate, Tax and Technology. These groups have a wealth of knowledge of European issues affecting these legal areas and frequently work together on pan-European projects.

As a client of Shoosmiths, you will find us quick to relate to your commercial goals, and adept at advising you on the most direct way of achieving them. Our lawyers tailor their approach to each client’s business, delivering high quality legal advice backed by clear and open communication, cost transparency and business sense.

Your contacts
If you have a question about anything in this guide, please contact Gary Assim or Crispin Bridges Webb.

“A highly commercial firm, keen on price and innovative with value adds in their own way; quality and proactive service with reasonable pricing.”

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## Appendix

Comparison of a UK Branch and subsidiary

<table>
<thead>
<tr>
<th>Status</th>
<th>Branch</th>
<th>Subsidiary</th>
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<tbody>
<tr>
<td></td>
<td>A branch is not a separate legal entity.</td>
<td>A subsidiary company is a separate legal entity.</td>
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<tr>
<td></td>
<td>A branch usually has some form of physical presence in the UK, such as business premises.</td>
<td>A subsidiary can be established by incorporating a new company or acquiring an existing company.</td>
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| Formation       | Relatively easy and inexpensive to establish, although the application form is fairly long and detailed. | There is a standard process to incorporate a private company, which can usually be completed within one business day. |
|                 | Particulars of the overseas company have to be registered with the Registrar of Companies in the UK, together with information about the UK establishment. | Certain forms have to be completed and registered with the Registrar of Companies in the UK and a fee is payable. |

| Legal considerations | It gives no protection to the overseas company from the UK operation’s trading losses/other liabilities. | A subsidiary company will have limited liability, offering the overseas parent company some protection against trading losses/other liabilities of the UK entity. |
|                     | The overseas company will make decisions and enter into contracts on behalf of the UK operation. | As it is a separate legal entity the subsidiary can enter into contracts/transactions directly. |

| Commercial considerations | In some sectors it is more attractive to customers/clients to deal with a UK company rather than an overseas branch office. It may be harder to secure finance without the stability of a separate UK entity. | Companies often prefer to do business with a UK company. Operating a UK company may be administratively more convenient. If claims are made against a UK owned subsidiary, any liability is usually restricted to the assets of the subsidiary. It may be easier to secure grants and loans/other finance. |

| Accounts | A branch (with a permanent establishment in the UK) has to deliver to the Registrar of Companies copies of all the accounting documents that the overseas company is required to disclose by its local law (and, if no such requirement, in a form that complies with UK company law or International Accounting Standards). These accounts will be available for public inspection. | A UK company has to prepare and file annual accounts. The accounts filed with the Registrar of Companies are available for public inspection, but will relate only to the UK subsidiary, not the overseas parent company. |

| Transparency | Branches do not currently have to comply with transparency rules. | As from April 2016, UK companies have to comply with transparency rules, by keeping and publishing a register of ‘people with significant’ control which shows who controls the company (and not just the shareholders). |