Hogan Lovells

Establishment of a business in the United Kingdom by a foreign corporation

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Scope of this note

Following the EU referendum in the UK in June 2016, and the Brexit vote, businesses around the world are assessing what impact Brexit could have on their operations and relationships in the UK, the EU and internationally. We have a huge amount of information on the possible implications on our Brexit hub which can be found at http://hoganlovellsbrexit.com/brexit-toolkit

This note, however, describes in outline the laws and taxes which currently apply to a foreign corporation establishing a business operation in the United Kingdom and the administrative requirements which need to be observed once the business is established. It reflects the law as at 1 October 2016.

The Companies Act 2006 (the "CA 2006") provides for a single company law regime applying to the whole of the UK. The Channel Islands and the Isle of Man have separate legal systems and this note should not be used as a guide to the establishment of business in those areas.

The three methods of establishment considered in this note are:

- incorporation of a subsidiary company;
- establishment of a "branch" office either of the foreign corporation itself or of a subsidiary or affiliated company resident outside the UK; and
- appointment of a person or corporation which is resident in the UK to act as an agent.

An additional alternative is to acquire an existing UK business or company. Although detailed consideration of this alternative is beyond the scope of this note, some brief comments are contained in Appendix I.

It is also currently possible to establish a European company which can operate throughout the European Union ("EU") under one set of rules and a unified management and reporting system. Please contact Hogan Lovells for further information on the incorporation of such a company.

Where this note discusses the incorporation of a subsidiary company, it deals only with the establishment of a trading company limited by shares. Special requirements apply to certain types of company (for instance investment companies, insurance companies, banking companies, unlimited companies and companies limited by guarantee), and these are generally not considered.

Grants and financial assistance

Certain grants and other financial assistance are available under schemes established or supported by the EU or British Government to encourage the establishment of new business ventures in certain areas of the UK. This note does not attempt to deal with these issues but such factors can play a large part in determining the location of any new venture. Further information can be found in the "Finance and support for your business" section at www.gov.uk/business-finance-support-finder.

Exchange controls

There are currently no exchange control restrictions on inward direct or indirect investment in or on the repatriation of funds from the UK by foreign individuals or corporations or on repatriation of funds by dividend, loan repayment, or any other means.

Legal Formalities

Types of company

The vast majority of companies will be registered as limited companies of which there are two types: private companies and public companies ("PLCs"). The liability of a limited company's shareholders (or members) will be limited to the amount they agree to put into the company as capital (for example, when they subscribe for shares). This money can only be returned to the shareholders when the company is wound up and all other creditors have been paid. In contrast, the liability of the members of an unlimited company is not limited. Therefore, in the event of insolvency, the members will have to contribute such funds as are necessary to clear the debts of the company.

Before registering a company and issuing a certificate of incorporation, the Registrar of Companies must satisfy himself that all the requirements of the CA 2006 in respect of registration have been dealt with. Issues which may hold up the process at this stage include the use of a sensitive company name or the allotment of initial shares in a PLC for consideration other than cash (such as on the acquisition of shares in another company or for an existing business). It is therefore important to carefully assess any such issues beforehand and ensure that the documentation is properly prepared. For example, checks can be made on the proposed company name prior to submission to the Registrar and, in the case of a PLC issuing shares for consideration other than cash, an expert's report valuing the consideration should be arranged. Furthermore as discussed later in this note, the minimum issued share capital requirement of £50,000 (of which £12,500 must be paid up) for a PLC often poses practical problems. A company cannot trade until the appropriate documentation has been filed at Companies House and a certificate of incorporation has been issued.

Private company

Companies are usually incorporated, at least in the first instance, as private limited companies. Such companies are generally limited by shares, but may be limited by guarantee. The company name must end in the word "limited" (or the abbreviated form "Ltd").

Generally, the form and structure of a private limited company is the same as that of a PLC, however the obligations under English company law tend to be less stringent than those imposed on a PLC. It is normal practice to incorporate a wholly-owned subsidiary company as a private company.

The main operational difference between private companies and PLCs is that private companies can not offer their shares to the public. Therefore, a company must weigh up the advantages of potentially being able to raise a greater amount of capital against the disadvantages of increased administrative burdens and disclosure obligations.

Private companies can re-register as PLCs further down the line provided certain requirements are met, and PLCs can also re-register as private companies.

Public company

A PLC must state in its memorandum that it is to be a public company and must include the words "public limited company" (or the abbreviated form "plc") at the end of its company name.

The principal advantage of a PLC is that it is able to offer its shares and debentures to the public and to have them admitted to trading on the London Stock Exchange or other securities' markets. It is only if the company wants to take advantage of these measures that it will be initially incorporated as a PLC, and even then there may be advantages in incorporating the company as a private company and converting it into a PLC at a later date.

However, to register as a PLC, the company must have a minimum issued share capital of £50,000 and at least one quarter of the nominal value of each share (and the whole of any premium) must have been paid to the company. Therefore, a PLC must have a paid up share capital of at least £12,500 from the outset. This minimum amount must be issued in pounds sterling (or Euros), but shares issued above this threshold may be denominated in different currencies at the option of the PLC. PLCs are not entitled to do business, or exercise any borrowing powers, until the Registrar of Companies has issued an additional certificate confirming that he is satisfied the company complies with these minimum capital requirements, but this will normally be issued at or very shortly after registration.

In contrast to private companies (for which the company secretary requirement is optional) PLCs are required to have a company secretary, who must be a suitably qualified person such as a solicitor, accountant or qualified company secretary.

For the remainder of this note, references to a company are references to a private company limited by shares unless stated otherwise.

Registration and government control

The register of companies incorporated in England and Wales is kept by the Registrar of Companies, a public official based at the Companies Registration Office in Cardiff ("Companies House"). Registers of companies incorporated in Scotland and Northern Ireland are kept in Edinburgh and Belfast respectively.

Documents relating to any company incorporated in the UK are filed with the appropriate Registrar and are available for public inspection. Copies of recent documents relating to English companies are stored as electronically scanned images and are available from Companies House.

Company law and administration is for the most part under the supervision of the Department for Business Energy & Industrial Strategy ("BEIS").

A company's constitution

The way in which a company is run is mainly dictated by the company's constitution, which sets out the powers delegated to the directors and those reserved for the shareholders. A company's constitution includes its articles of association and any resolutions or agreements affecting its constitution. There are standard "Model Articles" that will apply (discussed further below) if a company so chooses or fails to cover a particular matter, but usually a company will adopt its own tailored constitution. Usually the constitution will not be altered very frequently, but it is possible for the shareholders to do so by passing resolutions (discussed in detail on page 8).

Memorandum of association

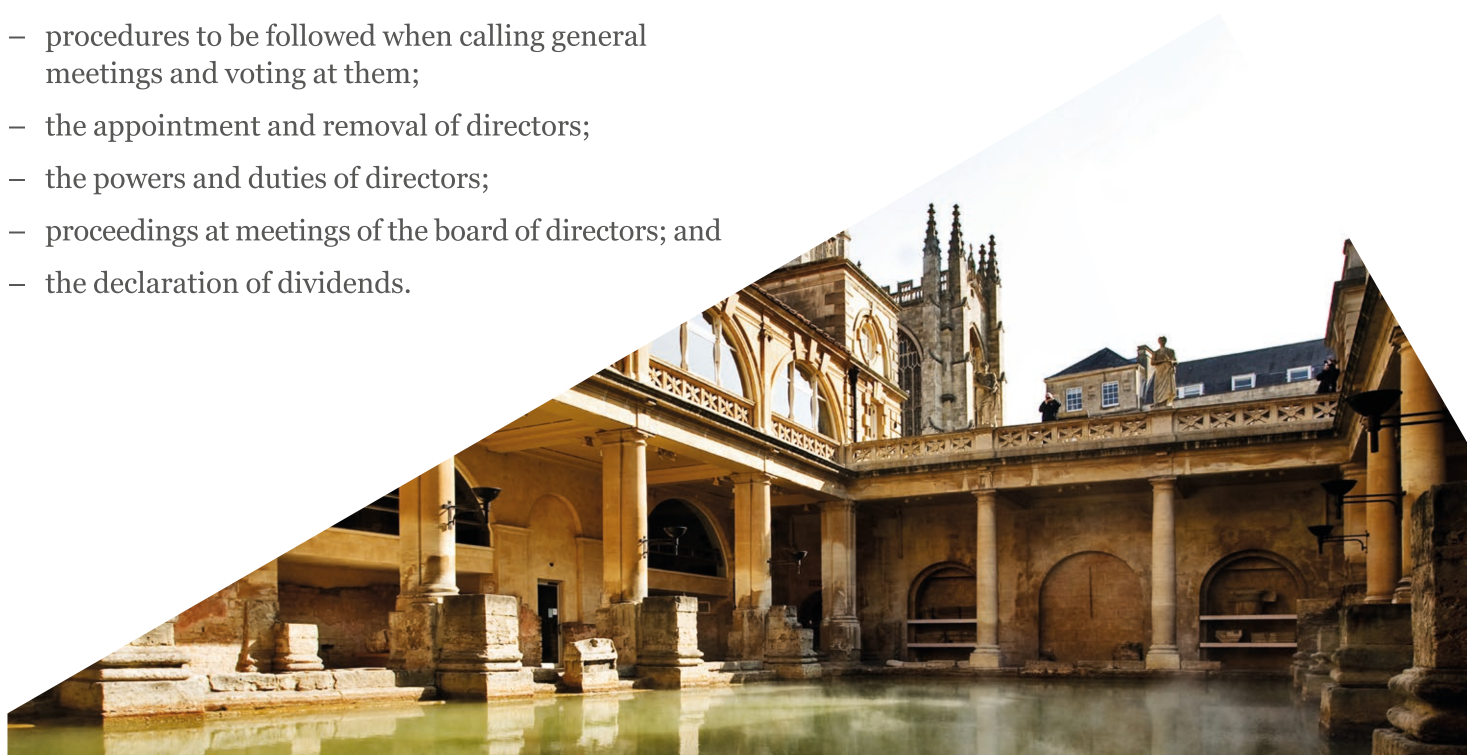
Companies are required to file a prescribed form memorandum which consists of a statement by the subscribers that they wish to form a company under CA 2006, agree to become members and agree to take at least one share each.

Articles of association

A company must adopt articles of association ("articles") on its incorporation which will set out detailed rules regulating procedures for its internal management. The articles will generally cover such matters as:

- the issue and transfer of shares;
- the alteration of share capital;
- procedures to be followed when calling general meetings and voting at them;
- the appointment and removal of directors;
- the powers and duties of directors;
- proceedings at meetings of the board of directors; and
- the declaration of dividends.

Model forms of articles (known as "Model Articles") are prescribed by legislation and taken to be adopted if no other articles are registered on incorporation at Companies House. There are three sets of Model Articles – for private companies limited by shares, private companies limited by guarantee and PLCs. There are three possible approaches in relation to the Model Articles. They can be adopted in full, they can be adopted in part so that a company's articles incorporate most of the provisions of the Model Articles by reference, but which include specific provisions that make certain adaptations, dependent on each company's particular requirements. In the case of subsidiaries there are a number of standard changes that are normally adopted such as arranging for the appointment (or removal) of directors to be by written notice from the holding company without the need for company meetings. In most cases, however, it may be more appropriate to adopt a full set of bespoke articles and to exclude specifically the application of the Model Articles. This is because the private company Model Articles are drafted for a simple company with few shareholders. The Model Articles must be excluded in this case because they will apply by default if they cover something not in the bespoke articles.



Incorporation of a new company

A company is incorporated under UK law by registration with the relevant Registrar of Companies for England and Wales, Scotland or Northern Ireland.

Notaries play no part in the incorporation of companies in the UK, nor do they have any responsibility for keeping or authenticating documents.

Incorporation procedure

Appendix II sets out the basic information required to incorporate a company.

The incorporation procedure may be summarised as follows:

- Adoption of a company name

  The Registrar will accept for registration any name which is not the same as one already on the Register and which does not contain any of a list of prescribed words and expressions. In addition, certain other words (which include, for example, 'international', 'association' and 'United Kingdom' (but not 'UK')) may only be used with the prior consent of the Secretary of State or some other designated authority. Such consent must be filed with the papers for registration.

- Subscription of the memorandum and articles

  The memorandum and articles of the company must be signed by the person or persons who are to be the first member or members of the company. This is known as 'subscription'. In the case of a private company (or, although less common, PLCs), such subscription is frequently carried out by solicitors or registration agents who form the company with the intention of transferring the shares before the company commences business. In this situation, it is usual to incorporate the company with a single subscriber who will agree to take up one share.

  Companies limited by shares are not required to submit bespoke articles signed by the subscribers. If no articles are filed, the company will be deemed to have adopted the Model Articles by default. However, most companies prefer to make at least some modifications to these standard articles.

- Filing of documents with the Registrar of Companies

  The signed memorandum and articles must be filed with the Registrar together with an application to register (Companies House Form IN01), which contains the required information and statements. This includes a statement of capital and initial shareholdings which provides information on the company's share capital including total number of shares and their aggregate nominal value. It also includes details of the proposed officers of the company and a compliance statement that the CA 2006 requirements for registration have been met. An incorporation fee of £40 (or £100 for same day incorporation) is required. Electronic incorporation is also possible at a standard fee of £10 or £30 for same day incorporation. Web incorporations are also possible for private limited companies using Model Articles at a cost of £12 using the www.companieshouse.gov.uk website

- Certificate of incorporation

  After the Registrar has examined the papers and is satisfied that the formalities have been properly carried out, a certificate of incorporation will be issued. This is conclusive evidence of the due incorporation and establishment of the company and (except in the case of a PLC) entitles the company to commence business immediately.

- Trading certificate

  If the company is a PLC, a certificate must also be issued by the Registrar confirming that he is satisfied as to compliance with the minimum capital requirements, on receipt of which the PLC may commence business.

A company's constitution *continued*

Additional incorporation requirements

– Shareholders

A company (private or PLC) must have at least one shareholder.

– Directors

A PLC must have at least two directors, and a private company must have at least one director. Given the fiduciary responsibilities of directors, it will often be preferable to have a number of directors. There is no restriction upon the nationality or residence of directors, and directors can be either individuals or corporations, although every company is required to have at least one director that is a 'natural' person of at least 16 years of age. Legislation has been introduced, which would put a ban on the appointment of corporate directors (with certain unconfirmed exceptions), however implementation of the ban (intended for October 2016) has been postponed indefinitely.

– Company secretary

A PLC must have a secretary who may be either an individual or a corporation. Private companies are not obliged to appoint a company secretary. It is, however, our experience that it is still common for one to be appointed as someone still needs to discharge the administration obligations of the company.

– Auditors

Each company must appoint an auditor (or auditors) that is a member of body of accountants established in the UK and recognised by BEIS. There is an exception for certain categories of inactive companies, which qualify as 'dormant', and small private companies, permitting them not to appoint an auditor. A company's auditor may not be a director, secretary or employee of that company, or be a partner or employee of such a person or associated body corporate. The auditors must be formally re-appointed (or replaced) each year at the general meeting of the shareholders at which the statutory accounts are laid before the members of the company. If a private company does not appoint an auditor within the 28 day period following distribution of the annual accounts, the auditor in office will be automatically deemed to be re-appointed (subject to certain conditions).

– Registered office

The registered office of the company must be situated in the UK and will be the address at which legal and other notices may be served on the company. A company may change its registered office by filing the appropriate form of notice with Companies House.

– Statutory books

A company is required to maintain certain registers including a register of members, a register of directors and secretaries, a register of directors' residential addresses, and a register of charges, and to keep minute books containing records of general (shareholders') meetings and board (directors') meetings. These registers and minute books are known as the company's statutory books. Since 6 April 2016, UK companies are now also required to maintain a register of persons with significant control over them (a "PSC register"). This requirement is intended to increase the transparency of corporate ownership by making public who the ultimate beneficial owners of companies are. A company must identify the persons with significant control ("PSCs") over it and record and update the details of the PSCs in its register. Even a company which does not have a PSC has to maintain a PSC register and include an appropriate entry to that effect.

An individual or legal entity is a PSC in relation to a company, broadly, if they:

– hold, directly or indirectly, more than 25% of its shares;

– hold, directly or indirectly, more than 25% of its voting rights;

– hold, directly or indirectly, the right to appoint or remove a majority of the directors of the company who together hold a majority of the voting rights at meetings of the board on all or substantially all matters;

– have the right to exercise, or actually exercise, significant influence or control over the Company; or

– have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm which is not a legal entity and whose trustees or members meet any of the above conditions or would do so if they were individuals.

The statutory books must be kept at the registered office of the company, or at a single alternative inspection location (SAIL) located in the same part of the UK as the registered office. The statutory books can be stored 'otherwise than in legible form', such as on computer, as long as the records can be easily reproduced in hard copy. Since 30 June 2016, private companies may also opt to keep certain information on the public register at Companies House rather than holding their own statutory registers ("central register"). This applies to the registers of members, directors, secretaries, directors' residential addresses and PSCs.

A company's constitution *continued*

If a company does elect to hold its registers at Companies House the information in them becomes part of the public record. Companies may need to consider whether they wish to do this as information like shareholders' addresses and the day of birth of directors is protected information if the registers are kept by the company but would be public information if the registers are held at Companies House (though suppressed from public inspection). Companies are able to opt in to registers being held at Companies House and then opt out again but any sensitive information that has become part of the public register remains public.

Any information held on the public record can be inspected by anyone through the Companies House website whereas the normal inspection rules will continue to apply to registers that remain at a companies registered office or its single alternative inspection location (SAIL). Records of shareholder and board resolutions, decisions and meetings must be kept for ten years from the date of the resolution, decision or meeting (as the case may be), although we recommend they be kept indefinitely.

– Company seal

A company may have a company seal which may be used for the execution of certain documents. Its use is optional and becoming increasingly rare however.

Incorporation expenses

The costs of incorporating a company include:

- a registration fee of £40 or £100 for same day incorporation, £10 (or £30 same day) for electronic incorporation) or £12 for web incorporation via www.companieshouse.gov.uk;
- purchase of a company seal (optional) (anything up to £20);
- purchase of statutory books (share register, minute books etc), which also cost anything up to £20; and
- legal charges, which vary according to the amount of work involved.

No tax or duty is payable on the creation or issue of share capital by a UK company. Contrary to relatively onerous initial share capital subscription requirements in some other EU states, there is no minimum amount of share capital which must be subscribed for on incorporation of a private company in the UK, provided that at least one share is issued. As stated above, a PLC must have a minimum issued share capital of £50,000 and at least one quarter of the nominal value of each share (and the whole of any premium) must have been paid to the company.

Time required for incorporation

Typically, it takes about five to ten working days from the filing of the incorporation documents until the issue of the certificate of incorporation. However, if an expedition fee of £100 is paid (inclusive of the basic fee of £40) the process will be completed the same day provided that the papers are received before 3pm.

If consent is required from a designated public authority for the proposed name, the time before documents can be filed may be considerable.

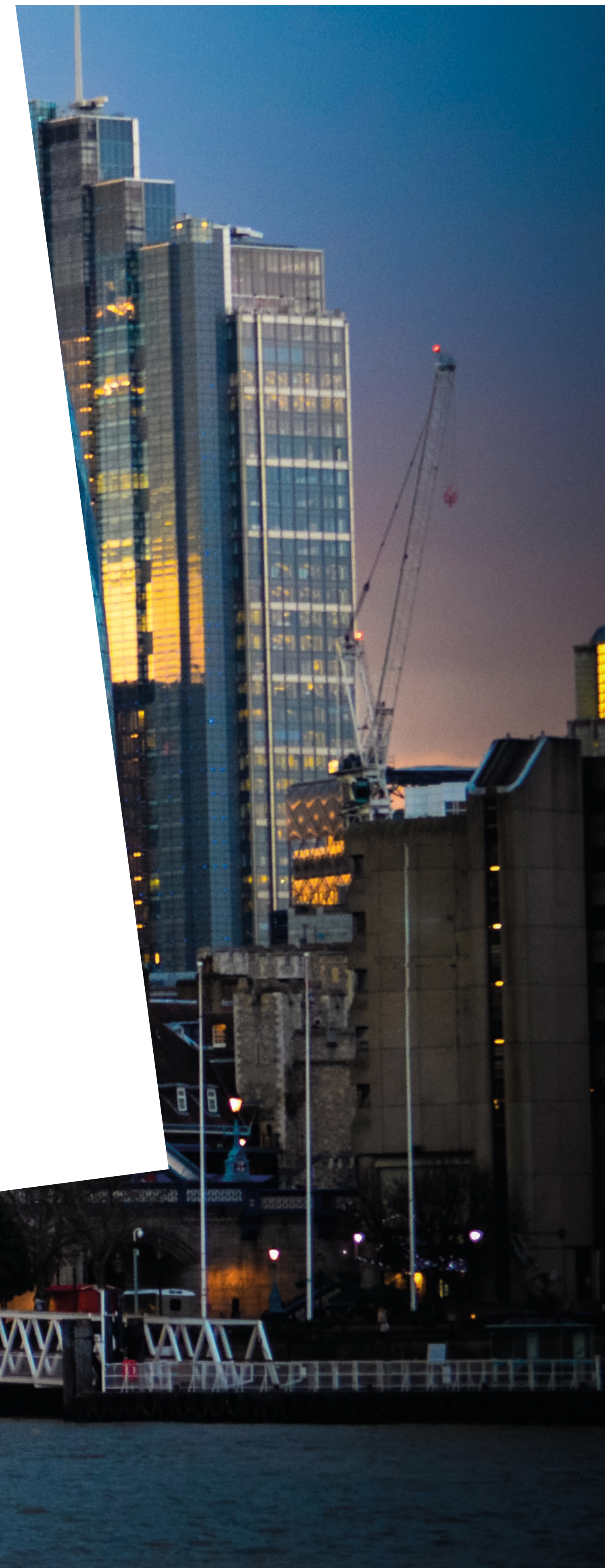
Functioning before incorporation

A company does not exist under English law, and therefore cannot function, before the certificate of incorporation is issued by the Registrar. A contract which purports to be made by the company before incorporation has effect as a contract of the person who purported to act on the company's behalf and he will be personally liable under that contract. Such a contract cannot be later adopted by the company simply by ratification but can only be transferred to the company by novation. This requires a new agreement which replaces the original whereby the other contracting party agrees to deal with the company in substitution for the individual who originally purported to contract. Clearly, this requires the co-operation of the other contracting party, which may not always be forthcoming.

Shelf companies

An alternative to incorporating a new company is to use a 'shelf company' (that is a company which is already incorporated in a standard form). Hogan Lovells can provide shelf companies, or alternatively they can be purchased from company registration agents.

A list of the information that will be required to buy a shelf company is set out in Appendix II. In general it is preferable, if circumstances allow, to register a newly incorporated company which meets any particular requirements and given the ease and speed with which a company can be incorporated electronically shelf companies tend not to be used often now.



Basic rules for the operation of the company

The directors

Under the articles, the power to conduct the daily affairs of the company will be vested in the directors acting as a board. The directors are usually allowed to delegate their powers to one or more managing or executive directors and, in practice, frequently exercise this power of delegation to a substantial extent. The directors remain collectively responsible for the conduct of the company's affairs.

The board of directors take more important decisions (that do not relate to the normal daily activities of the company) at board meetings (through board resolutions), where they will resolve to take a particular course of action and this will be recorded in writing (board minutes). In some circumstances, and if the articles permit, the directors may take such decisions by written board resolution (rather than holding a board meeting). Board meetings may be held either inside or outside the UK. However, holding board meetings in another jurisdiction may result in a company becoming resident in that other jurisdiction for tax purposes or may result in its becoming dual resident. It is, in practice, convenient for at least two directors (or, where there is only one director, that director) to be resident in the UK (for the purpose of holding board meetings, executing documents etc). It is possible for any non-resident director to appoint an 'alternate' who is resident in the UK to act on his behalf. The scope of the authority of an alternate can be determined both by the articles (note that the Model Articles for a private company do not provide for alternates, hence specific provision will need to be made in tailored articles) and the form of his appointment.

Powers of the company and the directors

The powers of a company were traditionally set out as the company's objects in the memorandum of association. Under CA 2006 a company no longer has any restrictions on its objects although companies are still able to restrict their objects by including an appropriate statement in the articles, and indeed some companies, for example charitable companies, must include some restrictions.

Restrictions or limitations in a company's constitutional documents are fully effective, however, as between the directors on the one hand and the company and its shareholders on the other. It remains the directors' duty to observe any limitations on the company's capacity or their own powers; an obligation which can be enforced by a member of the company obtaining a court injunction. The directors may also be held personally liable for any breach, unless steps are taken for the company to ratify the transaction and relieve the directors of liability.

First meeting of directors

The persons who are named as the first directors and company secretary (if there is one) in the forms filed before incorporation are deemed to be appointed upon incorporation of the company. It is usual for a company to have the first meeting of the board of directors shortly after incorporation at which the board will normally deal with matters such as the adoption of statutory books; the adoption of a seal (if there is one); the allotment and, if applicable, transfer of the subscribers' shares; the allotment of any further shares to be issued at the outset; the appointment of auditors; the appointment of bankers and passing of resolutions relating to the functioning of the bank account; the determination of an accounting reference date; and the appointment of a chairman of the board.

Duties of directors

The proper management of a company's business is the directors' responsibility, and they will be liable to the company for a failure to carry out that responsibility. It is outside the scope of this note to analyse in detail the extensive and diverse duties of a director of a company incorporated in the UK. A summary of the more important considerations is, however, set out below. The CA 2006 codified directors' duties, which replaced and modified many of the common law rules. It is of paramount importance that directors familiarise themselves with, and regularly refresh their understanding of, the precise scope of their powers and obligations as set out in a company's articles and imposed by law.

Statutory duties

These laws are to be interpreted and applied in the same way as under the common law regime which applied until 1 October 2007 so that existing case law principles continue to apply. Below is a short summary of the legislation in this area.

- Duty to promote the success of the company

  Directors are obliged to promote the success of the company. In this respect, directors must have regard to the longer term interests of the company and not just the immediate financial returns. The underlying concept of this duty is "enlightened shareholder value", whereby the company is still managed in the interests of the shareholders, but it is assumed that the shareholders are enlightened – they are taken to believe, for example, that corporate social responsibility is generally good for profit. Therefore, CA 2006 s. 172(1) states that when taking decisions, directors must consider various factors including:

  - the likely consequences of the decision in the long term;
  - the interests of the company's employees;
  - the need to foster business relationships with suppliers, customers and others;
  - the impact of the company's operations on the community and the environment;
  - the desirability of the company maintaining a reputation of high standards of business conduct; and
  - the need to act fairly as between the company's shareholders.

- Duty to act within powers

  Directors must exercise their powers in accordance with the terms on which they were granted and for a proper purpose. The precise requirements of this duty will depend on the individual constitutions of each company and the powers invested in their directors.

- Duty to exercise independent judgment

  Directors must exercise their powers without being unduly influenced by others and must not fetter the exercise of their discretion. This does not prevent directors from relying on professional advice, as long as they exercise their own judgement when deciding whether to follow such advice.

- Duty to exercise reasonable care, skill and diligence

  When assessing whether a director has fulfilled this duty, reference will be made to: (a) the general knowledge, skill and experience reasonably expected of a person carrying out the functions carried out by a director in relation to the company; and (b) the actual general knowledge, skill and experience of the director in question.

- Duty to avoid conflicts of interest

  Generally, directors should avoid conflicts between their personal interests and the best interests of the company. The board of directors may authorise such conflicts if this is not prohibited by the articles (in the case of a private company) or if it is expressly permitted by the articles (in the case of a public company). A director with such a conflict may not vote or count in the quorum requirement when the board decision is taken.

- Duty not to accept benefits from third parties

  Directors are prohibited from exploiting their position for personal benefit and are not able to accept any benefits from third parties conferred by reason of their position unless acceptance of the benefit would not reasonably give rise to a conflict of interest.

- Duty to declare an interest in a proposed transaction or arrangement with the company

  A director must disclose interests of which he is aware or "ought reasonably to be aware". To discharge this duty, a director may give a general notice of his interest in a particular company or of a connection with certain people, or specific notice of a particular matter concerning the company. Such notice may be given in writing, at a board meeting or generally to the directors.

Basic rules for the operation of the company *continued*

Share capital

It is up to each individual company to decide how many shares to issue and at what price. Shares must have a fixed 'par' or 'nominal' value (for example, £1) and a share cannot be issued for anything less than this amount (although shares are often issued at a premium far higher than this nominal amount). This value is most frequently stated in sterling but it may be in any other currency (provided that the minimum capital requirement for a PLC is met in sterling or euros (ie £50,000 or the equivalent)). Companies can alter the currency of the nominal value of their shares by ordinary resolution.

New companies are not required to include details relating to share capital in their constitutions (although they may do so) but must submit a statement of capital and initial shareholdings on incorporation detailing the nominal value of shares. A company may issue as many shares as it sees fit, subject to any authorised limits or contrary provisions in place.

Issued share capital relates to the number and amount of shares actually subscribed for by individuals or corporations (the shareholders) and should correspond with the amount of money kept in the company's share capital account (whether paid up or not). Once paid up, this money must be kept within the company and cannot generally be paid out to shareholders, such as in the form of dividends. Any money paid as a premium for the shares must also be maintained within the company.

Advice is often sought as to the appropriate amount of issued share capital. There is no statutory minimum share capital for a private company nor is there any minimum amount which must be subscribed for on incorporation provided that at least one share is issued. In the case of a PLC and as mentioned above, the minimum amount of issued share capital is £50,000 (of which £12,500 must be paid up).

Shares may be issued either as ordinary shares or with preferred, deferred or other special rights as regards dividends, voting and capital. Shares with limited, extended or no voting rights are permissible. Where shares are divided into different classes it is sensible to make provision for the variation of any special rights attaching to each class, as in the absence of a specific provision, the statutory requirement is for 75% of the holders of shares of the class affected to consent to the variation.

Irrespective of legal requirements, as an indication of financial soundness it may be appropriate for the company to have a substantial issued and paid up share capital. This consideration may be less significant where the parent company or the group to which it belongs is well-known in the UK as an organisation of stature. In other cases, a substantial paid up capital gives an indication of financial solidity which may have considerable commercial value, particularly where a parent company wishes to avoid giving guarantees. It should, however, be borne in mind that paid up share capital cannot be returned to members except on liquidation, by a reduction of capital, or, in certain limited circumstances only, by a redemption or purchase by the company of its own shares.

Shareholders' meetings

Only public companies are required to hold AGMs and they must do so within six months of the end of each financial year. Although private companies may hold AGMs if they wish, they are not obliged to. Business usually transacted at an AGM includes:

- consideration of the annual accounts;
- declarations of any dividends;
- election or re-election of the directors;
- appointment or reappointment of the auditors; and
- authorisation for the directors to fix the remuneration of the auditors.

Other business, such as amending the articles, can also be dealt with at an AGM provided the necessary formalities are complied with.

Aside from AGMs, ad hoc shareholders' meetings may be convened at any time throughout the year by the directors (on request of the shareholders or by their own decision) following the appropriate procedure (which, amongst other things, involves serving written notice of the meeting on each shareholder). Such ad hoc meetings are known as general meetings ("GMs") and are generally used (in the case of a PLC) to transact business which cannot wait until the next scheduled AGM (eg if the directors want to change the company name) or to deal with an unusual scenario which requires immediate shareholder action (eg if the directors have breached the articles and require the shareholders to ratify their actions). If a shareholder is unable to attend a meeting, he may appoint a proxy who is entitled to vote in his place.

Shareholder Resolutions

When the shareholders take a decision on any matter, they do so by passing a resolution. Currently there are three main types of shareholder resolution and which one to use will depend on the issue under debate, the legislative provisions and the company's constitution.

- Ordinary Resolution

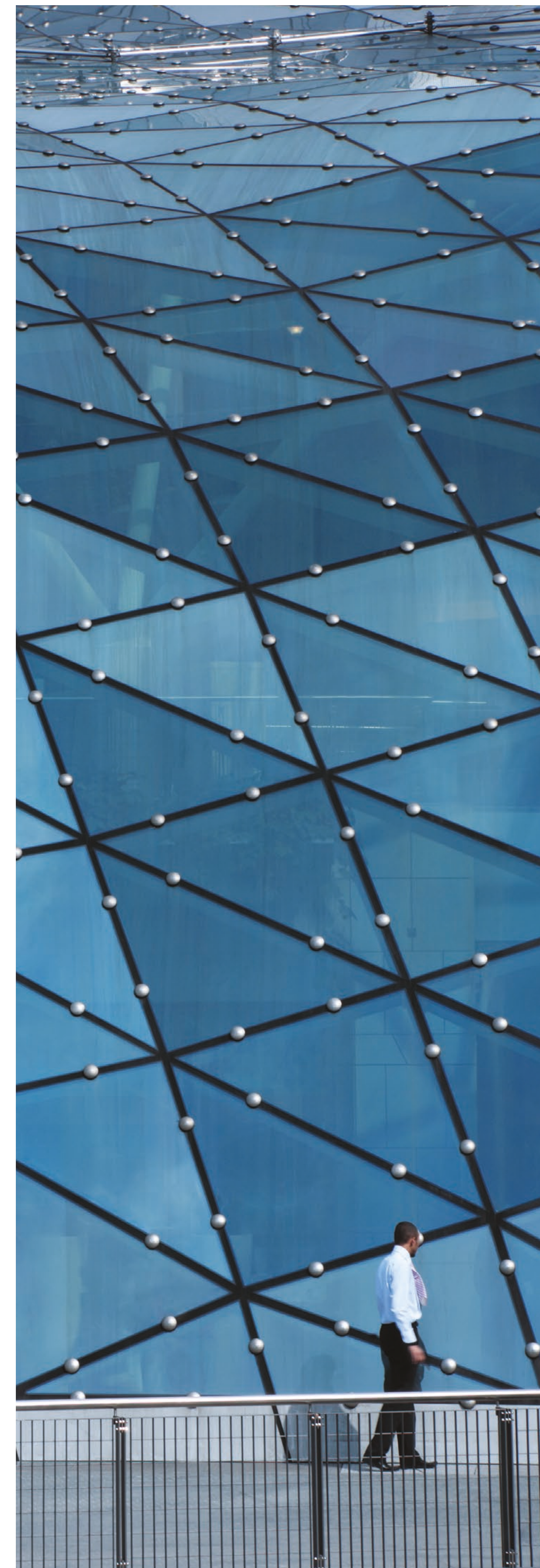
  To pass an ordinary resolution more than 50% of the shareholders present at a meeting must agree to the decision. Where the matter is routine or not of particular importance, an ordinary resolution will suffice. Only certain ordinary resolutions need to be filed at Companies House (for example, a resolution affecting a company's constitution must be filed at Companies House within 15 days).

- Special Resolution

  Special resolutions are passed if 75% of the shareholders present at the meeting vote in favour of the decision. Such resolutions are used for more sensitive matters such as amending the articles or reducing share capital. Once passed, all special resolutions must be filed at Companies House within 15 days.

- Written Resolution

  Private companies are able to take advantage of the statutory written resolution procedure (for which a specific process is set out in CA 2006). Except for the removal of a director or auditor before the expiration of their period of office, anything which may be done by resolution of the company in a general meeting (or at a meeting of any class of members) may instead be done by resolution in writing signed by a simple majority of more than 50% (as an ordinary resolution) or a majority of 75% (as a special resolution). Under CA 2006 it is intended that the written resolution procedure becomes the default decision-making process for private companies – indeed the Model Articles are drafted on this basis. Public companies cannot use the written resolution procedure.



Basic rules for the operation of the company *continued*

Notice of meetings

All shareholder meetings require 14 clear days' notice (other than AGMs of public companies, which require 21 clear days' notice) unless a provision in the articles states otherwise.

Notice of meetings must be sent to the registered address of each shareholder entitled to attend and vote at the meeting, unless the company's articles stipulate otherwise. If the shareholder agrees, notice of a meeting may also be sent electronically (such as by email) or posted on a website (in which case the company must notify the shareholder that the notice has been published there). Notice of all shareholder meetings must also be given to the company's auditors.

Depending on the nature of the business to be transacted at the meeting, additional documents may need to be sent with the notice, for example, copies of the annual accounts and the wording of proposed resolutions. In most instances, the legal requirement as to minimum notice period can be dispensed with provided that a majority of shareholders holding at least (for private companies) 90% (unless the articles require a higher percentage subject to a maximum of 95%), or (for PLCs) 95% for GMs and 100% for AGMs, of the nominal value of the shares conferring the right to attend and vote, consent to a shorter period of notice.

However, given the availability of the written resolution procedure for private companies, most business need not be conducted by holding a meeting, particularly in the case of wholly-owned subsidiaries and single member companies.

Issue of new shares

A company may restrict the number of shares that it can issue by including a suitable provision in the articles on the number of shares that may be allotted. There are two key restrictions on the issue of new shares by a company:

– Authority to allot

  Before the directors can issue new shares, they must be authorised either by the shareholders of the company in general meeting or by the articles. The authorisation may be for a specific allotment (for example, in accordance with the terms of an acquisition contract) or may be a general power, but in either case it must state the maximum number of shares which may be allotted and the date on which the authority will expire. Generally, the authority can only be granted for a maximum of five years. Directors of private companies with just one class of share have automatic authority to allot shares unless the articles state otherwise.

– Pre-emption rights

  Any new shares to be issued for cash must be offered in the first instance to the existing shareholders pro rata to their existing holdings, unless contrary provisions are contained in the company's constitution or if the allotment authority provides that the directors may allot the shares in a different way. The pre-emption procedure will delay the issue of shares if it must be followed, as shareholders must be given at least 14 days to accept the offer.

  It is sensible to consider policy on these matters at the outset so that the requisite provisions can be incorporated into the company's articles.

  Shares may not be issued for less than their nominal value, but they may be issued nil or partly paid. As previously mentioned, shares of a PLC can only be issued on the basis that not less than one quarter of their nominal value and the whole of any premium is paid up.

  Shares may be issued at a premium above their nominal value, in which event the premium must be credited to a share premium account in the company's books which, like the share capital, may not be returned to shareholders except in limited circumstances.

Redemption and purchase of own shares

Companies are only able to purchase their own shares or redeem shares in issue if not prohibited by their articles and the shareholders authorise the purchase or redemption. Such a purchase or redemption must be paid for out of distributable profits or the proceeds of a fresh issue of shares. Private companies may fund the purchase or redemption out of capital if the proper procedure is followed. Purchased or redeemed shares must be cancelled or, in certain circumstances, may be kept for resale, transfer or cancellation. The amount by which a company's share capital is reduced on a purchase or redemption must be transferred to an account called "the capital redemption reserve" and that money is effectively locked in the company.

Transfer of shares

A company will issue registered shares (where ownership is determined by reference to the register of members). The method for transferring registered shares depends upon how the relevant shares are held. Registered shares held in certificated form (ie with a share certificate) are transferable by the execution of a written instrument of transfer (a stock transfer form is normally used), but legal ownership does not pass until the name of the transferee is entered in the company's register of members. Subject to any restrictions on transfer imposed by a company's articles, a transferee is entitled to have this entry made on producing the transferor's share certificate together with the stock transfer form signed by the transferor and duly stamped. The current rate of stamp duty is 0.5% of the value of the consideration rounded up to the nearest £5 (unless an exemption applies). A new certificate will be issued to the transferee, but this is merely evidence of an entry in the register of members and is not a document of title.

Shares traded on the London Stock Exchange and certain other securities markets may be held and transferred (if the company so chooses) using the CREST system. This is a paperless computerised system whereby share transfers are effected electronically, enabling shareholders to own shares in an uncertificated form (ie without a share certificate). The shareholdings are held as electronic records and CREST maintains a register of the company's shares held in this manner (the company must also keep a register of these entries). Legal title to the shares is transferred at the same time as the transaction is completed and is not delayed by the requirement to update the company's statutory books. Stamp duty reserve tax applies to share transfers effected through the CREST system at a rate of 0.5%.

Financial assistance

It is prohibited for a PLC (or any of its subsidiaries) to give financial assistance for the purpose of an acquisition of that company's own shares, unless certain limited exceptions apply. The prohibition covers any attempt to reduce or discharge a liability incurred by the company or a third party in connection with the acquisition. The prohibition on giving financial assistance no longer applies to private companies except in the following circumstances:

– a private company that is a subsidiary of a PLC is prohibited from giving financial assistance for the acquisition of shares in its PLC holding company; and

– a PLC that is a subsidiary of a private company is prohibited from giving financial assistance for the purpose of the acquisition of shares in the private holding company.

Statutory accounts

Each company has an obligation to file annual accounts with the Registrar (although there are exemptions available for certain companies such as those which do not trade). These accounts become a matter of public record and can be accessed for a small fee from Companies House.

Basic rules for the operation of the company *continued*

When a company is formed the Registrar of Companies will designate its "accounting reference date" ("ARD") as the last day of the month in which the company is incorporated (for example, 30 September for a company incorporated in September of any year). A company must draw up accounts for its "accounting reference period" ("ARP"), also known as its "financial year", which ends on the ARD. The company's first ARP cannot be more than 18 months or less than six months and every ARP thereafter should be 12 months commencing from the end of the last ARP and ending with the ARD. For example, a company incorporated on 6 May 2016 would be given an ARD of 31 May. Therefore, the first ARP would be from 6 May 2016 to 31 May 2017. Each ARP thereafter would run from 1 June to 31 May. The ARD may be changed by notice to the Registrar, but a change which has the effect of extending the then current ARP may not normally be made more than once in five years (except in certain limited circumstances).

The statutory accounts must comprise:

- a profit and loss account;
- a balance sheet;
- an auditor's report;
- a directors' report.
- a strategic report (unless a small company)

The accounts must be prepared in accordance with the requirements set out in statute and various accounting standards, and must give a true and fair view of the state of affairs of the company. The precise requirements for each of these documents will largely depend on the form of the company, its size and its industry sector. For example, large companies must produce a cash-flow statement and quoted companies are required to publish a directors' remuneration report. A parent company at the top of a UK or EU group of companies will normally also be required to produce consolidated accounts for the entire group. PLCs must, once the accounts have been prepared, lay them before a general meeting (usually the AGM).

The period allowed for filing accounts is nine months (for a private company) and six months (for a public company) after the end of the ARP. If the accounts are the company's first and the period covered is longer than 12 months, the time limit for filing is 21 months after the date of incorporation (or 18 months from the date of incorporation for a public company) or three months from the end of the ARP (whichever is later). Therefore, following on from the example above, a private company incorporated on 6 May 2014 would have to file its annual accounts for the period 6 May 2016 to 31 May 2017 by 6 February 2018 (as the ARP covers more than 12 months and the later time period for filing is 21 months from the date of incorporation). Thereafter, the company would need to file its annual accounts by the end of February each year. It is worth noting that listed companies are required by Disclosure and Transparency Rule 4.1.3 to make public their accounts within 4 months of the end of the ARP.

Directors' report

The directors' report is the document over which the directors will have most control. This report must provide a fair review of the company's performance over the year and detail any particular successes or failures. Again, the precise content of the document will depend on the form of the company and its type of business (eg there are additional requirements for listed companies). Typical (and required) points to mention include:

- business development of the company and its subsidiaries;
- the company's position at the end of the financial year;
- proposed dividends;
- important events which have occurred since the end of the year;
- likely future developments;
- employment policies;
- directors' interests in the shares or debentures of group companies; and
- political and charitable contributions.

Strategic report

All companies (other than those entitled to the small companies exemption) must prepare a standalone strategic report.

The idea of the strategic report is that it includes the information necessary to understand what the directors consider to be of strategic importance to the company and to give an understanding of the development, performance and future prospects of the company.

Auditors

Generally, companies must appoint independent auditors who will review the annual accounts and pass comment prior to the accounts being filed at Companies House. The auditors must be appointed annually by the shareholders or, in certain circumstances, the directors. Auditors of private companies are generally deemed to be re-appointed provided that no appointment is made within a 28 day period following circulation of the accounts, unless, for example, there is a contrary provision in the articles. Under recently implemented EU legislation, auditors of public-interest entities (PIEs),such as banks, insurance companies and listed companies, must be rotated every ten years following a public tender process.

Accounting records

A company must keep accounting records sufficient to show and explain its transactions and enable the annual accounts to be prepared. It must be possible to disclose, with reasonable accuracy, the financial position of the company at any given time.

Dividends

Shareholders may get a return on their investment in the company in the form of shareholder dividends. The directors may recommend that a dividend is paid and then it is for the shareholders in general meeting to declare dividends up to such recommended amount. Dividends are usually paid out at the year end, but a company's articles will often stipulate that directors may also declare interim dividends. Dividends can only be paid out of realised profits available for distribution.

Confirmation statement (formerly Annual Return)

Since 30 June 2016, the confirmation statement has replaced the annual return. Although the confirmation statement largely serves the same purpose as the annual return there are some differences. The main one is that rather than having to be submitted on a set date as with the annual return, a company now has to 'check and confirm' that the information held by Companies House is accurate or provide any necessary updates at least once a year. Another difference is that a company's first confirmation statement will need to include information held in the PSC Register. The fee for the confirmation statement is the same as for filing an annual return, £13 for an online filing and £40 for filing a paper version. The fee covers a period of 12 months and is payable only once although it will be possible to file as many confirmation statements as are necessary during that period.

A statement of capital is currently required to be provided on the annual return. It will now be possible to show on the confirmation statement that no changes have been made during the year, if that is the case. If changes have been made a full statement of capital will still need to be filed. The information required to be put on a statement of capital has also been simplified so it is no longer a requirement to show the amount paid up and unpaid on each share. The aggregate amount unpaid on the total number of shares must be provided instead.

Company filings

Other information has to be filed from time to time with the Registrar at Companies House. The most common filings are:

- changes of directors or secretary;
- change to the ARD;
- change in address of the company's registered office;
- issue of shares;
- creation of most types of mortgage or charge over assets of the company;
- special resolutions of the company in general meeting (or an agreement between the shareholders that has the same effect);
- reprints of the amended constitutional documents; and
- certain ordinary resolutions.

Basic rules for the operation of the company *continued*

Company name and stationery

A company must exhibit its full registered name outside every office and place in which its business is carried on. The Companies (Trading Disclosures) (Amendment) Regulations 2008 provide the following exemptions from these obligations:

- where a liquidator, administrator or administrative receiver is appointed, and the place of business of the company is also the place of business of that liquidator, administrator or administrative receiver;
- where the registrar of companies is prohibited from disclosing the home address of every individual director of the company to a credit reference agency (although this will not exempt a company from its obligation to display its registered name at its registered office).

In addition, a company's name, registered office, registered number and place of registration (eg "England") must be mentioned in legible characters on all business letters, order forms (including those in electronic form eg e-mails) and websites. If the company chooses to refer to its amount of share capital, such reference must be to paid up share capital (although it is unusual for a company to refer to such information). There are a number of statutory requirements which apply to companies as well as other business entities, which provide that particular types of stationery must contain certain other information. For example, an invoice must show the entity's registered VAT number. It is also worth noting that if a company's cheque does not bear the proper name of the company, the signatory can be personally liable.

Business names

A company may trade under a business name, meaning a name other than its full corporate name. If it does so, in addition to complying with the preceding paragraph it must satisfy the following requirements:

- the name may not include any of a list of prohibited words or words which imply connection with governmental authority and it may only use certain others after consent has been obtained from the appropriate authority, in the same way as is applicable to the use of such words in the name of a company;
- in addition to the company's full corporate name, the business name must also be displayed on all correspondence;
- the business name must be displayed in a prominent place at each set of premises from which the business is carried on; and
- the company must supply such information in writing on request from any person dealing with the business.

Trade marks and service marks

Use of words, letters, devices or logos as trade marks or service marks is a separate question governed by trade mark law and is not covered in this note. It should be noted, however, that the name of a company or a business name may infringe an existing registered trade mark or service mark and in appropriate circumstances a trade mark or service mark search should be conducted before incorporation.

UK Tax

Tax residence

An important factor in determining the liability of a company to UK tax is its place of residence. The basic rule is that all companies incorporated in the UK, and all companies (whether or not incorporated in the UK) whose central management and control is exercised in the UK, are resident in the UK for tax purposes. For the purposes of this rule, the place where central management and control of a company is exercised is not necessarily the same as the place where the day to day running of the company is carried out and is wholly a question of fact. It is normally the place where the directors' meetings are held, but in cases where the directors do not genuinely exercise central management and control of the company, HM Revenue & Customs ("HMRC") then look to establish where and by whom it is in fact exercised.

The basic rule is overridden in a case where the company is resident in a foreign country under the terms of a double tax treaty between that country and the UK.

Under UK tax law, a company can be resident in more than one country, although most of the UK's double tax treaties contain a "tie-breaker" provision to eliminate dual residence. There are certain tax disadvantages where a company is a dual resident investment company.

Since 1 July 2009 there has been a requirement to report to HMRC the details of certain transactions involving international movements of capital whose value exceeds £100 million. This requirement is subject to a number of exclusions, for instance, where the transaction is carried out in the ordinary course of a trade. A report of the relevant transaction must be made to HMRC within six months of the transaction.

Care should be taken to ensure that a UK resident subsidiary is, as far as possible, managed independently from its foreign parent. There may be a risk in some cases that a UK subsidiary could be regarded by HMRC as a "permanent establishment" of its parent, with the result that a proportion of the parent company's income and capital gains could be charged to UK corporation tax.

Subject to double tax relief, a non-resident company will be liable to UK tax on all its income from UK sources. Special rules apply to companies engaged in oil exploration activities in the UK continental shelf.

Corporation tax

Tax on profits

A company resident in the UK (whether or not that company is also resident elsewhere) is liable to corporation tax on all its profits, wherever arising, and upon its net realised capital gains which have accrued since 31 March 1982 – that is, gains less allowable losses arising on the disposal of most capital assets.

Corporation tax is charged by reference to financial years, which run from 1 April to 31 March. The main rate of corporation tax chargeable on profits and capital gains is 20% (reducing to 19% on 1 April 2017 and 17% on 1 April 2020).

Before 1 April 2015 UK resident companies were able to claim the benefit of a lower "small profits" rate of corporation tax if their profits did not exceed £300,000. Marginal relief was available on profits up to £1,500,000. These reliefs are no longer available, however, and from 1 April 2015 all profits are taxed at the same corporation tax rate (except for north sea oil and gas ring fence profits).

As is the case in most systems, profits for tax purposes and accounting purposes are not necessarily the same. Differences may arise, for example, on the depreciation of expenditure on capital assets, and certain types of expenditure may be deductible only against certain types of income or, indeed, not at all. There are also a number of anti-avoidance provisions which may be relevant. For instance, transactions between a subsidiary and parent or between two subsidiaries could be reviewed if they are not on an arm's length basis. It is outside the scope of this note to discuss this in detail but references to profits (or losses) for tax purposes should be read with this qualification in mind.

Interest is generally deductible from a UK resident company's profits for tax purposes on an accruals basis. However, since 1 January 2010, UK tax relief for interest has been restricted by reference to the group's overall finance costs.

The 2016 Budget proposes changes to the deductibility of interest payments. It is anticipated that from 1 April 2017 the tax deductibility of net interest expenses will be restricted to 30% of a group's UK EBITDA, subject to a minimum group threshold of £2 million net UK interest expense. This is in line with the proposals made in the OECD Base Erosion and Profit Shifting project.

Loans also fall within the ambit of the UK's transfer pricing regime – it is not possible to discuss the detail in this note.

Special tax rules apply to "close companies", broadly, UK resident companies controlled by five or fewer persons and their associates, or UK subsidiaries of overseas parents which would themselves have been 'close' if resident here.

Tax on capital gains

As indicated above, a company's net realised gains are chargeable to tax at the full relevant corporation tax rate.

An important exemption from the charge for corporate sales of shareholdings in trading companies, where the seller is also a trading company (or member of a trading group), and holds at least 10% of the ordinary share capital of the company whose shares are sold, is available (the Substantial Shareholding Exemption or SSE).

The charge on capital gains is subject to relief (commonly known as "rollover relief") by way of postponement of liability where a gain arises on the disposal of certain categories of capital assets (including most tangible property, but not intangible property) used solely for the purposes of a business and all the proceeds of disposal are used to purchase other qualifying assets to be used in the same way. The normal time limit for making an unconditional contract for the replacement purchase is 12 months before or three years after the date of disposal of the old asset, but HMRC may agree to an extension. There is also relief, by way of an indexation allowance, for the effects of inflation since March 1982 on the value of assets disposed of.

Subject to exceptions designed to prevent tax avoidance, transfers of assets between two companies in the same UK tax group do not attract tax on any resulting capital gain provided that the recipient of the asset does not leave the group within six years after the transfer. If this is the case, there may be a deemed increase in the gain (or reduction of the loss) arising on the sale of the shares that result in the transferee leaving the group, equal to the amount of the gain that would have arisen on the intra-group asset transfer had it taken place at market value. However, the SSE will often apply to exempt the gain arising on the sale of the shares. These rules apply even where the ultimate parent company of the group is resident outside the UK, and as between UK resident companies and UK corporation tax-paying branches of non-resident companies in the same group.

Capital allowances

Certain capital expenditure is deductible for tax purposes in order to encourage the use of capital for modernisation and re-equipment.

There are a number of allowances available for plant and machinery.

An Annual Investment Allowance ("AIA") is available for expenditure on most plant and machinery. From 1 January 2016 the AIA is £200,000.

An annual writing down allowance equal to 18% of qualifying expenditure (ie cost less allowances already given) is available on a reducing balance basis in respect of plant and machinery. The writing down allowance is available from the time the expenditure is incurred. Special rules apply with regard to leasing. On certain types of assets with a useful economic life of over 25 years, allowances are given at only 8% instead of 18%.

There are certain other allowances available for certain kinds of expenditure.

If an asset in respect of which a capital allowance has been claimed is sold for a price which is in excess of its tax written down value, the excess is generally subject to corporation tax by way of a "balancing charge". In contrast, a "balancing allowance" is available if the sale price is lower than the tax written down value.

Tax losses

Subject to exceptions designed to prevent tax avoidance on a change of ownership of a company, trading tax losses of a company may be carried back and set off against the general profits (including capital gains) of the previous accounting period provided that the company carried on the same trade in that period, or set off against the other profits (including capital gains) of the company for the same accounting period, or carried forward indefinitely and set against profits of the same trade in later years. Alternatively, in the case of groups or sub-groups where a 75% relationship exists between the two companies and subject to the satisfaction of certain detailed conditions, a trading loss of one group company may, by election, be set off against the profits for the corresponding accounting period of another.

The government has proposed relaxing the rules on carried forward losses with effect from 1 April 2017. Losses will be useable against profits from different types of income and other group companies. Companies will have their use of carried forward losses restricted, however, so they cannot reduce their profits arising on or after 1 April 2017 by more than 50%. This restriction will apply to a company's or group's profits above £5m. For banking companies, losses that are within the separate bank loss restriction will continue to be subject to separate rules. Profits and losses subject to the oil and gas ring-fence regime will also be excluded from the loss reform. It is intended that the changes will be introduced in the Finance Act 2017.

Taxes on interest and royalties

In principle, a company resident in the UK which makes payments of yearly interest, or royalty payments in respect of public lending rights in respect of books, design rights, copyright, or patents, to a foreign recipient must withhold income tax. The rate of withholding is currently 20%.The Finance Act 2016 extends the scope of royalty withholding tax so it applies to royalties paid in respect of all relevant intellectual property, whether the royalties are annual payments or not.

In cases where payments are made to companies or persons resident in countries which have double tax treaties with the UK exempting such payments from UK tax or limiting the rate at which UK tax may be charged, a direction can be obtained from the tax authorities permitting these payments to be paid free of withholding tax, or under deduction of withholding tax at a reduced rate. However, the Finance Act 2016 combats 'treaty shopping' by providing that treaty relief will not be available where the main purpose or one of the main purposes of the arrangement was to obtain a tax advantage, with effect from 17 March 2016. HMRC has also introduced a 'passport' scheme to simplify the treaty relief process.

Unless such payments are "annual payments" the withholding system does not generally apply to royalties of most other kinds, such as "know-how" and copyright royalties, although it does apply to copyright royalties paid abroad (subject to any double tax relief).

Taxes on dividends

General

Dividends paid by UK resident companies are not subject to withholding tax.

Effect on a UK resident shareholder

The 2016 Budget abolished the previous regime whereby UK resident shareholders were entitled to tax credits on dividend payments. The changes took effect on 6 April 2016. The system has been simplified by the introduction of a new annual dividend allowance, meaning that a UK resident shareholder pays no income tax on the first £5,000 of taxable dividend income. This income will still count towards an individual's basic or higher rate limits. Dividends received over the £5,000 allowance will be taxed at 7.5% for income in the basic rate band, 32.5% for income in the higher rate band and 38.1% for income in the additional rate band.

Since 1 July 2009, a single set of corporation tax rules has applied to UK and overseas dividends, the effect of which is to exempt from corporation tax all dividends (subject to anti-avoidance rules).

Effect on a shareholder resident outside the UK

Following the abolition of the previous tax credit regime (above) in respect of dividend income, the UK position on non-resident shareholders has been simplified. Non-resident individuals and companies are treated as receiving income on which tax at the dividend ordinary rate has been paid.

Tax consequences of liquidation

Upon the liquidation of a UK subsidiary, its foreign parent does not incur any charge to UK tax on amounts distributed to it in the course of the liquidation (even if these amounts exceed its original investment in the subsidiary) unless the foreign parent is resident for tax purposes in the UK or has a permanent establishment in the UK for which the shares in the subsidiary are used or held, or the subsidiary is engaged in oil exploration or extraction activities. Corporation tax is, however, payable by the subsidiary in respect of any non-exempt capital gains arising out of the realisation of its assets in the course of the liquidation.

Value added tax ('VAT')

On establishment of a business in the UK, the impact of VAT and the possible need to register with HMRC require consideration at the earliest possible stage.

VAT is chargeable on the supply by "taxable persons" within the UK of a wide range of goods and services ("taxable supplies"), and on the import of goods into the UK. The standard rate of VAT is 20%. There is currently a zero rate on certain supplies, principally food, books, transport and certain exports, while some categories are exempt, including insurance, finance and education.

A "taxable person" is widely defined to include anyone carrying on a business in the UK, including foreign concerns and overseas residents who supply goods and services in the course of carrying on a business in the UK. Anyone who falls within this category and whose turnover in taxable supplies exceeds the relevant limit must register with HMRC. This limit is currently £83,000 in the previous 12 months; moreover, anyone who at any time expects to exceed this figure in the next 30 days is required to register at that time.

A UK-established business which buys goods worth more than £83,000 in any year from another EU Member State ("acquisitions") is similarly liable to register and account to HMRC for VAT on the goods as if it had been charged VAT by the supplier. A similar VAT charge applies on the purchase by a UK-established business of services of many descriptions from outside the UK.

A person will generally be charged VAT by the supplier when goods and services which are taxable supplies are supplied to him by a taxable person. VAT is similarly payable to HMRC on the importation of goods into the UK from outside the EU, in addition to any HMRC duties which may apply. VAT incurred on acquisitions, purchases or imports is described as 'input VAT'.

A taxable person must submit regular VAT returns to HMRC (usually each quarter). He must charge VAT to his customers on the taxable supplies he makes, and must issue the customer with a "VAT invoice". On submitting his quarterly VAT return, he must pay over to HMRC all VAT due on supplies or deemed supplies (eg intra-EU acquisitions) made by him during the quarter ("output VAT"), less his allowable input VAT for the quarter (see below).

Subject to detailed rules, a taxable person who is registered for VAT is entitled to deduct the input VAT he incurs from his output VAT and account to HMRC for the difference. If the allowable input VAT he has incurred in the quarter exceeds his output VAT for that quarter, he is entitled to a repayment from HMRC.

The ability to recover excess input VAT in this way may render it advantageous for a business to register voluntarily for VAT even though the value of the supplies it makes falls below the compulsory registration threshold. However, it is also necessary to bear in mind the administrative burden and expense of ongoing compliance with the VAT regulations. Under the regulations, in addition to filing regular returns and issuing VAT invoices, a business which is registered for VAT must keep its VAT records for a minimum of six years.

Legal formalities

Certain formalities must be observed when a foreign corporation establishes its own business presence in England, Wales, Scotland or Northern Ireland. These involve it registering with a Registrar of Companies (there is a single UK jurisdiction for overseas companies) and certain initial filing requirements and continuing obligations must be satisfied. The details required to be filed and the continuing filing obligations (particularly of the accounts) may mean that a foreign corporation will decide to establish a business presence in the UK through a selected non-UK subsidiary company. The details to be filed relate to the specific foreign company (or companies) which establishes the business presence in the UK. They are referred to under the legislation (and are referred to in this chapter) as an "overseas company". As is the case with UK registered companies, the documents which are filed are open to public inspection.

The framework for the regime is contained in Part 34 of the CA 2006 itself, but the substance is set out primarily in two sets of regulations:

- the Overseas Companies Regulations 2009 (SI 2009/1801); and
- the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (SI 2009/1917).

The rules govern "establishments" in the UK, and the term "establishment" is defined to mean either a branch or a place of business which is not a branch. The main features of the regime are as follows:

Initial registration

Within a month of opening a UK establishment, an overseas company must deliver a return to the registrar of companies setting out information about itself (including details of its directors and the extent of their power to represent it) and about the establishment (including details of permanent representatives of the company in relation to the establishment). A copy of the company's constitution and latest accounts must also be filed.

Accounts

There are two sets of relevant provisions – one for companies required to disclose their accounts under the law of the country in which it is incorporated (its "parent law") and one for those who are not required to disclose accounts under their parent law. For companies required to disclose accounts under their parent law, the requirement is to deliver copies of all accounting documents that it is required to disclose by its parent law to the Registrar. A company incorporated in an EEA state which is not required by its parent law to deliver accounting documents does not have to file any documents with the Registrar.

Companies incorporated outside the EEA and not required to disclose accounting documents under their parent law have three options when choosing an accounting framework:

- overseas accounts in accordance with the Companies Act 2006;
- parent law accounts; or
- International Accounting Standards.

The choice of type of accounts will depend on factors such as whether the company has a presence in several countries, any benefits of choosing parent law and whether the company has any plans to apply for listing in the future. There are also special provisions for credit and financial institutions.

Disclosure of company details

The regime requires overseas companies with a UK presence to disclose certain details (a) at every location at which they carry on business in the UK; and (b) on stationery, emails and websites used in connection with their activities in the UK. This needs to be taken seriously, because a breach of the requirements without reasonable excuse amounts to a criminal offence on the part of the company and any directors who are in default.

Company name

The regime imposes restrictions on the name with which an overseas company can be registered in the UK. In some cases, a company is able to register the name with which it is registered in its home jurisdiction. In other cases – for example, where the name contains characters from an alphabet other than the English alphabet – the company will have to register an alternative name of its choosing. Companies from outside the EEA are subject to considerably more restrictions than those from within the EEA.

Charges

Companies with a registered UK establishment are required to register certain charges.

UK tax

UK tax implications of establishing a branch or agency

A non-resident company will not be subject to UK corporation tax unless it carries on a trade in the UK through a "permanent establishment" situated here. The definition of "permanent establishment" for this purpose is based on the OECD model definition (which is currently under review as part of the Base Erosion and Profit Shifting project). It includes, subject to some exceptions, a place of management, a branch, an office and a factory. Establishments carrying on activities which are confined to those of a preparatory or auxiliary character are excluded. Although the UK now adopts a "permanent establishment" test based on the OECD model to impose a corporation tax charge on non-resident companies, the definition for domestic tax purposes will not always coincide with that in an applicable double tax treaty. As a result, it is still possible that the UK corporation tax charge imposed by the domestic provisions will be excluded by an applicable treaty.

Even if there is no permanent establishment subject to UK corporation tax, it should be borne in mind that income derived from UK sources may be assessable to UK income tax, subject to relief under an applicable double tax treaty.

It is also worth noting that the UK introduced a diverted profits tax, which combats multinational businesses using aggressive tax planning techniques to divert profits from the UK. With effect from 1 April 2015, in very general terms, if a foreign company makes substantial sales in the UK but its business is structured to avoid establishing a UK permanent establishment, it is likely to incur a liability to tax at a rate of 25% of taxable diverted profits (with certain exceptions).

Tax on profits

A company not resident in the UK but carrying on a trade here through a permanent establishment is chargeable to corporation tax on:

- trading profits arising directly or indirectly through or from the establishment; and
- income from property or rights used by or held by or for the establishment.

Computation of the profits or income attributable to the permanent establishment is based on OECD guidelines, incorporated into UK law with special provisions for banks and other financial institutions.

Tax on chargeable gains

A non-resident company is chargeable to corporation tax on capital gains arising on the disposal of any asset situated in the UK which is used for the purposes of the permanent establishment or its trade. The reliefs applicable to a UK company will apply.

In addition, from 6 April 2015 all non UK residents are liable to UK capital gains tax on the disposal of UK residential property.

Capital allowances

A branch is entitled to allowances on plant and machinery in the same way as a UK company.

Tax losses

There is an ability to carry forward tax losses of a branch, similar to those applying to a UK company.

Taxes on interest

A non-resident company which pays interest is not normally obliged to withhold tax on paying interest even if the borrowing is for the purposes of its UK branch. Any levy of "interest" or other charge made by the foreign corporation to its UK branch for internal accounting purposes will be ignored for UK tax purposes.

Taxes on dividends

Since a permanent establishment is not treated (except for limited purposes) as a separate legal entity from the foreign parent corporation the permanent establishment will never pay a "dividend" to the parent. There are no UK withholding taxes on the repatriated profits of a permanent establishment.

Tax consequences of liquidation

No UK tax will be charged on the liquidation of the foreign company, except for corporation tax in respect of any capital gains arising out of the realisation of any asset of the permanent establishment or its closure.

Value Added Tax

The rules relating to registration of permanent establishments for VAT are the same as those which apply to a UK company.

Appointment

Note: Parts of the law on appointment and operation of an agency described in this chapter do not apply in Scotland.

Generally, a person or company resident in the UK can, under English law, be appointed an agent of a foreign corporation without formality, by written or oral contract. However, the Commercial Agents (Council Directive) Regulations 1993 (the "Regulations") have a direct effect on certain types of agency agreement, introducing a greater degree of formality and control and, in contrast to the common law on agency, more protection for an agent falling within their ambit. The Regulations can be difficult to interpret, but broadly they apply to the activities of "Commercial Agents" in Great Britain (there are similar provisions in Northern Ireland). A Commercial Agent is a self-employed intermediary, ie a person or company, who has continuing authority to negotiate the sale or purchase of goods on behalf of a principal or to negotiate and conclude such transactions on behalf of and in the name of that principal, subject to various exceptions. The Regulations can apply to both sales and marketing agencies, depending upon the agent's authority. The Regulations do not apply to purely service agencies. If the Regulations do apply, the main consequences in favour of the agent are:

- the agent has certain implied rights in relation to which transactions may attract commission;
- commission payments dates are regulated;
- the agent has rights to information concerning calculation of commission;
- the agent is entitled to a written statement of the terms of the agency, signed by the principal;
- minimum notice periods are implied into indefinite period contracts; and
- generally, the agent is entitled to indemnification or compensation upon termination, unless the agent has committed a terminable breach of the agency agreement.

Where the Regulations do apply, a written contract is not required; however, the agent and principal have each got the right, on request, to a signed document from the other party setting out the terms of the agency agreement. Some parts of the Regulations are mandatory whereas some are not and it is common and often desirable to contractually qualify or even disapply those parts of the Regulations which are not mandatory. Whether the agency agreement is subject to the Regulations or not, a written contract between the agent and principal is preferable, as a safeguard against misunderstanding and, more particularly, because of the need to limit, by written agreement, the effects of the English legal principle whereby a person who is "held out" as the agent of another is deemed to have authority to enter into binding commitments on behalf of his principal and to act on its behalf in all matters consistent with the apparent scope of the agency. It is, therefore, advisable to define precisely the scope of the agent's actual authority. Although, under the doctrine of "apparent authority" such limitations on the agent are not binding on third parties who do not have notice of them, the agent is liable to his principal if he exceeds his actual authority.

Where an agent is remunerated by commission it is particularly important to specify when his commission is earned and payable, especially where more than one agent may claim commission on the same transaction and where the expected interval between the obtaining and fulfilment of orders is substantial. This is heightened where the Regulations apply.

Appropriate professional advice should be sought if it is intended to appoint an "exclusive" agent or if restrictions are imposed on an agent from dealing with competing products, selling products outside his territory or similar restrictions, as such terms may have restraint of trade or competition law implications.

Operation of the agency

Where the Regulations apply, some aspects of the way the agency operates will be affected. Principals are particularly concerned about the compensation/indemnification provisions which cannot be excluded under the Regulations.

In all other cases, where the agency does not fall within the ambit of the Regulations, the operation of the agency depends entirely on the terms, express or implied, of the contract between the parties. For example, under the common law, an agent is not entitled to any fixed scale of compensation on termination of the agency. The length of notice required to terminate the agency is regulated by the contract

of appointment. If the contract is silent, it is usually terminable on "reasonable" notice. However there is no set formula for determining reasonable notice and so it is advisable to have contractual provisions dealing with termination and the notice that must be given. If the principal terminates the agency contract without giving the agent a reasonable period of notice then, unless the termination is in response to the agent's serious breach of contract, the agent will usually be entitled to damages equal to the loss of his prospective net benefits from the contract for the period for which notice should have been given, less any amount which the court finds he ought reasonably to earn over the same period in mitigation of the loss. If the agent is an employee the rules mentioned in the following section will also apply.

Tax

If a foreign corporation trades in the UK through an agent who has, and habitually exercises, authority to do business on behalf of the company (other than an agent of independent status acting in the ordinary course of its business) the profits and capital gains of the foreign corporation attributable to the UK trade are in principle taxable in the same manner as those of a permanent establishment.

The question whether a foreign corporation trades "in" or merely "with" the UK is a matter of fact and depends upon (among other things) whether contracts are made in the UK. The UK corporation tax charge is designed to follow closely the OECD model provisions treating an agent as a "permanent establishment", but may be removed by the provisions of a specific treaty. It should be noted that there are important differences between the various double tax treaties.

An agent may be required to register for, and charge, VAT.

Employment and labour law

General matters

In English law, no formalities are necessary for the creation of an employment contract and every employee, as a matter of law, has a "contract" (even if it is not in writing). By statute, an employer must give each employee written particulars of certain material terms of his contract of employment within two months after employment commences.

There is an important distinction between an employment relationship (commonly called a contract of service) and the relationship between someone who hires another (usually called an independent contractor), which is usually described as a contract for services. The distinction is not always easy to draw, but it has far-reaching consequences as employees and some other workers enjoy a variety of rights under statute some of which are not extended to independent contractors. The distinction is also important in connection with tax and National Insurance and other matters such as pensions.

Common law

Unless expressly overridden by the terms of the parties' agreement, the common law implies certain terms into the employment contract. We mention below some of the more important implied terms.

At common law, in the absence of any express agreement, a term will be implied that the contract can be terminated by either party on reasonable notice. What is reasonable notice will depend on the employee's status, his length of service, the way in which he is paid and other factors. Statute imposes minimum periods of notice, but these are not necessarily a guide to what is reasonable. Normally, a written contract will provide for specific notice and the written particulars referred to above must do so.

An employee whose contract is terminated other than by being given notice of the required length, or if it was a fixed-term contract, before the end of that term, will, unless the termination was justified by misconduct, have a claim for wrongful dismissal. Generally, the claim is for the value of remuneration and benefits that would have been received over the period of notice or during the remainder of the fixed term, usually subject to the employee's obligation to mitigate his loss by obtaining other employment. This is a separate remedy from the statutory claim for unfair dismissal referred to below. As a general rule, the English courts will not order the specific performance of an employment contract.

The common law imposes on employees duties of loyalty and good faith. These implied terms have two important consequences. First, an employee must keep as confidential his employer's trade secrets. Secondly, an employee may not normally work for a competitor while employed by an employer. Many employment contracts include specific restraints on the employee that continue after the employment is ended (for example, restrictions on the disclosure of confidential information or solicitation of customers or other employees). Under common law, clauses which are an unreasonable restraint of trade will be unenforceable and this rule may apply to this sort of provision in an employment contract. The terms of the restraints that are sought to be placed on an employee must be assessed bearing in mind what is reasonable. A court will determine reasonableness by considering the scope of the restraint, the period for which it is imposed and its geographical application. The onus is on the employer to show that the restraint is reasonable and necessary to protect its legitimate business interests, for example confidentiality or trade connections.

Statute law

Under English law there are a wide variety of statutes and regulations affecting employment matters. There are detailed statutory provisions governing working conditions and prohibiting discrimination. These include matters such as health and safety at work, discrimination on grounds of race, sex, disability, religion or belief, sexual orientation and equal pay for work of equal value. Discrimination on grounds of age (both young and old) is also outlawed. A number of codes of practice have also been published with which any employer in the UK should be familiar. EU legislation is also of continuing importance – at least pending Brexit – and it is essential to be aware of developments in this area.

Unfair dismissal

An employee with two years' service who is dismissed "unfairly" has a right to compensation. He is entitled to a basic award based on length of service and his weekly pay and age, the maximum amount of which is £14,370 for 2016/17, and a compensatory award which is discretionary and subject to a maximum of £78,962 (or one year's pay if less) for 2016/17. The employment tribunal has power, in addition to making an award, to order reinstatement but an employer may choose to disregard the order for reinstatement and pay additional compensation.

The tribunal has power to order specially increased awards in a number of limited cases, for example where dismissal arises for raising health and safety concerns. The statutory compensation limits and the service requirement do not apply in discrimination cases or when the employee has suffered a detriment after 'blowing the whistle' on his employer's wrongdoing.

If the employer can show that he had a substantive reason for dismissal (such as poor performance or serious misconduct) and that he acted in all the circumstances fairly and properly and in accordance with relevant codes of practice, the claim can be defeated.

Redundancy

An employee with two years' service will be entitled to a redundancy payment if he is dismissed for redundancy which, in this connection, is narrowly and specifically defined. The statutory redundancy payment is based on the employee's weekly pay, length of service and age and the maximum amount is £14,370 (for 2016/17).

Under the legislation, an employer may be required to consult with recognised trade unions or employee representatives and in certain circumstances to give notice to the Secretary of State for Business Innovation & Skills prior to making employees redundant. Failure to comply with these procedures can give rise to special awards being made to the employees by an employment tribunal or to a fine, or in exceptional cases to directors being prosecuted for a failure to notify BIS. It is quite common for employers to have their own redundancy schemes which are more generous than those available under the statutory scheme. If the redundancy is unfairly carried out (whether in relation to the selection for redundancy itself or the procedures followed) the employee will be entitled to make a claim for unfair dismissal.

Other statutory matters

All women have a right to take maternity leave and may be entitled to statutory maternity pay. There are also rights to adoption leave, paternity leave and from April 2015 shared parental leave. Both male and female employees have a right to take parental leave and a reasonable amount of (unpaid) time off to take necessary action for dependants. All employees with at least 26 weeks' service have the right to request flexible working arrangements. As mentioned above, legislation provides minimum periods of notice for the termination of employment. There is also a statutory scheme for protection of employees from victimisation for trade union activities or acting as employee representatives. Under statute, there are restrictions on the sums which can be deducted from employees' wages. There are statutory limits on the number of hours and the length of shifts which an employee can be required to work, along with minimum entitlements to paid holiday. There is a statutory right to a minimum wage. Special protection exists for part-time workers, for those employed on fixed term contracts and for agency workers. There are also strict rules governing how an employer can use personal information relating to those who work for them. Under the Data Protection Act 1998 employees have various rights in relation to information held about them (including a right to access their personnel files).

Transfer of undertakings

The Transfer of Undertakings (Protection of Employment) Regulations 2006 are based on an EU directive. Where a business, or part of it, is outsourced or transferred as a going concern, the employment contracts of the transferor's employees employed in that business are automatically transferred to the transferee, who takes on nearly all the rights and obligations under those contracts. The Regulations impose duties to consult and to provide information to recognised trade unions or employee representatives prior to the transfer taking place. The Regulations have no application in the context of sales of company shares.

Labour law and collective agreements

An employer can be required to recognise a trade union where the majority of the workforce is in favour of this. Once recognised, the employer must collectively bargain with the union on behalf of the workforce in relation to pay, hours and holidays. The union is entitled to certain information to facilitate these negotiations. Trade union representatives are entitled to certain rights under statute such as time off to attend meetings and not to suffer any detriment due to their position.

Organisations with 50 or more employees have to agree a consultative body with employees if at least 10% of the workforce (or at least 15 employees, if 10% of the workforce is fewer than 15 employees) demand it, unless they have pre-existing agreements in place.

There are a number of statutes dealing with industrial action, including strike action. This is a complicated topic and, in general, is beyond the scope of this note, but the following points may be of interest:

- In the UK, there is as such no right to strike, but within certain statutory limits, where industrial action is taken in furtherance of a trade dispute, the trade unions involved will enjoy immunity from legal action.
- Before taking industrial action (including strike action) trade unions must consult their members by ballot and failure to do so results in loss of immunity. Unions are required to give an employer fourteen days' notice both of the ballot and of any industrial action. Considerable limitations are now placed upon the right of trade unions to picket and to take action against employers who are not a party to the original dispute.
- Where action is taken or threatened in a situation where the union does not enjoy immunity, employers may be able to obtain injunctions against the trade union. Failure by the trade union to comply can result in severe consequences for the union, including sequestration, fines for contempt of court and awards of damages to the employer.
- The dismissal of an employee for taking part in official action (ie one which complies with the ballot and notice requirements) will generally be automatically unfair. Dismissals of employees resulting from unofficial strikes are only unfair if the employer acts selectively e.g. by only dismissing some of the strikers.

Employment of foreign nationals

If an employer is seeking to employ individuals who are not European Economic Area Nationals, it should check the applicable immigration requirements. We would be very happy to coordinate advice on this area if required.

It is a criminal offence for any officer, manager or senior employee in an organisation to knowingly employ an illegal worker.

Pensions and national insurance

There are currently three sources of retirement income in the United Kingdom:

- state pension entitlement;
- occupational pension schemes; and
- personal pension schemes.

Workplace-based pension provision typically is based on state pension (which is financed through national insurance contributions) and either an occupational or group personal pension scheme to which the employer, and increasingly the employees, contribute.

All personal and most occupational pension schemes will be registered with HMRC. Registration confers important tax reliefs, but subjects the scheme to certain requirements concerning the ways in which benefits are paid (see "Tax treatment of registered pension schemes" below).

National insurance

Prior to 6 April 2016, there were two elements to state pension entitlement:

- basic state pension (a flat rate benefit paid at state pension age to all who had paid or been credited with adequate national insurance contributions during their working life); and
- state second pension ("S2P", which replaced the State Earnings Related Pension ("SERPS") in 2002). This was calculated by reference to earnings during the pensioner's working life.

these two elements of state pension continue to be payable to individuals who reached state pension age before 6 April 2016.

A single-tier pension, combining basic state pension and S2P into one flat-rate weekly payment, was introduced in April 2016 and is payable to individuals who reach state pension age on or after 6 April 2016. The single-tier pension is set just above the threshold for means-tested support. For 2016/17, the full weekly rate is £155.65. To obtain the full rate, an individual will need to have paid 35 qualifying years of National Insurance contributions ("NICs") during their working life. A minimum of ten qualifying years will be required to obtain the single-tier pension in part.

The single-tier pension is paid from state pension age. This is currently 65 for men, though the state pension age for women is moving gradually upwards from age 60 (according to their date of birth). The government intends that state pension age will be raised for all, in stages, to age 68 by 2046.

National Insurance Contributions

NICs are made by both the employer and the employee based on the employee's gross weekly earnings. The rates are revised each year. For 2016/17, employees' national insurance contributions are 12% on weekly earnings between £155 and £827 and 2% above £827. Employers' contributions for 2016/17 are 13.8% on all weekly earnings in excess of £156 (without upper limit), including on taxable benefits in kind.

Contracting-out of State Second Pension

Prior to April 2016, it was possible for a pension scheme to "contract-out" of the state second pension (or prior to 6 April 2002, SERPS). The scheme promised to provide a level of benefit to replace or exceed the state benefit in return for lower NICs (for both employees and the employer) or statutory rebates. Members of contracted-out schemes received no S2P benefit (SERPS benefit prior to 6 April 2002) in respect of their time in contracted-out service or, depending on their income, a reduced level of benefit. Contracting-out on a money purchase basis has not been possible since 2012 and contracting-out on a final salary basis has been abolished from April 2016.

Occupational Pension Schemes

Occupational pension schemes are almost always established under trust. Assets are held and benefits are administered by a board of trustees. The trustees (or directors of a corporate trustee) are usually employees and managers (or retired employees) of the employer, although the use of professional trustees is increasing. One third of the board of trustees must be nominated by members of the pension scheme.

Occupational pension schemes fall into two main categories. These are:

- defined benefit schemes or "final salary schemes"; and
- defined contribution or "money purchase" schemes.

Occupational pension schemes are regulated by the Department for Work and Pensions and the Pensions Regulator, which regulates the funding of pension schemes and provides guidance to trustees regarding good practice in pensions administration.

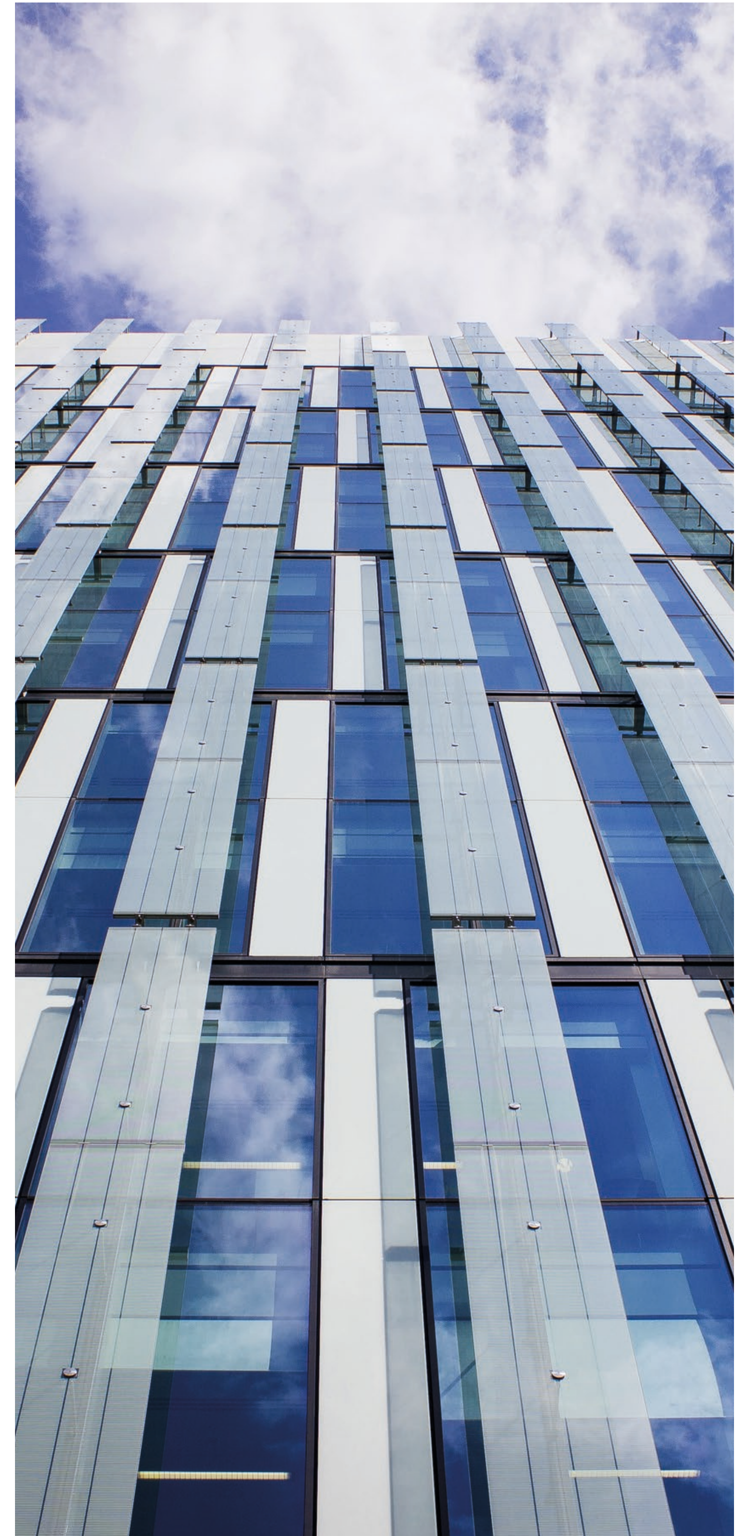
Defined benefit schemes

Members of a defined benefit scheme are promised a pension at retirement that will be paid for the rest of their life, usually based on a percentage of pay. For example, employees in a final salary defined benefit scheme typically accrue 1/60th or 1/80th of final pay per year of service. Employees may be required to contribute a percentage of pay in order to accrue benefits under the scheme, but the employer is responsible for meeting the balance of the cost of the benefit, and the cost is impossible to know with certainty at the time the benefits accrue.

Legislation requires defined benefit schemes to have a level of funding which is likely to be sufficient to provide the benefits promised to members. This level of funding is called the "scheme specific" level of funding, or the scheme's "technical provisions". The funding level is normally agreed between the employer and the trustees but for some schemes, the trustee has a unilateral power to set an appropriate funding level. Defined benefit schemes are expected to have a plan in place to reach this level of funding.

If a defined benefit scheme does not have sufficient resources to secure members' benefits on termination, or if a participating employer leaves a multi-employer scheme that is not sufficiently funded, the deficit or the employer's share of the deficit will be a debt due to the trustees from the employer. This deficit is calculated on a "buyout" basis – that is, on the basis that the promise will be secured with annuities from an insurance company.

Since 2005, the benefits promised to members under defined benefit schemes have been insured by the Pension Protection Fund (the "PPF"), a public body. The PPF insures pensions in payment and 90% of pensions of active or deferred members up to a cap of £37,420.42 per annum per member, assuming the benefit is taken at age 65. The PPF is financed by the assets of the schemes it takes over, plus a levy on defined benefit pension schemes that is intended to be calibrated to the level of risk that the scheme itself will fall into the PPF.



Defined contribution schemes

Under a "money purchase" or defined contribution (DC) pension scheme, the level of benefit at retirement is not guaranteed. Instead a member is entitled to whatever level of benefits can be purchased at retirement from a notional account established on his behalf, which consists of contributions in respect of him together with the investment return on those contributions up to the date he draws his benefit.

Typically, the trustees of a DC occupational scheme will have chosen a range of investment options for members designed to suit their investment risk tolerance. The member then may choose the funds that they believe best suit their circumstances. Many schemes will include a 'default fund' designed to be appropriate for the majority of membersinto which the members' contributions will be invested if they do not actively choose a different fund.

Occupational DC schemes, like defined benefit schemes, are overseen by the Pensions Regulator, which provides guidance to the trustees of these schemes regarding funding and information to members to help them make wise choices.

From 6 April 2015, new requirements relating to administration and governance of DC schemes apply, including:

- a trust scheme must have a chair;
- "core financial transactions" (which include payments to members and transfers between investments) must be processed promptly and accurately;
- at least once a year trustees must assess whether charges and transaction costs borne by members represent value for money;
- the scheme's default fund must be reviewed every three years. The trustees must also prepare a statement of investment principles for the default fund;
- an "annual governance statement" must be prepared within seven months of the end of each scheme year; and
- a charges cap applies to default funds in schemes which are qualifying schemes for auto-enrolment purposes (see below).
- New flexibilities for DC scheme members were also introduced in April 2015. An individual with DC pension savings in a registered pension scheme can generally speaking access their DC fund in full when they reach age 55, provided their pension scheme permits this. If a scheme does not offer the new flexibilities, an individual can transfer to a different DC scheme in order to take advantage of the new regime.

Hybrid schemes

The term "hybrid" scheme is used to describe an occupational scheme that has both defined contribution and defined benefit elements. The term may be used to describe a scheme that offers a defined benefit section for one group of employees and a defined contribution section for a group of later joiners, or a more complex scheme in which benefits themselves consist of a mixture of defined contribution and defined benefit elements.

Personal pension schemes

Personal pension schemes are established by insurance companies or others authorised to operate such schemes and offer pensions on a defined contribution basis. In these schemes, like defined contribution occupational schemes, an account is established and held for the member. The member's benefit at retirement will be based on the contributions made to that account and the investment return.

Group personal pensions ("GPP"s) are an increasingly popular choice for employers who wish to, or are required to, offer some form of pension provision, but who do not want the responsibility that a trust entails. The employer/sponsor of a GPP chooses a provider and may choose a range of investment funds that the provider will offer its employees. Employers are often able to negotiate better terms for their staff on a group basis than individual employees would be able to access in the retail market.

Personal pension schemes are regulated mostly by the Prudential Regulation Authority under the Financial Services and Markets Act 2000. The Pensions Regulator also oversees these schemes to some extent because they are considered "workplace-based" schemes, and provides "best practice" guidance to employers who sponsor such schemes. They are insured in the event of the failure of the provider by the Financial Services compensation Scheme.

Auto-enrolment

Large employers were required to begin automatically enrolling workers into qualifying pension schemes from October 2012, and all employers employing more than 50 employees became subject to the new regime by April 2015. Under the auto-enrolment regime:

- All employers, regardless of size, are obliged to enrol "jobholders" who earn more than £10,000 and are aged 22 to state pension age, automatically in a pension scheme meeting the "quality requirements", unless the jobholder falls within one of a limited number of exceptions.
- Employers can use an existing scheme or a new arrangement for auto-enrolment, as long as it meets certain requirements. These requirements vary depending on the type of pension arrangement.
- Employers also need to enrol those who do not qualify for auto-enrolment into a pension scheme if they so request. They need to pay contributions for those earning "qualifying earnings" (more than £5824 per year).
- Employers must conduct a re-enrolment exercise every three years.
- Until 2018, only minimal contributions will be required. From April 2019, employers using a DC scheme for auto-enrolment must ensure that contributions equalling at least 8% of qualifying earnings (£5,824 to £43,000 per year) are paid into the scheme for each qualifying jobholder (with 3% coming from the employer). Alternatively, an employer may certify that minimum levels of contributions are being paid.

Tax treatment of registered pension schemes

A registered pension scheme may be personal or occupational, defined benefit or defined contribution. Tax relief is available for both the employee and employer on the contributions to a registered pension scheme. National insurance contributions, however, remain payable on employee contributions.

An employee who is UK resident or who has relevant earnings chargeable to UK tax will receive tax relief on contributions up to the higher of £3,600 a year or 100% of all UK chargeable earnings. The total of all tax-relieved contributions and accruals attributable to an individual (from any source) in a year is capped at the "annual allowance", which for 2016/17 is £40,000, tapered down to £10,000 for individuals with incomes of £150,000 or more.

A registered scheme's return on its investments is mostly exempt from income tax and capital gains tax. There are some restrictions on investments. For example, occupational pension schemes are limited as to the extent they can hold employer-related investments. Restrictions on personal scheme investments are designed to prevent members from evading inheritance tax or purchasing pensions assets that the member then uses, such as artwork or holiday homes.

Members generally pay income tax on pension income after they retire. Most schemes allow them to take up to one quarter of their benefit as a tax-free pension commencement lump sum, however. On death prior to putting benefits into payment, a lump sum free of inheritance or income tax may be made available to the member's beneficiaries, provided the scheme administrator has discretion over the selection of those beneficiaries.

A member's benefit from any pension scheme in which he participates is tested against the lifetime allowance when he commences payment of the pension. Payments in excess of the lifetime allowance attract an extra tax charge. The lifetime allowance for the 2016/17 tax year is £1 million.

Equal treatment

Occupational pension schemes must treat men and women equally. All schemes should have equal retirement ages, benefits, and entry conditions for men and women, although it is still permissible for them to use different annuity factors and commutation rates (converting pension to lump sum) which take account of women's longer life expectancy.

From 1 December 2006 it has been unlawful to discriminate in a pension scheme on grounds of age. The legislation contains some exceptions for

age-related rules in pension schemes – for example, it is still permissible to have a normal retirement age in relation to which benefits are calculated. However, it is generally accepted that employees who continue to work past normal retirement age should be allowed to continue to accrue benefits on the same basis as younger employees. Age-related contributions to defined contribution schemes should be based on a reasonable actuarial assessment of the differences in contribution levels required to provide roughly the same benefit to older and younger employees when they reach retirement age.

It is unlawful to exclude part-time or fixed-term employees from membership of a pension scheme or to provide less favourable benefits, unless different treatment is justified on objective grounds.

Disclosure of information and consultation

Members of occupational schemes must be given basic information about the scheme and be supplied on request with copies of its legal and financial documentation. Members also have the right to statements of the entitlements they have built up in a scheme and the rights and options available to them in respect of those entitlements. Special disclosure requirements apply in relation to DC members, including an obligation to tell members about the availability of PensionWise, a free guidance service set up by the government.

Employers with 50 or more employees must consult employees before making decisions that impact on employee contributions or which reduce future accrual.

Unregistered pension schemes (Employer Financed Retirement Benefit Schemes)

Prior to the effective date of the Finance Act 2004, "unapproved" top-up schemes for highly compensated employees were common. The Finance Act changes have allowed more flexible funding of and payment from registered pension schemes, and the tax position of non-registered schemes is now less favourable. As a result, non-registered schemes are less prevalent than unapproved schemes were in the past.

Unregistered schemes are now known as employer financed retirement benefit schemes or EFRBSs. Where such schemes are funded, they do not enjoy favourable tax treatment of investment returns, and contributions are treated as compensation to the employee. Payments from an EFRBS are subject to income tax and NICs, and in some cases the employer contribution may not be eligible for relief from corporate tax. Payments of benefits outside of a registered pension scheme to employees who are already retired may also be treated as payments from an EFRBS. With the introduction of restricted tax relief for high earners, these schemes are again becoming more popular. However, anti-avoidance "disguised remuneration" provisions have been introduced which impose immediate income tax and NICs on arrangements made by an employer to remunerate an employee through a third party. These rules do not apply to registered schemes but can apply to unregistered schemes, including EFRBS. Although unfunded EFRBS are currently outside the scope of disguised remuneration, rules requiring disclosure of tax avoidance schemes to HMRC will catch some unfunded EFRBS.

Cross border schemes

There is no requirement that a member of an occupational pension scheme be employed in the United Kingdom, although of course only UK taxable income will be given favourable tax relief.

However, when an employee working in another EEA state accrues benefits in a UK-based scheme, that scheme may inadvertently breach the requirements for a "cross-border" scheme under the legislation passed in implementation of the Pensions (IORP) Directive 2003/41/EC. Cross-border schemes must be authorised by the Pensions Regulator and in order to be authorised must meet stringent funding requirements. The participation of a "seconded employee", that is, one whose habitual place of employment was in the UK prior to being employed in the EEA member state and who intends to return to the UK at the end of the secondment (among other requirements) will not cause the scheme to breach the cross-border requirements.

Transfer of Undertakings

Where an employee who is an active member (or eligible to become an active member) of an occupational pension scheme is transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006, the treatment of pension obligations depends on whether he participates in a personal pension scheme or an occupational pension scheme.

If he participates in a personal pension scheme, obligations will transfer to the receiving employer in accordance with the terms of his employment contract. By contrast, most occupational pension schemes rights do not transfer, although early retirement rights (payable until normal retirement age) will generally do so. Instead, the receiving employer is required to provide (as a minimum) either a defined benefit scheme with minimum benefits or access to a defined contribution scheme with employer contributions equal to either those of the employee (capped at 6% of basic pay) or, those paid by the seller immediately before the transfer. In addition, the employee's redundancy pension rights (if any) will transfer.

Pensions in transactions

Liabilities to defined benefit pension schemes may present complicated issues in the purchase or sale of a company, and increasingly even in asset sales. Pension scheme trustees and the Pensions Regulator may become involved where there is a danger that the "covenant" or ability to pay pensions liabilities, of an employer is being weakened as a result of the transaction. It is therefore important to identify early on whether any of the companies involved participate or have participated in a defined benefit pension scheme, and to take advice regarding how any liabilities to that scheme will be treated. It should be noted that the Pensions Regulator's anti-avoidance powers extend to any parties "associated" or "connected" with participating employers.

Residence and domicile

An individual's tax position will depend on whether he or she is resident or domiciled in the UK for tax purposes. This is a matter on which the individual will need separate detailed advice. However, there follows a broad summary of the position.

It should be noted that an individual's residence and domicile status need not be the same as that of his or her spouse or civil partner.

Residence

An individual's UK residence is determined by reference to a statutory test (the "Statutory Residence Test" or "SRT").

Under the SRT, an individual ("P") is resident in the UK for a tax year (ie from 6 April to 5 April) ("year X") if **either** of the following two tests is met:

– automatic residence test; or

– sufficient ties test.

Automatic residence test

This test is satisfied for year X if P meets at least one of the four automatic UK tests and none of the five automatic overseas tests.

Automatic UK tests

First test – P spends at least 183 days in the UK in year X.

Second test – P has a home in the UK during all or part of year X and is present in that home for at least 30 days in year X, and there is a period of 91 consecutive days (at least 30 of which fall within year X) when P either has (a) no home overseas or (b) one or more homes overseas but is present in each home on fewer than 30 days in year X.

Third test – P works sufficient hours (broadly, full-time) in the UK over a period of 365 days (all or part of which falls within year X) without significant break from UK work (broadly, 31 days or more), more than 75% of P's working days in that 365-day period are UK working days and at least one day which falls in both that 365-day period and year X is a UK working day.

Fourth test – P dies in year X, was UK resident for each of the three previous tax years, had a home in the UK at the time of his or her death and, if P had an overseas home during all or part of year X, did not spend a sufficient amount of time there in year X (broadly, 30 days or more).

Automatic overseas tests

First test – P was resident in the UK for one or more of the three tax years preceding year X, spends fewer than 16 days in the UK in year X and does not die in year X.

Second test – P was resident in the UK for none of the three tax years preceding year X and spends fewer than 46 days in the UK in year X.

Third test – P works full-time overseas for year X without significant break from overseas work (broadly, 31 days or more), works fewer than 31 days in the UK in year X and spends fewer than 91 days in the UK in year X.

Fourth test – P dies in year X, spends fewer than 46 days in the UK in year X and was either (a) UK resident for neither of the two tax years preceding year X or (b) not UK resident for the tax year preceding year X and the year before that was a split year under certain specified cases.

Fifth test – P dies in year X, he or she would have met the third automatic overseas test (full-time work overseas) had this been assessed from the start of year X up to the day before P's death, and P was UK resident for neither of the two previous tax years because (a) he or she worked full-time overseas for each of those years or (b) he or she worked full-time overseas for the tax year preceding year X and the year before that was a split year under certain specified cases.

Sufficient ties test

Even if P meets none of the automatic UK tests and none of the automatic overseas tests, he or she will still be UK resident in year X provided he or she has sufficient UK ties for that year. Whether UK ties are "sufficient" will depend on whether P was resident in the UK for any of the previous three tax years, and the number of days that P spends in the UK in year X. The position is set out in the tables below.

Where P was resident in the UK in one or more of the three tax years preceding year X:

Days spent by P in the UK in year X	Number of ties that are sufficient	UK ties
More than 15 but not more than 45	At least 4	A family tie An accommodation tie A work tie A 90-day tie A country tie
More than 45 but not more than 90	At least 3	
More than 90 but not more than 120	At least 2	
More than 120	At least 1	

Where P was resident in the UK for none of the three tax years preceding year X:

Days spent by P in the UK in year X	Number of ties that are sufficient	UK ties
More than 45 but not more than 90	All 4	A family tie An accommodation tie A work tie A 90-day tie
More than 90 but not more than 120	At least 3	
More than 120	At least 2	

Broadly, these UK ties are defined as follows:

Family tie – P has a family tie for year X if he or she has a "relevant relationship" with another person who is UK resident for year X (ie spouse or civil partner from whom P is not separated, unmarried partner, child under the age of 18);

Accommodation tie – P has an accommodation tie for year X if he or she has a place to live in the UK which is available to P for a continuous period of at least 91 days and P spends at least one night at that place in that year;

Work tie – P has a work tie for year X if he or she works in the UK for at least 40 days (continuously or intermittently);

90-day tie – P has a 90-day tie for year X if he or she has spent more than 90 days in the UK in the tax year preceding year X, the tax year preceding that tax year, or in each of those tax years; and

Country tie – P has a country tie for year X if the UK is the country in which he or she is present for the greatest number of days.

Split year treatment

Where P comes from overseas to live or work in the UK (or leaves the UK to live or work overseas) in year X, and certain conditions are met, year X will be split into a resident and non-resident part.

Domicile

An individual becomes domiciled in the UK if he or she decides to make the UK his or her permanent home.

UK income tax

Separate taxation of husband and wife

Husbands and wives are taxed separately and must submit their own tax returns. Each enjoys a personal allowance, ie an amount of tax-free income (£11,000 for the tax year 2016/17, subject to an income limit of £100,000).

A husband and wife have their own exemptions and sets of rate bands. There are detailed rules to determine how income from jointly owned assets should be treated.

Rates

The basic rate of income tax for 2016/17 is 20% on taxable income up to £43,000. For 2016/17 the higher rate of 40% is payable on taxable income of between £43,001 and £150,000, with an additional rate of 45% payable on taxable income over £150,000. Savings income and dividend income are dealt with separately.

If an individual's total taxable income is £17,000 or less he will pay no tax on his savings income. Otherwise, the tax payer is entitled to a personal savings allowance on his savings income, which is tax-free. The amount of the allowance depends on the taxpayer's income tax bracket. For basic rate taxpayers it is £1,000, for higher rate taxpayers it is £500, and there is no personal savings allowance for additional rate taxpayers. Amounts of personal savings income over the allowance are taxed at the taxpayer's usual rate of income tax.

From 6 April 2016 UK resident shareholders pay no income tax on the first £5,000 of taxable dividend income. This income will still count towards an individual's basic or higher rate limits. Dividends received over the £5,000 allowance will be taxed at 7.5% for income in the basic rate band, 32.5% for income in the higher rate band and 38.1% for income in the additional rate band.

In calculating his taxable income, an individual can deduct certain allowances, including personal allowances (see above). There is no tax relief for mortgage interest, or most other interest costs.

Income subject to tax

All income from UK sources is subject to UK income tax. This includes dividends from UK companies, interest from UK bank and building society deposits, income from UK properties and from trades and employments carried on in the UK.

Normally, someone who is resident and domiciled in the UK will be taxable on his worldwide income. Prior to 6 April 2008, individuals who were resident, but not domiciled, in the UK (and Commonwealth or Eire citizens who were resident but not ordinarily resident here), were generally not subject to UK income tax on income derived from overseas except to the extent that it was remitted to the UK. However, from 6 April 2008, in most cases individuals wishing to use the remittance basis of taxation are required to make an annual claim via their Self Assessment returns. They must also pay the annual Remittance Basis Charge of £30,000 (where they have been resident in the UK in the tax year in which the claim is made, and for at least seven of the previous nine years) or £50,000 (for individuals who have been UK resident for 12 or more of the 14 tax years before the year of claim). A claim for the remittance basis is not required in certain circumstances, for instance, where an individual's unremitted income and gains are less than £2,000 in the tax year in question. Where the remittance basis does not apply, individuals are taxed on the "arising basis" (ie they pay UK tax on their worldwide income and gains in the tax year in which such income and gains arise).

Treaty relief

An individual who is resident outside the UK may, if his employment is structured appropriately, be entitled under an applicable double tax treaty to exemption from UK tax on all his or her employment income, even in relation to UK duties. Normally, to benefit from this exemption, he must be employed and paid by a non-UK resident employer and must not be present in the UK for more than 183 days in the tax year. In addition, his remuneration should not be borne by a UK branch of the non-resident employer.

Secondment of employees to UK subsidiaries

There is rarely a UK tax advantage in seconding an employee from a parent company to its UK subsidiary if the employee's duties are to be performed in the UK. Whether or not the employee is seconded to the UK subsidiary, it should be noted that:

- the foreign parent may become taxable in the UK if the employee constitutes its permanent establishment, or if the employee exercises the central management and control of the foreign parent in the UK;
- the employee will still have the benefit of UK employment protection legislation; and
- a non-EC national will still need a work permit or other entry clearance.

Additionally, the operation of PAYE, VAT and treaty relief will depend on how the arrangements are structured.

The 'Pay As You Earn' system ('PAYE')

The UK operates a system, known as PAYE, for the deduction of income tax and national insurance contributions from an individual's salary or wages. The individual is then paid the net amount.

It is the responsibility of an employer to deduct income tax from the pay of every employee working in the UK, in accordance with tables issued by HMRC, and to account to HMRC each month or quarter for the tax deducted and the employer's and employee's National Insurance contributions.

UK law defines taxable pay very widely. Many expenses payments and benefits in kind are subject to income tax under PAYE.

Where an employee is from a country within the EEA or with which the UK has a reciprocal agreement or double contributions convention, an exemption from the payment of UK employee and employer NICs is allowed if the employer obtains (on the employee's behalf) the appropriate form demonstrating to the UK authorities that contributions are still being paid in the "home state". This exemption lasts until the period stated in the certificate has elapsed, though there is a possibility to extend the duration of the exemption in certain circumstances. Treatment of national insurance contributions after expiry of the exemption will depend on the terms of the regulations governing the EEA, the reciprocal agreement or the double contributions convention.

Where the employee is from a country outside the EEA or with which there is no reciprocal agreement or convention, full national insurance contributions should be paid from the date the employee's UK employment begins. However, subject to certain conditions relating to the non-UK employer, if the employee is not normally living or working in the UK and has been sent to work here temporarily, there will be no liability for contributions for the first 52 weeks after the employee arrives in the UK.

Prior to 1 May 2010, an employer was not liable to make contributions if it was not resident or present or did not have a place of business in the UK. In that case, unless the employer volunteered to pay them, the employees' contributions were collected directly from the employee via a modified PAYE scheme set up by the local tax office. Where the employee was seconded to a UK employer by an employer with no place of business in the UK, the UK "host" employer was liable to pay employers' contributions in respect of the employee.

Since 1 May 2010, an employer with no presence in the UK is deemed to be present here. This means that the employer will have an employer NICs liability and will need to account to HMRC for this liability. However, where a "host" employer was, prior to 1 May 2010, responsible for NICs, HMRC will allow this arrangement to continue.

UK capital gains tax ('CGT')

An individual resident in the UK in a tax year may be subject to CGT on gains arising when he or she disposes of, or realises a capital sum from, assets situated anywhere in the world.

In the case of an individual who is not domiciled in the UK, tax is generally chargeable in respect of gains derived from foreign situated assets on an arising basis unless the individual has claimed remittance basis taxation.

CGT is charged at 10% or 20% depending upon the individual's total amount of taxable income. Husbands and wives each enjoy an annual exemption from CGT (£11,100 for the tax year 2016/17). Transfers between spouses are exempt.

Since 5 April 2008, entrepreneur's relief may apply to gains arising on disposals of business assets as part of the disposal of a trading business carried on by an individual.

UK inheritance tax ('IHT')

IHT is chargeable on certain transfers of assets during an individual's lifetime by way of gift, or at an undervalue where the individual intends to confer a benefit on the recipient. There are numerous exemptions from the charge and in particular tax may not be chargeable if the individual survives seven years and has not retained any benefit from or interest in the property concerned.

IHT is also chargeable on transfers of assets on an individual's death including assets under which he has an interest under certain trusts. Transfers to spouses are exempt.

An individual has an annual IHT exemption (currently £3,000) for lifetime transfers, which can be carried forward for one year if it is not utilised.

IHT applies to individuals domiciled in the United Kingdom in respect of their worldwide assets and to individuals domiciled abroad in respect of their UK assets. "Domicile" has for this purpose an extended meaning: a person resident in the United Kingdom for 17 out of the 20 years preceding the chargeable transfer, or who had their permanent home in the UK at any time in the three years before they died, will be regarded as domiciled in the United Kingdom for IHT purposes, even if not so regarded under the usual rules. The government intends that from April 2017 non-UK domiciled individuals will be deemed UK domiciled for all tax purposes after they have been UK resident for 15 of the past 20 years.

IHT is payable at the applicable rate on the value of the property transferred. The tax is not payable until a threshold, which is currently £325,000, is reached. Thereafter, the tax is chargeable at a flat rate of 40% or, in the few cases where tax on lifetime transfers is immediately payable, 20%. A new rate of 36% has been introduced where 10% or more of the net estate is left to charity. In determining whether the threshold has been reached, the total value of chargeable transfers made in the previous seven years is added to the value transferred by the current transfer.

It is now possible to transfer any unused IHT nil rate band that has not been utilised on a person's death to the estate of the surviving spouse.

Appendix I

Acquisition of an existing UK business

General

A company wishing to set up a commercial operation in the UK may sometimes do so by acquiring an existing business. The two most usual methods are by the acquisition of the shares in a UK company or by purchasing a UK company's business. In the latter case it is possible to select which assets of the business are acquired and the extent to which liabilities of the business are taken over (if at all).

There are relatively few restrictions on who may acquire or operate a UK company, whether public or private. In general, legitimate foreign investors should be able to make acquisitions without legal impediment.

In the UK, the acquisition of a public company (listed and unlisted) is governed by the City Code on Takeovers and Mergers (the "Code"). However, the Takeover Panel (which administers the Code) may permit derogations from some or all of the Code provisions for acquisitions of unlisted public companies, depending upon the circumstances. The Code sets out various rules in relation to takeovers of public companies and dictates the time limits and procedures to be observed.

On the other hand, the acquisition of a private company or the assets of a business is less regulated than the acquisition of a public company. There are certain regulations protecting buyers of shares from misrepresentations as well as rules on financial promotions to consider. Otherwise, English law allows the parties considerable freedom to agree the terms of the acquisition in the contractual documentation.

Asset purchase

The acquisition of the business of a UK company is normally dealt with by way of an asset purchase agreement. There are various reasons why it may be advantageous to acquire assets rather than shares, for example, all or certain liabilities can be left behind with the seller, the buyer can choose to take only part of a company's business and it may be preferable from a tax perspective. Employment contracts should be carefully considered on a business sale, as employment legislation provides an exception to the general rule that the buyer can choose which part of the business to take control of – in most cases, the employees will automatically transfer with the business.

Share acquisition

With a share acquisition, the acquiring company may make an offer for the whole of the issued share capital of the company or for a proportion of the issued share capital sufficient to give it voting control. On a share sale, the actual structure and substance of the company stays exactly the same and it is only the ownership which will change.

Merger control

National and supranational organisations may impose restrictions on the ability of a company to purchase an existing business or company. If clearance is required, the process will be timely and costly and overall value of the acquisition may be compromised. Such issues should be considered from an early stage in the deal.

Tax

Early consideration should be given to the tax consequences of the proposals.

Appendix II

Information needed to incorporate a company (or to transfer a shelf company)

The following basic information is required by Hogan Lovells in order to transfer a shelf company or incorporate a new company:

Directors

In respect of each new director of the company (of whom it is recommended there should be at least two):

- full name (for an individual, their first names, surname and any former names and for a corporate director, its company name);
- nationality;
- usual residential address (or for a corporate director, its registered address or principal place of business) and service address;
- business occupation;
- the country, state or part of the UK in which the director is usually resident; and
- date of birth.

Share capital

The share capital of the company (together with other details in order to complete the "statement of capital").

Shareholders

In respect of each shareholder:

- full name;
- address; and
- instructions as to any allotment of further shares in the company.

PSCs

In respect of each individual PSC:

- full name;
- service address;
- the country or state (or part of the United Kingdom) in which the individual is usually resident;
- usual residential address;
- nationality;
- date of birth;
- the date on which the person became a registrable person in relation to the company;
- nature of control (and extent); and
- confirmation of consent or knowledge.

In respect of each corporate PSC (or "registrable relevant legal entity" as defined in CA 2006):

- corporate or firm name;
- registered or principal office;
- legal form of entity and law under which it is governed;
- register of companies in which entity is registered (and registered number);
- the date on which the entity became a registrable person in relation to the company; and
- nature of control (and extent).

PSCs that are corporations sole, governments, local authorities, government departments or international organisations are subject to slightly different requirements.

Name

The proposed new name of the company with, if possible, alternative suggestions in case the first choice name is not available.

Management and procedure

Any special requirements for the operation of the company so as to enable an assessment to be made about changes that may be needed to the standard articles.

Auditors

The name and address of the firm.

Registered office

The full postal address of the proposed registered office.

Bankers

The name and branch of the bank which is to act as banker to the company, the identity of the signatories and any limits on the authority of the signatories.

Further information

If you would like further information on any aspect of this note, please contact a person mentioned below or the person with whom you usually deal.

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This note is written as a general guide only and reflects the law at 1 October 2016. It should not be relied upon as a substitute for specific legal advice.

Notes

Notes

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