

ESTABLISHING A BUSINESS IN THE UK

A guide to establishing business in the United Kingdom gives an overview of the basic issues encountered when establishing a [business](#) in UK. This document covers the following aspects:

1. legal systems
2. Business Vehicles
3. Corporate governance issues
4. Foreign investment issues
5. Currency regulations
6. Tax employment issues

1. Legal Systems

Basis of legal system in UK:

England and Wales come together to form one jurisdiction called the English Law, based on common law. The Welsh Assembly has delegated powers on limited matters which include:

- Agriculture
- Culture
- Education
- Environment
- Food and health
- Housing
- Social welfare
- Town and country planning
- Welsh language

The Scottish law is an amalgamation of common law and the civil law, so much so that there is a clear distinction between the Scottish law and the English law.

The Northern Ireland law is only slightly different from English common law. Legislation can be passed on several matters including:

- Health
- Social services
- Education
- Employment
- Social security
- Pension
- Environment
- Transport

The Channel Islands and the Isle of Man also have separate legal systems that are used as “tax havens”. It is important to seek [legal advice](#) when establishing a business in the above mentioned jurisdictions.

This article deals with English Law and the different aspects related to it.

2. Business Vehicles:

- a. Public/Private companies limited by shares:

Public companies face more regulations than private companies. Offering shares is a way to raise capital by public companies. However, private companies are a more common business vehicle. Some advantages of a limited company include:

- No liability for shareholders for company's debts
- Sale of share determines transfer of ownership
- Investors willing to [invest in companies](#)

On the other hand, some disadvantages include:

- Strict disclosure requirements
- Rigid capital structure
- Inability to return capital to shareholders
- Double tax charges

3. Limited liability partnership (LLP)

LLPs are commonly used for advisory businesses and joint ventures and there must be at least two members of an LLP. Some of the advantages of LLP include:

1. No additional LLP debt liability for members except the amount of capital agreed upon.
2. Flexible structure.
3. Members can avoid double tax charge

There are also some disadvantages:

1. Strict disclosure requirements
2. Transferring ownership includes selling off the LLP business or replacing members

- **General partnership**

General partnerships are used for professional advisory businesses and each partner is an agent of the partnership. There must be at least two members at one time and partnership will cease if this doesn't happen. The main advantages include:

1. No registration or need for public disclosure
2. Flexible structure
3. Partners can avoid double taxation charge

Disadvantages include:

1. One partner can incur debt on behalf of others as unlimited liability to creditors for partnership's debts.
2. Complications in transferring ownership

- **Other Vehicles**

Other vehicles include:

- Company limited by guarantee
- Unlimited company
- Limited partnerships
- Open ended investment company
- European Company

3. Establishing an international presence

The most common approach to setting up an international business is to establish a subsidiary or joint venture in the host country. This allows for more control for the company.

- **Establishing a subsidiary**

A subsidiary is usually a private company and is a separate legal entity from the original international company. The main advantages of this include:

- a. Complete ownership of the business
- b. Local businesses and lenders are familiar with the local business format

Disadvantages include:

- a. High upfront costs
- b. Extra layer of bureaucracy as decisions are taken by board of the subsidiary

- **Establishing a branch**

Also known as a representative office, a branch is not a separate legal entity, but only a presence of the overseas company in the UK. The main advantages include:

- a. Inexpensive and easier to establish
- b. Minimum registration requirements
- c. Complete ownership and control of local business with decision autonomy

Disadvantages include:

- a. No separate legal personality
- b. Parent company liable for debts and obligations
- c. Local businesses may not understand overseas company structure

- d. Few assets of the international company in UK to provide as security
- e. No autonomy in major decisions

- **Entering into a joint venture**

A venture can take place in partnership with a local partner. The main advantages of this include:

- a. Local partner may have good local market knowledge and local contacts
- b. Easy market entry
- c. Local businesses and lenders familiar with local business format

Disadvantages include:

- a. Overseas company has a hard time delegating control to local partners
- b. Substantial upfront advisory and set up costs
- c. Lengthy negotiations for finance, management and profit sharing between local partners and overseas company partners

- **Appointing a local agent, distributor or franchisee**

An agent works on behalf of an overseas company. A franchisee uses the overseas company's names and logos. The main advantage of this includes:

- a. Less upfront and advisory costs
- b. No need to publish accounts or other corporate details
- c. Partner's local knowledge and reputation can be used by overseas party

The main disadvantages include:

- a. Heavy reliance on the local agent with no direct control
- b. Arrangement on contractual terms which will eventually end
- c. European law may overrule express provisions of the contract

4. Overseas company trade

Overseas companies are able to trade through a branch, representative office, an agent, distributor or franchise. In this case, no licensing requirements are necessary. An overseas company must be registered as a UK establishment with a payable fee. Necessary things to remember include:

1. A copy of the constitution
2. Director's details
3. Details of authorized persons
4. Details of proposed UK establishments

Shareholders detail disclosure is not necessary and compliance with UK requirements is a must for the overseas company. Moreover, accounts must relate to the overseas company and not only the UK establishment. Once the company is registered, UK establishment can enter into a contract on behalf of the overseas company. Here, the English law applies in relation to issues such as:

- Employment
- Health and safety
- Real estate ownership
- Consumer protection
- Environmental protection
- Taxation

5. Partnership formalities:

- **General Partnership:**

General partnerships have no particular formalities as they arise when two or more partners set up a business with a view of gaining profits. Instead of a contract, partners may develop a deed document that is based on the Partnership Act 1890 and negotiations between the partners. Partnerships do not have a separate legal personality and the assets are owned by the partners in their shares. Tax is charged on each partner's profit.

- **Limited partnership**

These partnerships are commonly used for private equity, investment and real estate investment funds and must be registered.

- **Limited liability partnership (LLP)**

LLP may act as a private company and a partnership at the same time. Formalities are the same as that for a private company.

6. Joint venture formalities:

The most common structure involves the partners to hold shares in a private company limited by shares. Parties must agree on specific terms which include:

- a. Management
- b. Financing
- c. Profit sharing
- d. Employee rights
- e. Exits
- f. Anti dilution

It is common to use an LLP as a JV structure. Formalities may be the same as that for a private company, with the difference that the JV agreement does not have to be made public. JVs

consist of contractual arrangements sans the formation of a JV vehicle. Moreover, central and local governments do not enter the JVs.

7. Trusts:

Important in English law, trusts are used in many situations. These include:

- Holding assets of pension funds and employee benefit schemes
- Holding assets on behalf of more than four people
- Private wealth management
- As a means of concealing identity of the company owner

The trustees hold the title to the trust's assets and must be involved in the selling and dealing with the trust assets. Trusts in the English law include:

- a. Bare trusts
- b. Discretionary trusts

8. Forming a private company

• Regulatory Framework

The Companies Act 2006 governs private companies, as the Registrar of Companies maintains the following details:

- Names, registered numbers and addresses, business details and financial information
- Information of constitutional documents and shareholder resolutions
- Information of directors and company secretaries
- Information of share capital, security, collateral granted and insolvency proceedings

• Tailor-made or 'shelf company'

Tailor made companies have no trading history and are a quicker and cheaper than setting up a new company. However, a [proper formation process](#) is in place for these. This includes sending the following to the Companies House:

- a. Form IN02: Includes the name, type of company, office address, type of constitution, directors and secretary, share capital and initial shareholders
- b. Memorandum of Association
- c. Articles of association
- d. Applicable fee

Once the application is submitted, the Companies House grants a certificate of incorporation, which makes the company come into existence. Naming the company is a tricky thing which must be looked into carefully.

- **Company constitution**

The main constitutional document is the articles of association which includes the management's rules and shareholder's rights. There are three forms that the articles of association document can take:

- a. Standard form of articles
- b. Modified form of the model articles
- c. A company's own personalized articles

Private companies often follow the model articles, as it is the most convenient option. These articles must be filed on the public register as per the protocol.

- **First Board Meeting**

After the company comes into existence, the directors usually hold a meeting on the following matters:

- a. Adopting a name for the business
- b. Appointing a chairman, auditors, bankers and lawyers
- c. Approving different contracts
- d. Issuing share certificates

9. Financial reporting

All private limited companies, small, medium or large, need to keep accounting records. These accounts must give the true picture of the company's financial affairs such as:

- a. Balance sheet
- b. Profit and loss accounts
- c. Director's report
- d. Strategic report

Classification of the size of the company and its accounts is determined by its profits, turnover and the number of employees. Companies should have their accounts audited by professional auditors. This usually applies to large companies only.

10. Trading Disclosure

A company must display a sign with its registered name at the following locations:

- a. Its registered office,

- b. Any place where records can be inspected
- c. Places where it carried on its business

Company stationary and online content must show:

- a. Where the company is registered in UK
- b. Company's registration number and registered office address

11. Contracts and Deeds:

• Contracts

A private company's directors can execute its [contract](#) in writing or through a person on behalf of the company. Moreover, employees also have the authority to do so. A contract does not have to be in writing as it can be made orally as well.

• Deeds

Certain documents must take the form of a deed instead of a contract. A private company can execute a deed if:

- a. Company's seal is affixed
- b. Two directors or a director and a company secretary sign a document
- c. One director signs a document in the presence of a witness who attests this signature

12. Membership

There are no restrictions on the number of members of a company. In fact, single member private companies are quite common.

13. Minimum capital requirements

There is no minimum investment or minimum share capital requirement for company formation. Private limited companies, which have shares, need a share capital that can be more than zero in order to qualify.

14. Transfer of shares

There are no restrictions on the transfer of shares in private companies. The legal requirement is to complete the transfer using a prescribed stock transfer form. However, a company's articles of association can put restrictions if the shares are not fully paid up for or if the transferor owes duty to the company.

In a joint venture or company with investors and shareholder managers, there are pre-emption rights or right of first offer provisions in the articles of association or the shareholders agreement. Moreover, a subsidiary cannot hold shares in its parent company.

- **Issue of shares**

There are statutory rights when a company issues new shares that are supposed to prevent dilution. New shares must be distributed amongst existing shareholders first.

15. Shareholders and voting rights

Protections for minority shareholders include:

- **Pre-emption rights**

Pre-emption rights protect shareholders from dilution. These rights apply to all shareholders, including those in minority.

- **Unfair prejudice and derivative claims**

If the company's affairs are conducted in a manner that is unfairly prejudicial to the members or some applicants, minority shareholders can apply to the court for relief. Alternatively, shareholders can take action against the directors who do not comply with their duties. Damages are paid to the company and not the shareholders.

- **Other protections**

Making claims is costly and expensive; therefore, contracts and articles often contain minority rights. These rights provide only contractual remedies and can be breached, but can be reversed if it is outside the company's powers.

- **Limited liability**

All shareholders have protection of limited liability. Once the full amount on the shares has been paid, they have no further liabilities with the company.

16. Statutory restrictions

There are few restrictions on quorum and voting requirements at shareholder meetings. The ones that exist are mainly structured to prevent "self-dealing". A company with only one shareholder has one quorum. Most companies' articles require a quorum of two shareholders. This basically means that a minimum of two people must be present at the meetings.

Private companies can also pass written resolutions and each shareholder has one vote. Written resolutions are the current preferred option for private companies. Company's voting rights can also vary and quorum requirements reflect these variations.

17. Specific voting majorities

Common corporate actions that require approval of shareholders include:

- a. Amending company's articles of association
- b. Changing company's name
- c. Registering the company
- d. Dis-applying statutory pre-emption rights on share issuance
- e. Redeeming or repurchasing company's shares out of capital

Common corporate actions mentioned below require approval of shareholders by an ordinary resolution:

- a. Removing a director or company auditor
- b. Appointing a director
- c. Approving transactions and payments to directors, such as:
 - I. Property transactions
 - II. Loans
 - III. Service contracts
- d. Breach of director's duties
- e. Authorizing directors to allot shares
- f. Subdividing, consolidating, converting and re-denominating shares
- g. Repurchasing the company's shares
- h. Paying a non-cash dividend

18. Voting majorities

Voting majorities can be disapplied. Varying the rights of a particular class of share or category of member requires at least 75% consent of the holders and affected class. The articles require an even higher percentage. Weighted voting rights can be given a share class.

19. Sectoral restrictions

There are few restrictions on establishing a business in UK. However, companies require authorization to operate in regulated sectors such as:

- a. Banking and financial sector
- b. Defense
- c. Media, broadcasting and telecommunications
- d. Energy and water

The company needs to register before entering any of these sectors. Other sectors require licenses, permits and government permits, in order to operate. The government gives the permission, based on the stability of the shareholders.

20. Foreign investment restrictions

There are no statutory restrictions on companies having foreign shareholders.

21. Exchange control or currency regulations

The UK imposes financial and trade sanctions that prohibit funding or dealing with assets of individuals and entities. There are also strict anti-money laundering and counter terrorism regulations that prevent access to illegal funding.

22. Restrictions on foreign ownership

There are no restrictions on foreign ownership or occupation of real estate or on foreign guarantees or security for ownership or occupation.

23. Directors

Minimum age of a director is 16 years, while there is no maximum limit. Corporate bodies can serve as directors of a company. Court can issue disqualification of a director for two to fifteen years. Disqualification takes place if directors commit serious or constant breaches of company or law. Although there is not maximum number of directorships to be held, a person may encounter difficulty in carrying out due duties of each.

The following details of directors are needed in the public register:

- | | |
|--------------------------|--------------------------|
| a. Name | f. Date of birth |
| b. Service address in UK | g. Registered number |
| c. Country of residence | h. Place of registration |
| d. Nationality | i. Legal form |
| e. Business occupation | |

24. Board composition

UK company boards are usually unitary. Two-tier and multi-tier boards are used but are purely internal.

- **Number of directors or members**

A public company must have at least two directors and a private company must have at least one director. A public company must also have a qualified company secretary, whereas a private company can have a secretary, but it's not mandatory and the secretary need not be qualified. Every company should have at least one director who is a natural person.

- **Employee representation**

Employees have no right to representation on the board of a UK company. However, directors must respect the interests of the company's employees.

25. Re-registering as a public company

In the UK, a public company is a type of a legal entity that is different from a private company. The title public company does not necessarily mean that the company's shares are publicly traded. A more appropriate term to be used is quoted company, or listed company.

- **Membership**

There is no maximum number of members for a public company and public companies only need one member. This changes if the company's shares are listed on a regulated securities exchange.

- **Share capital**

A public company must have a minimum share capital of GB £50,000, where quarter of the nominal value of these shares has been paid to the company. When these requirements are satisfied, the company issues trading certificates. A company wishing to list its shares on a regulated securities exchange must issue 25% of its issued shares in the public hands.

- **Other requirements**

Public companies differ from private companies. Public companies:

- a. Should have at least two directors
- b. Must have a qualified secretary
- c. Cannot operate without a trading certificate

- d. Must pass shareholder resolutions in general meetings
- e. Can redeem or repurchase shares using profits
- f. Cannot give financial assistance to someone to acquire shares
- g. Cannot file abbreviated accounts
- h. Must audited accounts
- i. Have six months to file their accounts
- j. Must obtain shareholders' approval to issue new shares.
- k. Must obtain an independent valuation to issue shares
- l. Must obtain a court order to reduce share capital.
- m. Must hold an annual general meeting (AGM)

26. Taxes

The main taxes applicable to different sectors are as follows:

- **Corporation tax on profits**

A UK tax resident company has to pay tax on its profits. Moreover, provided some conditions are met, a UK tax company can apply to be exempted from tax for all its foreign branches. These taxable profits include profits derived from income and gains from capital transactions.

An overseas company with a UK permanent establishment is subject to UK corporation tax on all profits that are derived from any trade that is carried through the establishment. These taxes are subject to corporate income tax.

- **Value added tax**

VAT is a sales tax that is chargeable in accordance with the EC legislation and certain UK implementing measures. A branch or subsidiary of an overseas business which has a place of belonging in the UK must register in the UK.

VAT is charged on all supplies of goods and services that are made in the UK by a taxable person in the course of its business. VAT is also chargeable on the importation of goods into the UK from outside the EU. There are three main categories of supply for UK VAT purposes:

- a. Standard rated
- b. Zero rated
- c. Exempt

From 1st January 2015, new rules apply to the supply of digital services by persons outside the UK to consumers in the UK.

- **Payroll taxes**

A branch or subsidiary of an overseas business which employs individuals to work in the UK will be required to deduct income tax under the pay as you earn system, from all payments of salary and bonuses made to those individuals. Social security payments are also payable by the employee and the employer. The employer deducts the employee's contribution from payments of salary to the employee.

Currently employer's NICs are charged at the rate of 13.8% of the gross salary paid to the employee.

- **Stamp duty and stamp duty land tax**

Stamp duty is payable at the rate of 0.5% on instruments effecting transfers of company shares, marketable securities and some transfers of interests in partnerships.

Stamp duty land tax is payable at a range of rates on transactions involving the transfer or creation of an interest in UK land or real estate and on transfers of interests in property-investment partnerships.

27. Circumstances under which a business becomes liable to pay tax

When an overseas company carries business in the UK, it is subject to UK corporation tax on profits. A UK tax resident subsidiary is subject to UK corporation tax on its worldwide profits. A non-resident company pays tax only on the profits that are attributed to the permanent establishment.

- **Tax resident**

A company is tax resident in the UK if it is incorporated in the UK or managed and controlled from the UK.

- **Non-tax resident**

Non-tax resident companies with a permanent establishment in the UK are liable for UK corporation tax on income profits of that establishment and gains from the disposal of assets situated in the UK and used in the trade of the establishment.

28. Tax position

Sending home profits from a subsidiary is most commonly done by way of dividends. Dividends can only be paid out of realized profits after deduction of losses. A dividend paid by a UK resident company is made out of post-tax profits. Profits earned by a branch can be sent to the parent company without withholding any tax.

29. Thin capitalization rules and transfer pricing rules

Thin capitalization rules apply when a company borrows money from a partner on non-marketable terms. In this case the ability to deduct interest payments is restricted.

Transfer pricing applies where:

- A transaction takes place between two people
- One person participates in the management of the other party or in the management of both the affected parties
- Terms of transaction differ from those of independent parties
- Actual terms of transaction confer an advantage in relation to UK tax

30. Grants and tax incentives

Limited funding is available to UK and overseas companies operating in the UK. Funding focuses on supporting research and development in high-tech centers. Tax incentives are also available to support business innovation including:

- R&D credits
- Patient Box
- Enterprise zones throughout England and Wales

31. Employment

The UK employment law is based on contract, statute and EU law.

- **Contract of employment**

All employees in the UK work under a contract of employment. A written employment contract is not required but is used to ensure the clear intentions of both the parties to protect the employees and employer's position. Employees are entitled to be paid at least the national minimum wage to be reviewed on an annual basis. Employees are also entitled to statutory sick pay. There is no legal obligation to provide medical insurance to employees.

- **Working time and holidays**

Working time and holidays are regulated under the Working Time Regulations 1998. Employees cannot be required to work for more than 48 hours per week. Employees are entitled to a minimum of 5.6 working weeks' holiday each year, which may include eight UK public holidays.

- **Family friendly rights**

Employees may have rights to maternity and paternity leave and pay, adoption leave and pay and shared parental leave and pay.

- **Flexible working**

Employees who have 26 weeks of continuous employment can make a flexible working request to their employers. Employees can make one request each year. Flexible working means any patterns of work outside the employer's standard. If the employer refuses the request, it must be based on one or more of the eight prescribed grounds. Part time employees must also be given the pro-rates benefits that they deserve.

- **Workplace pensions**

Employers in UK will be obliged to enroll eligible workers into qualifying workplace pension scheme. Eligible workers have the right to opt out of their workplace pension, but must be automatically re-enrolled every three years.

Employers must make a minimum contribution which stands at 1% of the worker's qualifying earnings.

- **Termination of employment**

There is no employment at will in the UK. Employment can be ended by giving notice or in limited and very exceptional circumstances with immediate effects. The notice period depends on the employee's length of service:

- a. One week's notice for one month's to two years of service
- b. One week's notice per year of service for employees with more than two years of service

Contractual notice periods can be greater than the statutory minimum. If a contractual notice period is shorter, the statutory minimum applies instead. If an employee is made redundant, he is entitled to a statutory redundancy payment, provided that he has been employed for at least two years. After two years' service, an employee has a right not to be unfairly dismissed. Compensation for unfair dismissal comprises two elements:

- A basic award
- A separate award to compensate the employee for loss of income

Non-compete and other post-termination restrictions are not generally enforceable for being in restraints of trade. However, an employer can enforce these restrictions if they protect a legitimate business interest of the employer, go no further than is required and are reasonable in scope.

- **Discrimination**

The equality act 2010 protects employees and workers from discrimination on the basis of protected characteristics:

- a. Age
- b. Disability
- c. Marriage and civil partnership
- d. Pregnancy and maternity
- e. Race, religion or belief
- f. Sex and sexual orientation

- **Wrongdoing**

Under the Public Interest Disclosure Act 1998, a worker can make a “protected disclosure” regarding his employer. This means that a disclosure concerning a potential criminal offence or wrongdoing. An employee who makes a protected disclosure cannot be dismissed, selected for redundancy or subjected to any other harm as a result of making the disclosure.

- **Transfer of a business**

The Transfer of Undertakings Regulation 2006 applies to many mergers, acquisitions, outsourcing and changes to service providers in the UK. This regulation provides that on a transfer of a business or a change of service provider, employees working in the transferred business or service arrangement transfer to the new owner or service provider on the same terms and conditions of employment.

Key consequences of TUPE are as follows:

- A buyer cannot just buy the assets of a company to avoid taking on new employees
- A company must be careful when outsourcing as the employees may transfer to the service provider
- A company must also be careful when ending outsourcing as it may have to take on some of the service provider’s employees
- The transferor and transferee must inform all affected employees and trade unions

32. Prior approvals for foreign nationals

Non- EU nationals require a work permit in order to work in the UK. Non –EEA nationals travelling to the UK to work must obtain a visa for the UK. The UK operates in a points- based immigration system structured around five tiers. All employers in the UK must obtain and maintain records of their workers’ right to work in the UK. Failure to maintain these records can lead to both civil and criminal liability.

33. Proposals for reform:

- **Corporate transparency**

The Small Business, Enterprise and Employment Bill is being debated in the parliament. A key provision of the Bill is the requirement for all UK companies to disclose details of the individuals exercising ultimately over them. These individuals will be those who:

- a. Hold voting rights or ownership indirectly
- b. Can appoint or remove majority of the company's directors
- c. Have significant control over the company

The Bill aims to prevent the ultimate shareholders from hiding their identities. Moreover, the Bill will also abolish bearer shares and corporate directors.

- **Tax**

The corporation tax rates will eventually fall to 20%. The UK government is considering the introduction of a "diverted profits" tax. This tax would apply at a rate of 25% on the profits relates to the UK activities of non – UK residents. This new tax is expected to apply in 2015.

34. Web Design and Digital Marketing and Advertising

We highly recommend BuxUp.co.uk which is the UK leading web design and digital marketing and advertising company. BuxUp successfully created high spec corporate websites for companies such as AIG and built a number of successful online businesses such as iChecker.com, CoursesUK.com or PropertyTurkey.com in different languages. BuxUp Contact details: Tel: +44 (0) 7824 363231

Email: contact@buxup.co.uk

Web: www.buxup.co.uk

Recommended sources for doing business in the UK:

1. [Business UK](#)
2. [Study in the UK](#)
3. [Property UK](#)
4. [Job Site](#)
5. [Cars UK](#)
6. [Company Due Diligence](#)
7. [UK e-Commerce](#)

We can form your company and provide legal and business support for your company in the UK.

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