Establishing and Managing a Business in the UK

2025 Edition

Pillsbury Winthrop Shaw Pittman LLP

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Foreword

The United Kingdom continues to stand as one of the most attractive and stable destinations for foreign investment. With a transparent legal system, strong regulatory institutions, a competitive tax environment, and access to global markets, the UK offers a compelling platform for international businesses seeking growth, innovation, and long-term success.

This brochure is designed as a practical legal guide for those looking to set up and manage a business in the UK, providing clear insights into key legal, regulatory, and commercial considerations. Whether you are an overseas investor, a growing start-up, or an established company entering the UK market, understanding the legal landscape is critical to your success.

For foreign investors, however, navigating the UK's legal and regulatory framework can present unique challenges—ranging from company formation and compliance requirements to employment law, data protection, and sector-specific regulations.

Whether you're setting up a UK branch, forming a subsidiary, acquiring assets, or entering into a joint venture, this guide highlights the key legal considerations and strategic decisions that can shape your investment journey.

In addition to foundational legal guidance, we highlight key recent and forthcoming legislative developments and government-backed incentives that are particularly relevant to foreign investors, including:

- UK Corporate Re-domiciliation Regime (upcoming) – Expected to allow foreign-incorporated companies to relocate to the UK without the need to liquidate and reform, offering strategic flexibility for multinationals.
- Investment Zones (launched 2023) – Targeted zones across England offering tax incentives, planning simplifications, and funding to encourage foreign investment in advanced manufacturing, life sciences, and technology.
- Full Expensing (2023–2026) – A capital allowance policy enabling businesses to deduct 100% of qualifying plant and machinery investment from taxable profits, extended as a permanent measure in the 2024 Budget.
- The Digital Markets, Competition and Consumers Bill (2024) – Introducing new pro-competition rules in digital markets, enhancing consumer protections, and potentially affecting M&A strategies for tech investors.
- Reforms to R&D Tax Reliefs (effective April 2024) – Simplification of schemes and enhanced incentives for innovation-led investment.
- UK Sustainability Disclosure Requirements (SDR) – A developing regime requiring firms to report ESG-related risks and performance, aligned with global standards such as TCFD and ISSB.

With this guide, our aim is to help you navigate the UK business environment with greater clarity and confidence. By understanding both established legal principles and emerging regulatory trends, companies and investors can seize opportunities, manage risk, and build lasting value in one of the world's most open economies.

Each section has been prepared by the respective specialist attorney from our Pillsbury London office. Our attorneys will endeavour to update this publication on an ongoing basis, and we recommend that our readers visit the Pillsbury website to download the most current version of this guide.We hope this guide will encourage you to consider the opportunities that the UK offers businesses and to reach out to your appropriate Pillsbury partner for an introduction to our services.

If we can be of assistance, please contact us directly - London Law Firm | Pillsbury Law

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1. Introduction to Establishing and Managing a Business in the UK

The UK welcomes international investors.

Investing in an Existing UK Business or Asset

Other than the requirements set out in the National Security and Investment Act 2021 (NSIA) as discussed below, there are no laws directly restricting foreign investment in the UK, nor are there any business requirements for UK participation in the ownership or management of any UK business established by a foreign investor.

Establishing Business Operations

A person residing outside the UK who wishes to establish a business operation in the UK must first decide the structure that such operation should take. The next section will consider some of the legal factors involved when establishing the two most common forms of UK businesses, which are:

1. UK Registered Company – Companies incorporated in the UK have a separate legal identity from its shareholder(s) or members and can be wholly owned or partly owned. There are a variety of corporate vehicles available, such as private limited companies (limited by guarantee or shares), limited partnerships, limited liability partnerships and public limited companies. Please note this publication only covers private companies limited by shares.

2. UK Establishment – An establishment is considered an extension of a non-UK company and does not have a separate legal personality. The ability to register a UK establishment does not extend to overseas partnerships or other unincorporated bodies.

3. UK Representative Office – A representative office does not have a separate legal personality. It is governed by the law and regulations of where the parent company is located. The branch is registered at Companies House as an overseas entity. A representative office will not usually create a corporation tax presence in the UK.

Alternatively, it may be appropriate to do business 'with' the UK rather than to establish a business 'in' the UK. This may involve one or more of the following agreements:

- Franchise agreement to appoint a franchisee in the UK;
- Agency or distribution agreement;
- Contract of employment to appoint employees in the UK; or
- License of intellectual property rights to a UK licensee.

2. Investing in a UK Business or Asset

When to Consider the UK's Investment Screening Regime

The UK's investment screening regime is governed by the NSIA and enables the UK government to assess and intervene in investments in businesses with activities in the UK, or assets which originate from, are located in or have a connection to the UK, in the interests of UK national security.

An investor engaging in such a transaction should be sure to assess the applicability of the NSIA to confirm if the transaction: (i) triggers a mandatory notification requirement (as failure to comply with such a requirement renders a transaction legally void and carries criminal and civil penalties); or (ii) presents a heightened risk of being called-in for a review of potential national security risks by the UK government. (In the absence of a voluntary notification, the UK government has the power to call a transaction in for review for up to five years post-closing, and if a transaction is called in for review, the UK government can impose conditions on the transaction, block the transaction, or unwind it.)

Having been in operation for a few years now, the administration of the UK's investment screening regime has proven to be reliable and business-friendly: the government has adhered to statutory review periods, providing certainty of the impact of the NSIA on transaction timelines, and statistics indicate that only a small handful of notified transactions are called in for detailed review each year (4.4% between April 2023 and March 2024), and very few non-notified transactions are typically called in each year (only four were called-in between April 2023 and March 2024).

Whether a transaction is subject to a mandatory notification requirement under the NSIA, or whether it may serve a strategic purpose for a transaction to be voluntarily notified under the NSIA, should be considered if a transaction will result in the direct or indirect acquisition of:

- shares, voting rights or control of a target entity that has a nexus to the UK (a 'Target Entity') – even a mere presence in the UK with insubstantial activities and minimal revenue can suffice in terms of a nexus to the UK, and there is no requirement for the Target Entity to have a UK-incorporated entity; or
- ownership or control rights relating to an asset from, in, or with a connection to, the UK (such assets include land, tangible moveable property, ideas, information or technique with industrial, commercial or other economic value) (a 'Target Asset').

The scope of the UK's investment screening regime is very broad: it applies to a variety of transactions (share purchases and mergers, certain minority investments, asset and licensing deals, joint ventures, internal corporate reorganizations, and debt for equity swaps); and covers various, broadly defined sectors, e.g., advanced materials and robotics, artificial intelligence, communications, semiconductors, defense, and quantum technologies, amongst others.

Mandatory Notification Requirement

Under the NSIA, a mandatory notification requirement applies where:

- an investor's interest in a Target Entity exceeds or crosses certain share and voting right thresholds, and
- the Target Entity's business has activities in one or more of 17 key sectors. See below:

1. Advanced Materials	7. Critical Suppliers to Government	13. Quantum Technologies
2. Advanced Robotics	8. Cryptographic Authentication	14. Satellite and Space Technologies
3. Artificial Intelligence	9. Energy	15. Suppliers to the Emergency Services
4. Civil Nuclear	10. Defense	16. Transport

5. Communications	11. Data Infrastructure	17. Synthetic Biology
6. Computing Hardware	12. Military and Dual-Use	

Failure to comply with such a requirement renders a transaction legally void and carries criminal and civil penalties.

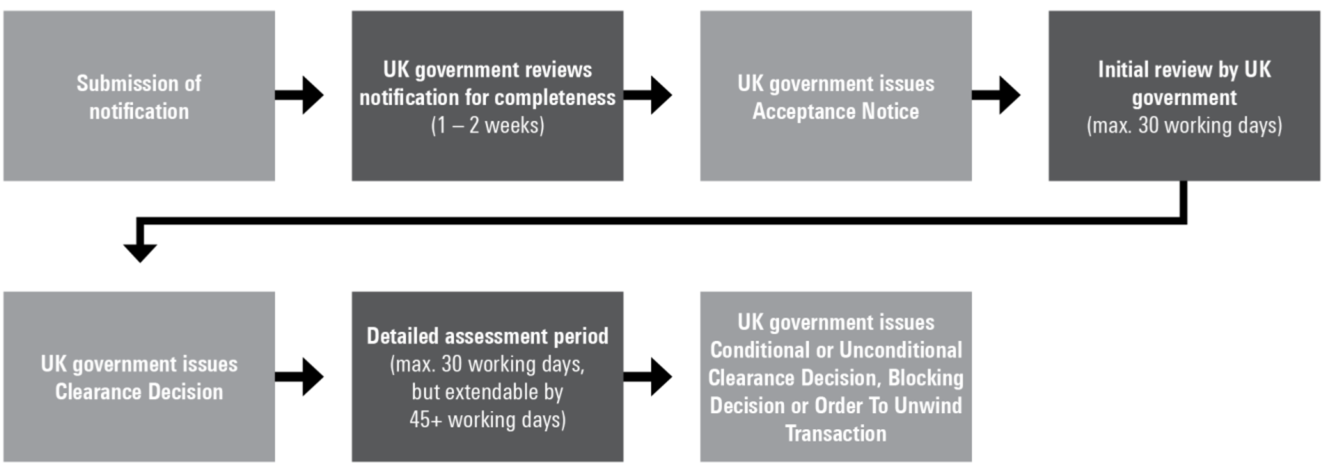
When Might It Be Strategic to Voluntarily Notify?

An investor may wish to submit a voluntary notification to the UK government in respect of an investment that:

- constitutes an investment in a Target Entity that does not fall within scope of the criteria for the mandatory notification requirement to apply (i.e. the investor's interest does not cross the relevant thresholds, or the Target Entity's activities do not fall within scope of the 17 key sectors); or
- involves a Target Asset: asset deals are carved out of the mandatory notification requirement;
- where there is a risk that the UK government may find the investment to be of interest from a national security perspective (e.g. due to the nature of the target, the identity of the acquirer or the level of control being acquired) or where a transaction is attracting significant public attention. A voluntary notification mitigates the risk of an investment being called in for review by the UK government post-closing as the UK government has the power to call a transaction in for review for up to five years post-closing.

The Notification and Review Process

The timeline and review process is the same following a mandatory notification or a voluntary notification and is depicted in the diagram below.



A detailed assessment of a transaction following the issuance of a call-in notice by the UK government can result in the UK government: (i) imposing conditions on a transaction to mitigate national security risks (e.g. restrictions regarding transfers of information or technology outside of the UK, requiring new or enhanced security measures to be implemented, or imposing reporting requirements regarding contracts, activities or asset transfers, amongst others); (ii) blocking the transaction, if it has not yet completed, or (iii) issuing an order to unwind a transaction that has completed.

Simple transactions that do not raise national security concerns can be expected to take approximately two months from when a notification is submitted to clearance. Borderline cases or cases that are clearly expected to generate UK national security concerns may take four to six+ months.

3. Factors in Making the Choice between a UK Company and a UK Establishment

UK Companies	UK Establishments
Corporation Tax Charged on the worldwide profits of a UK company at a main rate of 25% with a small profits rate of 19% applicable to most companies with profits not exceeding £50,000, and with marginal relief for companies with profits between £50,000 and £250,000. The calculation of taxable profits is based upon a company's trading profits and as adjusted for tax purposes. Trading losses made by a UK company can be set off against its total profits. A diverted profits tax charge of 31% can apply where HMRC considers that profits have been artificially diverted from the UK. A residential property developer tax applies at 4% to the UK residential property development profits of groups in excess of a £25 million groupwide annual allowance, with only profits from residential property development activities above this amount being subject to the tax. For relevant companies, this brings the effective corporation tax rate up to 29%. A digital services tax at the rate of 2% applies to the UK digital services revenues of businesses that provide social media services, internet search engines or online marketplaces, where certain revenue thresholds are met (i.e. £500 million in global digital services revenues and £25 million in UK digital services revenues). A temporary 45% charge on exceptional receipts realised from the sale of wholesale electricity by nuclear, renewable, biomass and energy from waste sources has been introduced. Exceptional receipts are those in excess of a benchmark price of £75 per megawatt hour (adjusted in line with consumer price index (CPI)). The levy is limited to companies or corporate groups whose relevant electricity output exceeds 50 gigawatt hours across a year and applies only to exceptional receipts exceeding £10 million per annum. The levy will apply to exceptional receipts from electricity generation during accounting periods between 1 January 2023 and 31 March 2028.	**Corporation Tax** Taxed in the UK only on profits which are attributable to the UK establishment. Rules on calculation of profits, use of losses, filing of returns and transfer pricing apply in the same way as UK companies. A diverted profits tax charge of 31% can apply where HMRC considers that profits have been artificially diverted from the UK.
Financing Interest paid on loan financing may be deductible from a UK company's taxable profits, subject to the application of the Corporate Interest Restriction rules. These rules limit interest deductions to the higher of (a) a £2 million de minimis; (b) 30% of earnings before interest, tax, depreciation and amortisation (EBITDA). If the taxpayer elects, a higher percentage can be used where the worldwide group's interest ratio exceeds the 30% limit.	**Financing** Interest paid on a loan from the head office is not tax deductible unless the funds derive from a third-party lender advanced for the purposes of the UK business.

Startup Costs Startup losses can generally be carried forward and deducted from future profits.	**Startup Costs** Not applicable.
Repatriation of Profit Profits can be repatriated by declaring a dividend. Dividends paid will not reduce the company's taxable profits. No withholding tax on dividends. Interest or royalty payments are other ways a UK company's profits may be made available to a parent. Withholding tax may apply but may be reduced or eliminated by a double tax treaty.	**Repatriation of Profit** No profits tax for establishments of overseas companies, other than the corporation tax.
Filing Obligations Filings for the following matters must be provided to the Registrar of Companies and kept up to date: - Company name; - Directors; - Company secretary (if any); - Registered office address; - Allotments of shares and statement of capital; - Mortgage or charge on the company's property; - Accounting reference date; - Person(s) with significant control over the company; and - Articles of association (the document governing how the company is run). Any special or extraordinary shareholder resolutions (requiring a majority vote of at least 75% or 95% respectively) must also be filed with the Registrar of Companies within 15 days of being passed. A confirmation statement must be filed annually confirming that publicly held information is up to date and correct. Traditionally, filings were submitted as hard copies; however, most filings can now be made online through the WebFiling service or software filings. It should be noted that companies can elect to be part of the Protected Online Filings Scheme (PROOF) to protect against false filings. If a company is part of PROOF, paper filings for forms covered by the scheme will be rejected. All minutes of meetings of shareholders, directors and statutory registers must also be retained by the company (although not publicly). Accounting records must be kept, and annual accounts prepared. Annual accounts must also be submitted to the Registrar of Companies annually, meaning they are available for public inspection. In addition, the Economic Crime and Corporate Transparency Act came into effect in 2023. The Act introduces new requirements regarding the way in which companies registered in England and	**Filing Obligations** Within a month of being operational, filings must be made to register the UK establishment. Registration requirements include: - The name of the overseas company and any alternative name used in the UK; - The legal form, country of incorporation, registration number, governing law, company officers and accounting requirements of the overseas company; - The name, address, nature of business of the UK establishment, details of authorised permanent representatives and the extent of their authority, and the names and addresses of any UK resident person authorised to receive documents on behalf of the overseas company; and - Certified copies of the overseas company's constitutional documents, as well as its latest set of accounts. (Where an overseas company already has a registered UK establishment, it does not need to resubmit these documents.) All details (other than directors' residential addresses) are available for public inspection. Establishments are not required to file a confirmation statement each year, but they must notify the Registrar of Companies of any changes to its details on the public record. Accounting and reporting requirements for a UK establishment depend upon the company's filing requirements in its country or state of origin.

Wales interact with, and submit information to, Companies House. The new requirements include identity verification requirements for directors, persons with significant control and members of a limited liability partnership, restrictions on who can file documents at Companies House on behalf of companies, restrictions on the use of corporate directors, changes to company record keeping requirements, and new powers for Companies House to check, remove or decline information submitted to, or already on, the companies register.	
Liability of Shareholders and Directors Companies are recognised as having a separate legal personality from the person(s) who form the company, the directors and shareholders. Shareholder liability in a company limited by shares is restricted to paying in full the agreed price for their shares in that company, although there are some exceptions. Directors owe statutory and fiduciary duties to the company and can be found personally liable in certain circumstances, including but not limited to: - Failure to meet filing obligations or for filing a misleading statement; - Breach of director duties under the Companies Act 2006; - Wrongful trading in the event the company has gone insolvent - Environmental breaches; and - Serious data protection breaches.	**Liability of Shareholders and Directors** The UK establishment is not a separate legal entity but rather the same legal entity as the overseas company it is derived from. The liability of directors and shareholders is therefore determined by the constitution and jurisdiction of the non-UK company personality.
Persons of Significant Control Register All companies are required to keep their register of persons with significant control (PSC Register) up to date. Legal entities may be noted on another company's PSC Register if they are both relevant and registrable in relation to the company in operation. This will generally be where they are a UK company or their shares are trading on regulated markets (such as the LSE, AIM, the NYSE and Nasdaq).	**Persons with Significant Control Register** Non-UK companies operating in the UK might be subject to similar requirements in their home country but are not subject to the requirements to hold and maintain a PSC Register. On 1 August 2022, the UK's Economic Crime (Transparency and Enforcement) Act 2022 (ECA 2022) came into effect. The ECA 2022 requires overseas companies to declare the beneficial owners of property or land held by overseas individuals or companies. Failure to comply with this requirement may result in criminal penalties. In addition, from 5 September 2022, overseas entities must demonstrate they are registered on the register of overseas entities to register the land title at the UK Land Registry. The ECA 2022 is subject to ongoing regulatory review.
	Requirement to Follow UK Law Although the UK Establishment will not be subject to UK company law, it will still need to ensure it complies with various other laws, including (for example) in relation to anti-bribery and anti-money laundering, data protection, modern slavery and health and safety laws.

Tax

UK tax is levied on income and capital gains—with income tax and capital gains tax payable by individuals and corporation tax by companies. The potential exposure of both UK registered companies and UK establishments to taxation upon profits is summarised below.

Taxes that equally apply to UK companies and UK establishments:

Corporation Tax – For corporation tax years starting after 1 April 2024, corporation tax is payable at a reduced rate of 19% for companies with profits of less than £50,000 with the main rate of 25% for companies with profits over £250,000

Capital Gains – Tax must be paid at a company's or establishment's corporation tax rate on any capital gains made on the disposal of chargeable assets.

VAT – The standard rate of VAT in the UK is currently 20% and is chargeable on the supply of most goods and services. UK businesses register and charge VAT when the value of their chargeable supplies reaches a threshold, currently £90,000. It is possible to voluntarily register before the threshold is reached in order to reclaim VAT paid on purchases.

VAT is largely neutral for most businesses. VAT charged to customers and collected by the business is paid to HMRC. Businesses that have registered for VAT can reclaim or set off any VAT that they themselves are charged on purchases of goods and services. Where VAT incurred on purchases exceeds VAT charged on supplies, the business will receive a repayment from HMRC.

Import Duties – Import duties will be applied to any goods imported into the UK from countries outside the UK unless, (i) the country being imported from has a trade agreement with the UK, (ii) an exception applies, such as a relief or tariff suspension, or (iii) the goods come from developing countries covered by the Developing Countries Trading Scheme. The rate at which duty is charged varies according to how HMRC classifies the goods concerned. Different rules may apply for Northern Ireland.

Excise Duties – Excise duties will be imposed on the supply of certain products (e.g. tobacco, liquor and petroleum products).

Stamp Duty Land Tax – This is a tax on transactions relating to the transfer of real estate or interests in real estate, details of which are set out in Chapter 6: Acquiring or Leasing Business and Residential Premises.

4. Formalities Required to Set up a Company and Register a UK Establishment

There are two main types of UK limited company: private limited companies (LTD) and public limited companies (PLC).

Public limited companies may, but need not, effect a listing of their shares for trading on an exchange, such as the LSE or AIM. There are strict regulatory standards that apply to public companies relating to matters such as disclosure of information and prohibiting certain transactions. Private limited companies are not allowed to make such listings. This guide concentrates on issues relating to UK private limited companies.

Share Capital – At least one share must be issued in a private limited company on its incorporation to one 'subscriber'. This can be increased after incorporation as the company requires in accordance with the company's articles of association. Shares (including different classes of shares) may be denominated in any currency.

Certificate of Incorporation – A company is not deemed to exist until the Registrar of Companies has issued a certificate of incorporation. The Registrar will issue this when it has received the company's articles of association, together with certain incorporation forms and a fee.

Memorandum of Association – The memorandum is provided by the Registrar of Companies on incorporation and sets out the names of the subscribing shareholders and their shareholdings in the company; simply put, it is a snapshot of information about the company on incorporation. The memorandum cannot be amended and is not generally required after incorporation. A copy of the memorandum must be kept with the statutory registers of the company.

Articles of Association – This is the constitution of the company which set out the basic management and administrative structure of the company. The articles form a contract between the company and all of the shareholders (also known as members) and detail certain rights and entitlements which the company binds itself to grant its shareholders. These entitlements might include the right to vote, the right to attend general meetings and the right to a dividend, if one is declared. The articles of association may be updated, or new ones adopted, with shareholder approval.

Statutory Forms – In order to incorporate a new company, certain documents must be completed and lodged with the Registrar of Companies. Incorporation occurs when the Registrar of Companies issues the certificate of incorporation, which usually takes about one week. Standard incorporation by online filing costs £12, and the same-day service online costs £30. Alternatively, hard copy forms can be filed at a cost of £40. Various company incorporation agents will have 'off-the-shelf' companies that are already incorporated. Filings can then be made and paid for to change the company's shareholders, directors, registered address, and other corporate details when the off-the-shelf company is transferred to the new shareholder. There are also small charges for other filings that the company may have to make during the course of its existence.

Shareholder – Any individual, firm or corporation may be appointed as a shareholder (or member) whether they are a resident in the UK or otherwise. Every UK company must have at least one shareholder. A register of the names, addresses and number of shares held by each of the company's shareholders must be maintained by the company (but not publicly, although it must be available for inspection on request). UK company law reserves certain company decisions for shareholders, e.g. amending the articles of association of the company and, in certain circumstances, removing a director. Shareholders exercise their powers by passing resolutions in general meetings or, in some circumstances, passing a written resolution signed by the requisite shareholder majority.

Director – The company must have one or more directors, and at least one director must be an individual. The company's articles of association may set out details of the maximum and minimum number of directors and will also vest the power to run the company in the directors. The directors will generally make the day-to-day decisions of the company.

Company Secretary – Either an individual or a company may act as the company secretary, although it is not mandatory for a private company to appoint a company secretary. The secretary may also be a director of the company. If a secretary is appointed, they are responsible for the administrative requirements to which the company is subject and should therefore ideally be present in the UK.

PSC Register – Since 6 April 2016, UK companies have been required to keep a register of individuals or legal entities that have control over them (which is publicly available at Companies House). The PSC Register is part of a wider movement to increase transparency around the ultimate ownership and control of companies incorporated in the UK. The UK provisions are similar to those introduced by the EU and its respective member states.

Choice of Company Name

The Registrar of Companies will not incorporate a new company which proposes to use the same or a materially similar name to one which is already in use by an existing company. It is necessary to search the index of names at Companies House to establish whether a desired name is available for use. A private company limited by shares must have 'Ltd' or 'Limited' at the end of its name.

Before selecting a name, it is also sensible to conduct a trade mark search and domain name search against the desired name.

The Registrar will not accept applications for incorporation if a company name is offensive or suggests a criminal activity or attempts to use certain restricted words. Furthermore, if a company wishes to include a 'sensitive' word in the name, it must obtain prior approval. The grant of a certificate of incorporation registering a particular name does not guarantee that there will be no issues in the future, e.g. if a company's name is deemed to provide a misleading indication of its business activities, then the Registrar can order the company to change its name.

Although a company must always have a registered name, it may decide to trade under a different business name. The directors of a company have the power to decide on the use of a business name. The business name need not contain the word 'limited'. If a different business name is used, then the company's incorporated name must also appear on all its stationery.

After incorporation, a company can change its name (subject to the above) at any time if 75% of the shareholders approve the name change by a special resolution or if such permission is granted in the company's articles of association. A fee between £8 and £30 is payable to the Registrar, depending on the speed of the service and whether the application is made by paper or electronically. Please note that there are continuing obligations, with regards to how and when the company's name must be displayed. (See below.)

Immediate Actions of the Company upon Incorporation

Any or all of the following may be necessary:

- The company must write up and update as appropriate its statutory books;
- Where appropriate, the company should be registered for VAT and Corporation Tax with HMRC;
- The directors must ensure that all company stationery, publicity and the company's website bear the following information:
    - The company name and business trading name, if different to the company name;
    - Its place of registration (England and Wales, Scotland or Northern Ireland);
    - Its registered number (which is granted on incorporation);
    - The address of the registered office;
    - The names of either all the directors or none of them; and
    - The fact that the company is a limited company. This is normally shown by spelling out the company's full name including 'Limited' or 'Ltd.'

If the company is to have employees working for it, HMRC should be contacted to arrange for the necessary income tax and national insurance contributions and (if applicable) apprenticeship levy to be accounted for or paid.

All UK employees must be provided with a written statement of their terms and conditions of employment within two months of the commencement of their employment.

The company may wish to open a bank account and arrange for appropriate bank mandates to be established.

The company may have to change its financial year and date (known as the 'accounting reference date') to fit with the wider corporate group. Newly formed companies are automatically given an accounting reference date of the last day of the month of incorporation.

Standard terms and conditions of trade or other contracts to be used by the company which are enforceable under English law will be required.

Continuing Obligations for UK Companies – Continuing obligations for UK companies include filing annual confirmation statements (confirming any changes to the share capital, PSCs or directors), filing annual accounts, maintaining the public PSC Register and making event-driven filings, e.g. to reflect changes in share capital, registered office details or directors.

Formalities Required to Establish a UK Establishment

To register a UK establishment, a detailed form must be completed and filed with the Registrar of Companies, along with a filing fee of £20 (£100 for the same-day paper filing service). In the form, the applicant overseas company must set out the following details:

- The overseas entity's name;
- A certified copy of the overseas company's constitution or, if it is written in any language other than English, a certified translation thereof;
- The country of incorporation, the name of the register on which it is registered within the country of incorporation, the legal form of the overseas company and its registration number;
- The governing law and accounting requirements;
- If it is required to prepare, disclose and deliver accounts under local law, a copy of the company's latest set of accounts; and if it is not required to prepare accounts under local law, the company will be allocated an accounting reference date and must prepare and deliver signed accounts. Please note there are different accounting rules for credit or financial institutions;
- A list of officers and the secretary and certain information about each of them (including name, address, date of birth and the extent of their powers to represent the overseas company, along with a statement as to whether they may act alone or must act jointly);
- Any persons authorised to represent the company and/or, persons authorised to receive documents on behalf of the company and whether particulars have been delivered previously in respect of another UK establishment, together with the registration number;
- Regarding the UK establishment, any alternative name which it proposes to carry on business under in the UK must be provided. Please note the same restrictions apply to overseas companies registering in the UK. (See 'Choice of Company Name'.); and
- The following particulars of the UK establishment must be stated on all business letters, order forms and websites used in the United States:
    - Where the establishment is registered;
    - Registered number of the establishment;
    - Country of incorporation, identity of registry if applicable, company number, legal form, whether liability of members is limited; and
    - The location of head office.

5. Finance

Once a company has been established and is operational there will generally be a need for some form of outside finance to acquire working capital or assets. In the initial stages of a company's life, funds for activities such as these will often be provided by the shareholders in the form of equity or from initial debt investors in the form of loan notes. As the business develops, bank finance often becomes necessary.

Types of Finance

Typical forms of finance provided by banks include overdrafts and loans. A bank that is approached for any form of finance will undertake credit checks and 'know your customer' (KYC) checks. Depending upon the amount of finance required and the financial standing of the company, a bank may require personal guarantees and security from the company, its shareholders or its parent company.

Overdrafts: These provide a short-term form of revolving finance for companies for general working capital purposes and are made available via the company's current account. An arrangement fee will usually be charged by the bank offering the overdraft, and interest on the overdraft will generally be linked to the bank's base rate. (A margin in addition to the base rate will be charged by the bank.) As this is short-term finance, the company will be able to borrow up to the agreed overdraft limit, and any receipts in the company's current account will reduce the overdraft outstanding automatically. At the end of the agreed overdraft period, unless the overdraft is extended, the company will be required to repay any outstanding borrowing. Typically, overdrafts are repayable on demand.

Loans – Term and Revolving Credit Facilities: Longer-term finance is required by companies not only to fund working capital but also so that the company can fund expansion and the acquisition of assets, such as premises, plant and machinery and other fixed assets. Banks are willing, subject to the usual credit and KYC checks, to provide loans pursuant to which an agreed amount will be lent to the companies. These loans typically have a longer repayment period than would be available under an overdraft. Loans can be made available either on a term- or revolving-credit basis.

Term loans, where the loan is made for a given period, may have an amortised repayment profile whereby a certain amount of the loan principal is repaid at regular intervals (monthly, quarterly, etc.), or where the whole principal amount advanced is repayable at the end of the term of the loan in one amount (a bullet repayment). These two mechanisms can also be combined to allow for a repayment profile that suits all parties. Interest will comprise either a floating or fixed-base rate and a margin (as agreed with the bank); it will normally be paid at regular intervals (monthly, quarterly, etc.) throughout the term of the loan. Alternatively, interest can be capitalised and paid at the end of the term. The bank will charge an arrangement fee for setting up the loan for the company and may charge a commitment or ticking fee until the loan is drawn down by the company.

Revolving-credit facilities provide the company with a committed finance line for a given period as the need arises for items such as working capital. The company can access funds (within the agreed amount of the loan) as and when required (subject to minimum drawdowns and drawdown periods), but, unlike a term loan, the company is able to repay the loan whenever it wants and redraw the loan again later (hence the revolving nature of the loan). Interest will accrue on the loan in the same way as a term loan but will only be charged when the revolving-loan facility is being utilised; a commitment fee will be charged by the bank to the extent that the loan is available to be drawn but is not utilised. The bank will also charge an arrangement fee for setting up the loan for the company.

More Complex Financing Solutions: Banks can provide more complex financing solutions to companies depending on the needs of the company. For example, the company may need to import goods from overseas and thereby set up documentary letters of credit with the foreign exporter. In order to do this, the company's bank (the issuing bank) will require proof that the company has adequate funding in place to make payment to the exporter; this may be undertaken by a loan provided by the bank, which will enable the importing company to settle any liabilities which arise under the documentary letter of credit (the issuing bank will require a counter indemnity from the company in order to issue the documentary letter of credit) which can be repaid by the company upon its subsequent sale of the goods.

In larger loan transactions, banks will often use market-standard documentation drafted by the Loan Market Association (LMA). This will aid a syndicate or club of lenders by providing administrative mechanics to manage the loan as between such lenders, including, for instance by the appointment of an agent who will act on instructions of the lenders or a majority of the lenders.

Common Documentary Requirements

- **Constitutional Documents** – The lender will require copies of all constitutional documents (articles of association, memorandum, certificate of incorporation and certificate(s) of change of name) to check that the company is properly established and to ensure that the internal regulations of the company are complied with when the loan is made.
- **Board Minutes** – It is important from a lender's perspective to ensure that the company has properly approved the loan in accordance with the company's constitutional documents, to ensure that the company is empowered to enter into the loan agreement (and other related documents such as guarantees and security) and is therefore fully liable for the obligations created thereunder.
- **Parent Company Board Minutes or Shareholder Resolutions** – These will sometimes be required (especially in the case of a loan being made to a special purpose vehicle that has been established solely for the purposes of the transaction) to ensure that the company's parent is fully aware of the terms of the transaction and supportive of the transaction as the shareholder of the borrowing company.
- **Officers' Certificates** – These will provide the lender with specimen signatures of the officers of the company that are signing the loan documentation and will certify any board minutes, constitutional documents and other documents that are delivered to the lender as being complete and up to date. They may also contain certain market standard declarations to provide additional comfort to the lender.
- **Legal Opinions** – These will be required by lenders in larger value loans. Legal counsel confirms that the company (and any other obligor companies) is properly empowered to enter into the loan documentation and that the loan documentation (such as the loan agreement and any guarantees and security) is legally binding and enforceable. Other matters, such as registrations, filings and tax may also be covered by legal opinions, giving the lender confirmation of the legal position regarding the status of the loan and reducing the legal risk.
- **Financial Statements** – These will be required by the lenders prior to drawdown of the loan facility (where historic audited profit and loss accounts, balance sheets, etc. are available) and throughout the term of the loan. (These may include audited accounts and monthly, quarterly, and semi-annual financial statements and management accounts.) These form the basis of the credit analysis undertaken by the bank to make the loan available to the company and may prove a vital tool to monitor the company's financial performance, both on a historic basis and looking forward. During the term of the loan, a compliance certificate may also be required, by which the directors of the company will certify compliance with any financial covenants set by the lenders.
- **KYC** – In order to combat fraud and money laundering, all lenders are required to seek information on the ultimate beneficial owners of the company with whom they are seeking to do business.

Guaranteed Security

Guarantees: Guarantees are required by lenders to support overdrafts and loans which they provide, particularly where the company has a limited history, assets or track record or where the company is part of a larger corporate group. In the case of a startup business, where the sole-owner shareholder or director is often the main person running the business, the financial standing of the company is significantly dependent upon that individual. It is common in such circumstances for the lender to require the owner of the company to provide a guarantee. In this instance, the owner will need to seek independent legal advice.

A guarantee is a third-party obligation which provides the lender with recourse against the guarantor when the overdraft or loan goes into default or, in other words, where the company fails to pay or perform other obligations. Where multiple facilities (such as overdrafts and loans) are granted to the company, the lender may require the owner to provide an all monies guarantee in respect of all the liabilities of the company. Instead of guaranteeing a specific amount, the guarantee would be in relation to all monies lent by the relevant lender from time to time.

In cases where the company forms subsidiaries or is part of a corporate group of companies, guarantees are also helpful in that they allow one company to provide financial support to other members of the group. Where one member of the group seeks finance, the lender will often seek a guarantee from other members of the group. In all cases where guarantees are provided by parent companies, sister companies or subsidiary companies, it is important that each guarantor company receives a corporate benefit for doing so. This may take the form of a monetary payment. More usually, it is evidenced by the board of the guaranteeing company acknowledging, in the board minutes approving the guarantee, the benefit of such guarantee to the company and the group as a whole.

Where a guarantee is provided by a company, the lender will undertake a thorough credit analysis of the guarantor company in the same way as if it were a borrower. Similarly, the lender will require many of the deliverables it would require if the guarantor company was the borrower (i.e. board minutes, financial statements, etc.) and may require additional security to be provided by the guarantor to support the guarantee obligations.

Security: Lenders will often require security to be provided not only by the borrower company, but often in the case of small companies, by the shareholders/owners. The type of security taken will depend upon what assets the company or guarantor is able to provide, and the lender will need to assess the value of such security. Common types of security include:

- **Mortgages of Land** – A form of security which will allow the lender to foreclose over the land in the event of a default. This form of security must be registered at the Land Registry and elsewhere.
- **Assignment of Rights** – A form of security over contractual rights, e.g. over receivables (financial benefits under contracts including monies owing to the security provider) or bank accounts. To perfect the assignment, it will be necessary for notice to be given to the counterparty of the debtor under the contract.
- **Charges** – Charges can be taken in respect of a wide variety of assets, including land, bank accounts, company shares, etc. Charges may be fixed or floating.

Documentation: A share charge would usually be a document that only includes a charge over shares, while a debenture is a document that would ordinarily include fixed and floating charges over all or several classes of assets of a company. A debenture may also include mortgages and assignments. Where a debenture contains a floating charge, such floating charge creates a security interest over those assets which, until a crystallisation event occurs, will allow the company to deal and dispose of those assets. Once a crystallisation event occurs (such as the insolvency of the company or receipt of notice from the lender that it wants to take action to protect the assets), the floating charge is converted into a fixed charge thereby freezing the assets and preventing the company from dealing with or disposing of the assets thereafter.

Registration: Under the Companies Act 2006, security created by a UK-registered company is generally registrable at Companies House within 21 days of creation. Failure to deliver particulars to the Registrar will mean that the security will be void against a liquidator, administrator or creditor of the company, and it is likely the money secured by the charge will become immediately payable.

Risk-Free Rates

In many credit facility agreements entered into before 2021, interest was calculated by reference to LIBOR (London Interbank Offered Rate). However, since 1 October 2024, all 35 LIBOR settings have ceased, so all credit facility agreements should now contain alternative risk-free rates (RFRs). The Sterling Overnight Index Average (SONIA) is the RFR of reference in the UK, and the Secured Overnight Funding Rate (SOFR) is the RFR of reference in the United States.

6. Employment

Business leaders, in-house counsel and HR professionals rightly expect risk-based analysis and practical and proportionate employment law solutions. That is what we aim to provide by maximising our cross-disciplinary approach.

The UK economy continues to emerge from the experiences of COVID-19 with the practices of employers and employees having been influenced by the challenges of prolonged remote working. Many individuals have heightened expectations for a more flexible working environment within a more competitive, and potentially more litigious, labour market. Similarly, many employers wish to encourage and mandate an increase in the number of working days physically in the office, with many large employers expecting a minimum of three days per week in the office. However, enhanced scope to request flexible working arrangements also must be managed. (See below.) Strikes and other forms of industrial action directed at above-inflation pay settlements are much more prevalent in the public sector where trade union membership is concentrated—but this influences remuneration expectations within the market. Flexible working requests and formal workplace grievances continue to be regular challenges in the daily workplace. Discrimination and whistleblowing claims can lead to uncapped compensation.

Diversity and Inclusion considerations are increasingly important, particularly so within regulated financial services. The potential for third party harassment claims and the requirement to show that 'all reasonable steps' have been taken in order to rely upon a statutory defence requires careful and thorough risk assessments by employers. There are increasing expectations for positive engagement with neurodiverse candidates and employees and the consideration of reasonable adjustments with the workplace is likely to increase in order to attract and retain candidates more broadly.

2025 is likely to be a period of significant change as the Labour government seeks to implement various improvements to the rights of employees and workers. For example, there will be changes to increase eligibility for Statutory Sick Pay. The scope to request flexible working arrangements as a 'day 1' right, and a narrowing of the scope to decline such requests on the part of an employer, will place in sharp relief the challenges that will arise from the expectation of a broader return to the physical workplace.

The qualifying period for the right to bring an unfair dismissal claim may not be shortened until 2026 but employers will likely need to plan and prepare for its impact. Collective consultation requirements in relation to dismissals of 20 or more employees will become more challenging as the focus will be on an employer's UK-wide operations rather than at a specific establishment/location. We continue to help businesses adapt and manage operational risk effectively and efficiently, drawing on our long experience of supporting U.S.-based businesses making their first hires in the UK, often with home-office structures. We help clients anticipate and manage their risks proactively.

Where a business employs staff who work in or are based out of the UK, the employer will have obligations under the law applicable in the relevant part of the UK. It will need to consider employment law, immigration issues and tax issues.

These issues arise irrespective of whether the employer is a UK entity or not—the key issue is where the employee actually works. Specific advice should be sought as to the applicability of the UK employment and tax laws where the employee is peripatetic, an expatriate or otherwise works out of a number of jurisdictions. These factors are relevant to the mandatory local law rights as well as the potential to enforce post-termination restrictions.

All employees have an employment contract with their employer, even if it is not set out in writing. Minimum statutory particulars of employment must be provided in writing. It is always preferable to set out terms expressly in writing to avoid ambiguity and the possible relevance of more beneficial implied arrangements.

Employees and workers in the UK have a number of protections set out in the applicable legislation covering, amongst other things, working time and paid leave, minimum wage, pension contributions, discrimination, 'whistleblowing' and protection against unfair dismissal. Key points include:

- Paid holiday entitlement is 28 days per annum (pro-rated for part-time workers). However, care needs to be taken if overtime, commission or bonus arrangements might apply and the particular arrangements assessed to determine whether holiday pay needs to expressly include such elements;

- Under the auto-enrollment regime, employers may need to make provision for, and contribute to, a pension benefit for their employees. Although opt-out arrangements can be applicable, employers should seek specific advice as to their obligations in this respect;
- There is no employment-at-will in the UK. All employees are entitled to be given, and are required to give, notice of termination of employment of at least the statutory minimum (basically, one week per year of service from an employer, up to the statutory limit of 12 weeks, and a minimum of one week from an employee). Market arrangements for more senior hires will commonly involve negotiation which seek longer periods.

Employer's Liability Insurance: Employers must take out insurance against disease or injury sustained by an employee during his or her employment and against damage caused by its employees to third parties.

Immigration Issues: If an employer wishes to employ a worker in the UK who comes from outside the UK, including those from the EEA or Switzerland, permission for that individual to work in the UK is likely to be required and specific advice should be sought.

UK legislation requires all employers to check whether all employees who start work with them in the UK are entitled to work in the UK. Employers need to check the appropriate original documents of each employee and keep a record to show that they have carried out the appropriate right-to-work checks. Where an employer employs an illegal migrant worker, it could face a civil penalty of up to £20,000, unless it can establish that it carried out the appropriate right-to-work checks. Employing an illegal migrant knowingly, or where an employer reasonably believes that the migrant does not have the right to work, are criminal offences which could render an employer liable for an unlimited fine and/or a prison sentence of up to five years. We have strong relationships with UK immigration experts to help you get this right.

Employment Tax:

- Taxation, Social Security Contributions (National Insurance) and Apprenticeship Levy – Employers are likely to need to withhold income tax from their employees' pay in accordance with the PAYE system. Employers must also pay National Insurance contributions in respect of every employee, dependent on the employee's earnings and National Insurance category. Apprenticeship levy may also be payable (at the rate of 0.5%) by the employer if the employer/group is within its scope (which normally means an annual pay bill of more than £3 million).
- PEOs – We are seeing an increasing interest in the potential use of Professional Employer Organisation (PEO) structures and have experience in advising on the pros and cons of direct employment versus PEO arrangements. This is a particular issue to bear in mind if share options are to feature as part of a remuneration package.
- IR35 – Employers must be alert to the risks and practical impact of contracting with individuals who utilise their own Personal Service Companies.

Post-termination restrictive covenants are more prevalent in the UK than in many U.S. states. We can help you assess your needs and tailor your protections.

The UK has now identified the EU-driven legislation and case law that will be treated as 'assimilated law', which remains enforceable in the UK even though the principle of supremacy of EU law no longer applies. Further uncertainty is likely though, as there will be challenges that seek to justify departure from such assimilated law. This too will place a premium on clear, pragmatic risk management of employment matters, and we are eager to partner and bring to bear our experience to help our clients achieve their goals and priorities.

7. Property – Acquiring or Leasing Business and Residential Premises

Finding Suitable Business Premises

This is normally undertaken by commercial property agents, usually chartered surveyors whose knowledge of the market for the area you wish to locate to will be important. In England and Wales, chartered surveyors deal with the buying, selling and leasing of property together with connected professional matters, such as building surveying, planning issues and business rating. In advising on buying, selling or leasing property they will:

- Give advice on levels of purchase price and rent;
- Negotiate the main terms of the deal to ensure it reflects the local market at the time;
- If asked to do so, advise on the state and condition of the premises and/or the building. In this regard, we recommend your commercial property agent takes on board UK government policy on reducing emissions, achieving energy efficiency and its aim to achieve carbon net zero by 2050, and likely required capital investment. Where a lease is being taken, then if the term of the lease is short, care should be taken to avoid contributing via the service charge regime towards significant capital expenditure, including any such expenditure associated with energy efficiency improvement works. An energy performance certificate (EPC) should be requested from (and must be provided by) the landlord's representatives which will confirm the existing energy efficiency rating for the premises (which from 1st April 2023, should have an energy efficiency rating of not less than 'E', albeit, given proposed legislative changes on minimum energy efficiency standards the minimum rating is anticipated to be at least 'C' by 2027, with a more stringent minimum rating of 'B' by 2030). An indication of likely energy supply costs may also be sought given significant increases in the cost of such utilities. If car parking spaces are available, you may also wish to check on the availability of EV charging points and exclude the future installation of any EV charging point infrastructure by the landlord from your service-charge obligations, particularly if the lease is for a relatively short term. If a lease of a longer duration is being taken, you should perhaps expect to take a more collaborative approach with the landlord. The aim of establishing the 'green building' credentials of any proposed business premises may also tie in with your ESG-driven business strategy;
- You should also consider whether the lease is to be renewable at the end of the initial contractual term or, as is generally standard practice with office leases, whether it is to be excluded from the 'security of tenure' rights of renewal that are otherwise afforded to business tenants occupying commercial premises under the Landlord and Tenant Act 1954. Where significant capital expenditure is being made by a tenant to fit out commercial premises and/or significant goodwill is associated with the location of the premises then you are advised to seek a 'renewable' lease and/or a contractual option within the lease to acquire a new lease following expiry of the term of the existing lease;
- Where your commercial property agent can negotiate a break clause, we advise that the break clause pre-conditions should not be so onerous as to risk frustrating the effective operation of the break clause. The inclusion of a break clause may be a valuable tool as the concept of hybrid-working is seemingly now established practice and longer-term space requirements may be subject to ongoing review. The inclusion of a tenant break clause may also provide leverage on rent review discussions or renegotiating other lease terms, but it should be borne in mind that the landlord may offer reduced initial incentives (e.g. rent-free period and/or contribution to tenant fit-out costs) if a break clause is included in the lease or a landlord may seek a break fee from the tenant if the break option is exercised. A tenant could also seek to negotiate an additional rent-free period if it does not exercise a break option;
- We further advise that where a lease is being taken, the lease rent suspension clause applies equally to cases where there is damage or destruction to the premises whether caused by an insured or uninsured risk You should also carefully consider the scope of any business interruption cover insurance, where trading from the premises is not possible;
- For retail premises, instead of an open-market rent applying, the annual rental may be agreed based on a lower base rent plus further rent linked to turnover. Your commercial property agent will likely advise;
- Also, depending on the nature and extent of the premises to be acquired/leased and any proposed capital expenditure by you, tax advice is recommended on the availability of, for example, capital allowances and other reliefs on expenditure that may be set against taxable profits The UK government announced in 2023 the availability of 'full expensing' of qualifying capital expenditure

incurred within the next three years through March 2026, with the intention of making this permanent afterwards. This means that 100% of the amount of any 'main rate' capital allowance expenditure will be immediately deductible, meaning that for every pound invested, its taxes are cut by up to 25%, with 50% of any 'special rate' capital allowance expenditure being deductible in the first year, with a deduction at 6% thereafter. The UK government has now confirmed that full expensing as permanent measure. Full expensing will mean that capital investment in plant and machinery can be made out of pre-tax profits. It should be noted that full expensing and partial expensing referred to above are both 'first-year allowances', meaning that they are only available in the first year in which the expenditure is incurred.

Once the main terms are agreed, the parties' lawyers will discuss the legal documentation to give effect to the agreement. Any issues arising from the documentation and the legal due diligence exercise in respect of the property, including land use restrictions, planning issues, the terms of an existing lease (that is being acquired) that may affect whether the company can lawfully use the premises for its business or not, and any other questions will be discussed and dealt with. Information about the property generally will be sought from the relevant authorities and the seller or landlord. Environmental (as well as sometimes structural) surveys and local authority and other relevant property searches are also a wise precaution.

Structuring the Investment in UK Business Premises

There are no legal restrictions in the UK on overseas investors owning, selling or leasing property in England and Wales. When considering the investment vehicle, there is considerable flexibility with such investment permissible via a domestic or foreign vehicle. As tax considerations will determine the most appropriate investment vehicle to use, advice should be sought under UK tax laws and the laws of the investor's own jurisdiction. However if an overseas entity (including the use of any trust arrangement) is being considered as the investment vehicle for UK property then compliance obligations under domestic legislation relating to 'Economic Crime' should be factored in.

The Economic Crime (Transparency and Enforcement) Act (ECTA), enacted on 15 March 2022, requires that overseas entities that become the registered proprietor of a 'qualifying estate' (i.e. a freehold interest in land or a lease granted for more than seven years) register at Companies House and provide (and keep up to date on an annual basis) extensive information about the entity and its beneficial owner(s) and/or managing officer(s), such information to be maintained on a publicly available register known as the Register of Overseas Entities. A beneficial owner can be a natural person, a legal entity, or a government or public authority.

Furthermore, if an overseas entity has disposed of (i.e. transferred) a qualifying estate between 28 February 2022 and 31 January 2023, information regarding that disposal must be provided to Companies House. The information provided must be independently verified prior to registration, and overseas entities owning a qualifying estate had until 31 January 2023 to initially register. Failure to comply with initial registration and annual updating requirements (and to undertake a new registration where an overseas entity subsequently acquires a qualifying estate) under ECTA will expose the overseas entity and its officers to criminal sanctions and could potentially impact banks who have lent monies secured on UK property. ECTA also made changes to Unexplained Wealth Orders and the law surrounding sanctions.

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) has now extended the regime created by ECTA. The date some of these changes will take effect has not yet been announced. Most changes made by the ECCTA to ECTA are an attempt to close perceived loopholes, particularly where trusts and nominee structures are present in the beneficial ownership chain of overseas entities.

The Land Registry places a restriction on the title to any qualifying estate owned by an overseas entity, preventing the registration of certain dispositions (transfers, lease of over seven years and mortgages) by that overseas entity, unless it is exempt or has complied with: (i) the registration requirement; and (ii) the updating requirements. The ECCTA has now added a third requirement: complying with a notice from Companies House obliging the overseas entity to supply further information. This took effect on 4 March 2024.

The ECCTA's extension of the disclosure obligations (on initial registration and the annual updating requirements) now requires an overseas entity to also disclose the title numbers of all qualifying estates that it is the registered proprietor of and more information about trusts. In addition, when updating or applying to be removed from the Register of Overseas Entities, an overseas entity will have to give details of changes in certain trust beneficiaries since the overseas entity registered on the Register of Overseas Entities, or since its last update. Another new requirement to be brought in by the ECCTA is that an overseas entity must provide further information about past changes to beneficial owners, trust beneficiaries and trustee beneficial owners. This obligation will apply to any overseas entity that was registered proprietor of a qualifying estate during the period from 28 February 2022 to 31 January 2023, irrespective of whether that overseas entity is still on the Register of Overseas Entities or not. This obligation also applies to some overseas entities that committed an offence by not registering on the Register of Overseas Entities before 31 January 2023. Not complying with this new obligation is a criminal offence.

Since the ECCTA changes came into effect on 4 March 2024, a person is also treated as a beneficial owner of an overseas entity if the overseas entity is the registered proprietor of a qualifying estate and holds the qualifying estate as nominee for that person or for an entity of which that person is a beneficial owner. This means that certain beneficial owners of the land must now be registered on the Register of Overseas Entities, in addition to certain beneficial owners of the overseas entity.

The ECCTA also gives the government new powers to further expand the definition of registrable beneficial owner where the overseas entity is part of a chain of entities that includes a trustee. The details of how the UK government intends to implement this power are awaited. Although trust information is not currently on the public register, from 31 August 2025, the registrar may disclose certain trust information to anyone who requests it. Any person whose details could be disclosed in this way can apply in advance to have their details excluded from disclosure, but such applications are only permitted on limited grounds.

Overseas entities of registrable land in the UK therefore not only need to be aware of their ongoing registration obligations on the Register of Overseas Entities but should also be aware of the new and extended obligations introduced by the ECCTA and, where UK real estate is held via offshore corporate structures or offshore trusts, the implications of ECCTA on increased transparency of land trust arrangements.

Likely Costs When Obtaining Business Premises

In addition to the purchase price or rent payable for the premises, the chartered surveyor's fees, fees of any building surveyor and legal costs, the following costs also should be anticipated when acquiring new premises:

Stamp Duty Land Tax (SDLT) – SDLT will be payable to HMRC where a commercial property (freehold or leasehold) is being purchased. SDLT is payable on the consideration paid for commercial property at the following rates:

Property or lease premium or transfer value SDLT rate:

- Up to £150,000 – 0%;
- The next £100,000 (the portion from £150,001 to £250,000) – 2%;
- The remaining amount (the portion above £250,000) – 5%.

SDLT is also payable on the net present value (NPV) of the rental element on the grant of new leases. If VAT is payable on the rent, then this should be included in the rent in the NPV calculation at a rate of 20%. As a rule of thumb, the longer the lease and higher the rent, the greater the SDLT liability will be. It should be noted that there will be no SDLT partial refund should a tenant exercise a break option, for example, halfway through the contractual term of the new lease.

Specific rules deal with further issues, such as any premium paid, rent reviews (in the first five years of the lease term) and surrender and re-grants of the same or enhanced premises.

Value Added Tax (VAT) – VAT may in certain circumstances be charged by the landlord on rent payable under a lease. It may also be charged on the purchase price of freehold property, or the premium paid on the purchase of a lease. It may be possible to recover the VAT if the company is registered for VAT purposes.

Land Registry Fees – Fees range from £45 up to £1105 and are payable (i) on any purchase consideration, (ii) on the registration of leased land where the lease granted for a term of seven years or more, or (iii) where an existing unregistered lease is acquired with more than seven years still left to run.

Rent – Rent is usually payable quarterly in advance on leasehold property, exclusive of utilities and other outgoings such as electricity, telephone, gas and water charges. Services provided by the landlord to the property, rates payable to the relevant authorities, and buildings insurance premia are likely additional costs.

Service Charges – Charges may be payable on leasehold property for facilities provided by the landlord, such as repairing and maintaining the building, the decoration and repair of common parts (including external areas), and provision of security and reception services where the property is part of an office block, or an industrial or retail estate. When negotiating the terms for a new lease, consider whether a capped service charge can be obtained. This is especially important on shorter-term leases, especially if unusual or capital expenditure is contemplated by the landlord, which would cause the service charge to increase dramatically.

Business Rates – Where commercial property is occupied, the property user will be required to pay local area and government taxes to the local business rating authority.

Other Cost Considerations – For freehold, leasehold and (possibly) serviced offices, consider the cost of equipping and fitting out to the required standard and specification for business in addition to the purchase price or rent payable for the premises, chartered surveyor's fees, fees of any building surveyor and legal costs referred to above. The following additional costs should also be anticipated when acquiring new premises:

- Cost of insurance for tenants' own fixtures, fittings and equipment and third-party liability and public liability insurances.
- Consideration should also be given to ensuring that premises have sufficient IT capability to meet modern business requirements, and, in relation to leased premises or serviced offices, that requisite rights have been granted to allow data communication equipment and cabling to be installed to facilitate such IT capability.

Serviced Office Accommodation

When initially setting up a business, a company may not have a large staff and may not wish to spend time looking for offices. A suitable alternative may be serviced office accommodation, which is widely available.

Leasehold Premises

The acquisition of commercial leasehold premises usually takes longer to finalise than the acquisition of a freehold, due to the relative complexity of the transaction. Prospective tenants will be required to furnish references, which will include the provision of annual reports and company accounts.

Once in new premises there are a number of considerations that tenants should be aware of:

Rent Review – Commercial leases that are for longer than five years will almost always contain provisions allowing the landlord to increase the rent in line with current market rates at different intervals in the life of the lease (or, alternatively, may specify pre-agreed stepped increases which may provide the tenant with greater budgeting certainty). The rent review cycles are usually at the end of every fifth year of the lease. If the parties are unable to agree on a reviewed rent in line with the open market at any stage, they can refer the matter to an independent third party to decide on the reviewed rent. Alternatively, the rent may also be increased by reference to increases in inflation using the RPI or CPI indices. It should also be noted that a rent review will be 'upwards only'.

Subletting and Selling – A commercial lease will usually allow a tenant to rent out the whole (and sometimes a part) of its space to another company, subject to obtaining the landlord's prior consent. Sharing of the space with 'group companies' is often permitted without the need for the landlord's consent. If a move to alternative premises is subsequently required during the term of an existing lease and the tenant does not have the ability to exercise a break option, the lease will also usually allow the tenant to transfer (assign) its lease to a third party. The landlord's consent will usually be required before an assignment can take place. An outgoing tenant may remain liable for payment of rent and other sums under the lease if the new tenant defaults on payments, but this will depend on the provisions in the commercial lease.

Repairs – Most commercial leases will require the tenant to keep the premises in a good and substantial state of repair, condition and decoration. This applies regardless of the state of the premises when acquired. Prior to committing to the lease, it would be prudent to carry out a survey of the premises. If the tenant wishes to limit its repairing obligation in the lease, and the landlord is amenable to a diluted repairing obligation, the tenant's surveyor can produce a 'baseline' schedule of condition, and the landlord and the tenant will incorporate qualified repairing, decorating and 'handback' provisions by reference to the schedule of condition which is appended to the lease as evidence of its existing state of repair and condition. Tenant repairing obligations often extend to any plant and equipment exclusively serving the premises (e.g. air-conditioning) and it is advisable to carry out, or procure from the landlord, specialist surveys and maintenance records so that the tenant is assured of the proper working order and economic life of such plant and equipment. Consideration should also be given to the position on liability for the reinstatement of carpets and other floor coverings at the end of the lease term.

Alterations – A tenant may wish to carry out alterations to the premises to suit its business needs. Most commercial leases (unless a lease of a whole building or a lease of retail premises that includes the shop-front) do not allow external or structural alterations but do allow internal non-structural alterations, provided that the landlord's prior consent is obtained. A tenant is generally required to reinstate any alterations and/or additions that it makes at the end of the term of the lease. The cost and timeframe for undertaking such reinstatement works should be considered well in advance of the end of the lease term.

Landlord's Professional Fees (Legal and Surveyors) for Tenant Alterations – These fees are invariably payable for the review and approval of the proposed works and formal documentation of consent to works, save where such approval (for initial fitting-out works) is obtained at the time the new lease is entered into, in which case, landlords will generally bear their own professional costs.

Use – The lease will specify how the property may be used, which must also accord with the permitted use under planning law. If a change of use is required, there may be a need to obtain both the landlord's consent as well as any required, planning permission from the planning authorities. There have recently been material changes to planning laws in England and Wales. The introduction of new wide-ranging planning use class E (commercial, business and service) may allow a tenant under a lease that contains a user clause consistent with planning use class E to potentially change use (for example, between retail and office use) without the need for further planning consent or even landlord consent.

Residential Premises

Corporate Letting

If a company is moving staff to England and Wales to start up the UK company, residential accommodation may be taken by the company for the staff members rather than the staff buying freehold houses or purchasing long leases of flats. If a company proposes to enter into a short-term lease arrangement in its name for a staff member, the company should be aware it has no rights of occupation in the property at the end of the tenancy and no right to renew the tenancy. With the aim of enhancing the rights of renters in the private residential sector, including the ending of 'no-fault' evictions, that currently allows landlords to evict tenants on two months' notice (after their contractual term ends) without needing to specify any other ground, the UK government has also (following on from the "Renters Reform Bill" in 2023) put before the UK Parliament the Renters' Rights Bill 2024 with the intention of abolishing the fixed-term Assured Shorthold Tenancy ("AST"). which have long been a staple of the rental market. AST's will be replaced by periodic tenancies, which will continue indefinitely unless validly terminated. Tenants will be able to terminate a periodic tenancy by giving two months' notice, via any written method. Landlords will be able to terminate only on certain prescribed grounds.

Residential Purchases

It should be noted that changes in UK tax laws have made the holding of residential property in a foreign vehicle much less attractive with the imposition of additional and burdensome disclosure obligations. Consideration may therefore be given to 'de-enveloping' a residential property that is held by an overseas entity so that it is held directly by the individual beneficial owner instead. This could potentially be achieved without any adverse Stamp Duty Land Tax consequences, but corporation tax may be payable by the overseas entity on any increase in value accrued during its period of ownership.

Following the introduction of the Building Safety Act 2022, care should be taken to ensure that prior to taking or acquiring an interest in residential property that is in an apartment block, any required compliance obligations under such building safety legislation have been satisfied. It should also be noted that leaseholder protections under the Building Safety Act 2022 only apply to a 'relevant building' (i.e. a building which is at least 11 meters or five storeys high, with at least two dwellings, and is not leaseholder-owned). Additional building safety measures apply toa 'higher risk building' (i.e., buildings of at least 18 meters or seven storeys that contain at least two residential units) and compliance with the management and mitigation of building safety risks in the occupation of such higher risk building should be confirmed.

8. Environmental, Social and Governance

Environmental, Social and Governance (ESG) refers to a framework for assessing a business' impact on society and the environment, as well as its transparency and accountability. In the UK, ESG has become a cornerstone of corporate governance, with evolving legal and regulatory frameworks that impose increasing obligations on businesses to address sustainability, human rights and governance issues. These obligations require proactive engagement from businesses to remain compliant.

The UK's ESG regulatory environment is shaped by its commitment to achieving net-zero emissions, fostering social equity and enhancing corporate accountability. Mounting pressure from stakeholders, including investors, customers and regulators, is driving businesses to adopt best practices and align with voluntary standards. Companies in the UK face more scrutiny in this area than in many other jurisdictions, which can present increased ESG-related compliance and liability risks.

Below, we outline key ESG regulations, frameworks and trends in the UK, focusing on concrete obligations and practical considerations for businesses.

Environmental Regulations

Climate Change Act

The UK Government passed the Climate Change Act in 2008 (as amended in 2019) and committed to (a) reducing the UK's greenhouse gas (GHG) emissions by 80% by 2050 and (b) an interim target to reduce UK GHG emissions by 78% by 2035. The UK Government has also implemented a Net Zero Strategy (Build Back Greener) 2021, updated in 2022. It is expected that ESG reporting will become mandatory for all UK companies in order for the UK to meet its legally binding Net Zero Targets. While no firm timeline has been announced, the UK Government has indicated a phased approach, with smaller companies potentially being brought into scope shortly after larger entities, likely by the late 2020s.

Environment Act 2021

The Environment Act 2021 plays a central role in addressing various environmental priorities. It mandates a minimum biodiversity net gain of 10% for all planning permissions, while also establishing long-term environmental targets in areas such as air quality, water management, biodiversity preservation and resource efficiency.

Sustainability Disclosure Standards

The Sustainability Disclosure Standards (SDS), set to launch in July 2025, will align with the International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards (S1 and S2). The SDS will introduce mandatory climate-related disclosures for 'large companies' and listed companies on UK stock exchanges beginning in 2026, ensuring greater transparency and consistency in ESG reporting. 'Large company' has not yet been defined.

Social Regulations

Modern Slavery Act 2015

The Modern Slavery Act 2015 remains a cornerstone of social regulation in the UK. Businesses with an annual turnover exceeding £36 million must report on their efforts to address modern slavery risks within their operations and supply chains. The Labour Government has signalled its intention to strengthen supply chain environmental and human rights due diligence regimes to enhance transparency and accountability, following the approach taken by the European Union under its Corporate Sustainability Due Diligence Directive.

Equality Act 2010

Employers with more than 250 employees are required to report annually on their gender pay gap under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. In addition, listed companies are now subject to enhanced diversity disclosure requirements under updated Financial Conduct Authority (FCA) rules.

Governance Regulations

The **Corporate Governance Code**, which was updated in 2023, addresses the integration of ESG considerations into governance practices. While the recent updates primarily focus on ESG-related risks in the context of internal controls and risk management, the Code more broadly encourages companies to consider ESG factors within their overall governance framework. It provides detailed guidance on board independence, the roles and responsibilities of non-executive directors and the management of material risks, including those related to ESG. The updated Code aims to improve accountability and ensure that companies align their governance structures with evolving stakeholder expectation

The **Financial Conduct Authority's (FCA) anti-greenwashing guidance**, which was adopted in November 2023 and came into effect in May 2024, seeks to combat misleading sustainability claims. By April 2025, the FCA's sustainability labels for financial products—developed under its Sustainability Disclosure Requirements (SDR) and investment labelling regime—will become mandatory with a view to ensuring clarity and transparency for investors in the green finance sector.

Financial Disclosure Frameworks

The **Taskforce on Climate-related Financial Disclosures (TCFD)** framework is now mandatory for listed companies and certain large private companies, defined as those with over 500 employees and a turnover exceeding £500 million. Currently, the framework applies broadly without explicitly targeting high-emission or high-risk sectors, such as oil and gas or heavy manufacturing, which limits its sector-specific impact. The UK government has announced plans to address this by expanding the scope of TCFD reporting for additional sectors by the end of 2025.

The **International Sustainability Standards Board (ISSB)** has published frameworks (S1 and S2) for sustainability and climate-related financial disclosures. The UK plans to adopt these standards from 2026, with mandatory reporting on a financial year basis.

Private Sector ESG Trends

Green finance continues to gain momentum, with green bonds, social bonds, and sustainability-linked bonds becoming popular instruments for financing environmental initiatives. Regulatory commitments such as The UK Green Finance Strategy, initially published by the UK Government in July 2019, support and encourage the importance of mobilizing private capital to transition to a low-carbon economy.

Corporate commitments to ESG principles are evident in the growing number of B Corporations (B Corps). Companies seeking a B Corp certification voluntarily commit to balancing profit with purpose by meeting high standards of social and environmental performance. There are now over 2,300 certified B Corps in the UK, a number which has significantly increased in recent years.

Institutional investors are increasingly demanding robust ESG practices and integration of sustainability considerations into their decision-making processes. This shift reflects a growing recognition from consumers and investors of the financial and reputational benefits of strong ESG performance.

Emerging Focus Areas

Biodiversity: Biodiversity-related requirements are gaining prominence, with the UK's biodiversity net gain policy already influencing planning decisions. Additional regulations on nature-related financial disclosures, likely aligned with the Taskforce on Nature-related Financial Disclosures (TNFD) framework, are anticipated in the near future.

AI and ESG: AI offers powerful tools for advancing ESG initiatives, such as predictive modelling for sustainability risks. However, concerns persist regarding its ethical and environmental implications. The Labour Government's approach to AI regulation emphasizes innovation while promoting ethical standards to address human rights and addressing environmental risks associated with increased computing power.

Litigation and Enforcement Risks: The UK has seen high-profile climate litigation that has set global benchmarks and the UK has a robust community of activists and stakeholders leveraging legal avenues to hold companies accountable for climate-related risks and supply chain violations. High-profile cases are testing new principles of corporate liability, highlighting the importance of proactive ESG compliance.

Regulatory Enforcement: Enforcement actions are also on the rise. The FCA and the Competition and Markets Authority (CMA) are intensifying their scrutiny of greenwashing and inaccuracies in ESG disclosures. Companies must ensure the accuracy and transparency of their sustainability claims to mitigate enforcement risks.

9. Intellectual Property Rights

The term Intellectual Property Rights (IPRs) may cover a wide range of registered and unregistered proprietary rights, such as patents, trade marks, service marks, design rights, topography rights, semi-conductor rights, moral rights, rights of confidentiality, utility models, copyrights, database rights or rights in domain names, and includes any rights granted by any existing registrations of or applications for the above.

Most IPRs are territorial, and whilst international treaties can provide some cross-border protection, not all rights and protection afforded in one country will necessarily extend to other countries. Many aspects of the UK intellectual property regime will be familiar to non-UK businesses, particularly those with experience in jurisdictions which are co-signatories to relevant international conventions on IPRs.

After establishing a UK operation, the non-UK entity (whether parent company or head office) should ensure that it has protected its own IPRs in respect of use in the UK and that it is not infringing or about to infringe a third party's IPRs. All licences needed to use any IPRs which the company does not exclusively own should also be obtained.

It is advisable for the non-UK company to carry out an audit of the IPRs it uses in its home territory. It should establish whether it owns or licences the rights it uses and whether these rights are transferable to the UK business without additional licences.

Registration of IPRs

The non-UK company should ensure that all necessary steps are taken to obtain or establish its ownership of its IPRs in the UK. Some IPRs (e.g. patents) must be registered to be enforceable, some (e.g. copyright) subsist without any registration and some (e.g. trade marks and design rights) can be registered or unregistered, although registration makes enforcement easier. The company should therefore assess whether it is able to register such protection and, if it is, make the relevant application(s) at the earliest opportunity.

The registers applicable to a company's IPRs should be searched prior to use/registration in the UK to establish (i) whether the company's IPRs are likely to infringe those of a third party, and/or (ii) the likelihood of obtaining registration. In relation to patent and registered design rights, an application should be made before the subject matter of the application becomes available to the public anywhere in the world.

The UK is a member of the Madrid Protocol, which means it can be designated for the purposes of an application to register an international trade mark. Under the Madrid Protocol, the 'international registration' is not a unified registration, however. Instead, it provides for a series of national registrations in the countries designated. This is in contrast to an EU-wide trade mark (EUTM), which is a single unitary right covering the 27 member states of the European Union. Following the UK's exit from the European Union, an EUTM will no longer cover the UK. Companies looking to protect their trade marks in the UK and EU must therefore file both a UK trade mark and an EUTM (or individual trade mark registrations in the national registers of those EU countries where it operates, e.g. Germany, Italy, France, etc.).

Unregistered IPRs

With regard to unregistered IPRs (which includes IPRs that cannot be registered in the UK, such as copyright and confidential information and IPRs that can be registered or unregistered, such as design rights and trade marks), steps should be taken with regard to each IPR to strengthen the company's evidence that it owns that right (and, where applicable, the company should consider registering any unregistered IPRs that are capable of registration).

Licence Limitations

The terms of the licences which grant the company use of IPRs should be inspected to ensure that they do not contain any restrictions that will prevent the UK company's use of those IPRs. It may also be necessary to establish whether the licensor has granted or is able to grant licences to third parties for use in the UK of the IPR in question.

IPRs and Employees/Consultants

Contracts entered into with the UK operation's employees or consultants should make specific provision for the retention of the ownership of IPRs in creations, developments, and copyright material or software made by the new UK operation. The default position in the UK is that if an employee generates IPRs in the ordinary course of their employment, their employer will own that IPR. However, it is prudent to make sure that this is the case through employment contracts. Also, in the UK, generally a company would not automatically own IPR created by contractors while providing their services—this must therefore be specifically dealt with by contract.

Domain Names

If the company wishes to have a UK website, it might want to register and use the company name as its domain name. The company cannot register a domain name if that name has already been registered by a third party. It can find out if the relevant domain name is available by performing a 'whois' search. This search reveals whether anyone owns the name rather than whether there is a website at the domain name address.

A domain name must be registered with the relevant domain name registrar (In the UK this is Nominet UK.) There are various restrictions regarding the length and format of the domain name. The company should register a domain name online through an accredited registration agent who will deal with the registrar and the registration requirements on behalf of the company.

Traditionally, domain names are registered on a 'first-come, first-served' basis. However, this has meant that some companies have discovered that they have been too late to register their own name as a domain name. While there are 45 classes for use of trade marks, there is no such restriction over domain names. Therefore, where a domain name has been registered and is being used in good faith, a business is generally unlikely to be able to force a transfer of that name. The company may be able to buy the name from the prior registrant. Alternatively, if the company has enforceable trade mark rights which pre-date the registration of a domain name similar or identical to the company's trade mark, it may be able to compel the prior registrant to transfer the domain.

UK Patent Box

The UK Patent Box allows companies to elect to apply a 10% rate of corporation tax to profits attributable to qualifying patents whether received as a royalty or embedded in the sales price of products. The regime also applies to other qualifying intellectual property rights such as regulatory data protection (also called "data exclusivity"), supplementary protection certificates and plant variety rights. Other non-qualifying profits in these companies will continue to be taxed at the main rate.

The aim of the Patent Box is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. It encourages companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in the UK and maintain the UK's position as a world leader in patented technologies.

UK R&D Tax Credits

Research and Development Expenditure Credit (RDEC)

For accounting periods beginning on or after 1 April 2024, SMEs can claim a credit for qualifying R&D expenditure under the merged RDEC scheme. The credit is calculated by applying a specified percentage (currently 20%) to the company's qualifying expenditure. As the credit is taxable, it is also sometimes called an above-the-line credit. The RDEC therefore increases a company's taxable profits and corresponding tax charge. However, the RDEC is also credited against the resulting tax liability. This means that the RDEC is worth up to

15% for a large company subject to the 25% corporation tax rate (i.e. the 20% credit itself less the fact that it is taxed at 25%, so the net benefit is 75% x 20%).

R&D Intensive SME Relief

Loss-making SMEs which meet an R&D intensity condition can claim a more generous SME relief. This is sometimes referred to as the 'SME intensive scheme' or 'ERIS' (enhanced R&D intensive support). A company meets the R&D intensity condition for an accounting period if its R&D expenditure is at least 30% of its total expenditure for the period. An eligible company incurring qualifying R&D expenditure can claim a deduction equal to 186% of the relevant costs incurred in calculating its taxable trading profits or loss. The deduction is given by allowing a further 86% of the qualifying R&D expenditure, in addition to the usual 100% deduction for such qualifying expenditure, in arriving at the adjusted profits for tax purposes. An SME with a trading loss that has incurred qualifying R&D expenditure can then surrender all or part of the loss for a tax credit. The amount of the credit is 14.5% of the surrenderable amount limited to a PAYE cap equal to £20,000 plus 300% of the certain PAYE and NIC liabilities.

Intellectual Property and AI

The UK government wants the UK to be at the forefront of the AI revolution and is committed to developing a pro-innovation national position on governing and regulating AI. The significance of IPRs in rewarding people for inventiveness and creativity was acknowledged in the UK's National AI Strategy. The UK Intellectual Property Office has previously undertaken consultations to understand how to provide the best environment to develop and use AI, including most recently a consultation which launched on 17 December 2024, and closed on 25 February 2025. Following this consultation, the UK government may implement proposals designed to: (i) boost trust and transparency by ensuring AI developers provide right holders with clarity about how material protected by IPRs are used; (ii) enhance IPR holders' control over whether or not their works are used to train AI models (and their ability to monetize such use); and ensure AI developers have access to high-quality material to train leading AI models in the UK and support innovation.

10. Data Protection

The law governing the collection and use of personal data in the UK was significantly updated by the EU General Data Protection Regulation (EU GDPR). Although the UK left the EU on 31 January 2020, the EU GDPR continues to apply in the UK (the UK GDPR), subject to minor amendments made by The Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019. The UK GDPR is supplemented by the Data Protection Act.

Previous UK governments signaled intentions to reform the UK data protection regime, but the current regime does not materially diverge from the EU GDPR. The Data (Use and Access) Bill is currently progressing through the UK legislative system and, if passed, will introduce a number of changes;l however, these are generally not considered to be a material departure from the existing regime under the UK GDPR.

The Information Commissioner's Office (ICO)

The ICO is the UK's supervisory authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. Under the Data Protection (Charges and Information) Regulations 2018, any business which processes personal data as a 'data controller', meaning they decide the purpose and means of processing, must pay a 'data protection fee' to the ICO. The fee will vary depending on the size of the company and turnover. Failure to pay the fee is a criminal offence.

The UK GDPR

The UK GDPR applies to the processing of personal data by organisations established in the UK. It also applies to non-UK organisations that offer goods and services to the UK market or who monitor activities of individuals based in the UK, as far as their behaviour takes place within the UK.

Those conducting business in the UK and/or the EU should look closely at the requirements of the UK GDPR and EU GDPR to ensure their systems, policies and contractual arrangements are compliant. UK data protection law sets out principles that govern the processing of personal data as follows:

- Personal data shall be processed fairly and lawfully;
- Personal data shall be obtained only for a specified and lawful purpose and shall not be further processed in a manner that is incompatible with the original purpose;
- Personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is being processed;
- Personal data shall be accurate and, where necessary, kept up to date;
- Personal data processed for any purpose shall not be kept for longer than is necessary for that particular purpose;
- Personal data shall be processed in accordance with the rights of data subjects;
- Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of the personal data; and
- Personal data shall not be transferred to a country or territory outside the UK unless an adequate level of protection for the rights and freedoms of the data subject is in place in relation to the processing of that personal data.

What Are the Obligations of the UK GDPR

Key requirements under the UK GDPR include the following:

- **Data Protection Officers (DPOs)** - In many circumstances, those caught by the UK GDPR will need to appoint a DPO, and so thought will need to be given as to whether this applies and, if so, who that person or persons might be.
- **Appointment of Representatives** – Where UK data protection law applies to a business established outside the UK, it may need to appoint a representative in the UK. This does not apply in certain circumstances. Also, where the EU GDPR applies to a business established outside of the EU (including in the UK), it may need to appoint a representative in the EU as well.
- **Accountability** – Those caught by the UK GDPR are required to demonstrate compliance through certain internal documents, maintaining written records of all data-handling activities and by carrying out data protection impact assessments, where required.
- **Legal Basis for Processing** – Personal data can only be processed where the data controller has a legal basis for that processing (e.g., consent, legitimate interests, contractual necessity, etc.).
- **Privacy Notices** – Businesses are required to provide certain information to data subjects where personal data is received from the data subjects or a third party, which is often contained in a privacy notice (i.e. the identity of the 'data controller', how the personal data is used, etc.).
- **New and Extended Data Subject Rights** – Businesses must comply (in most circumstances) with data subject rights (e.g. right of access, right of rectification, right to be forgotten, right to restrict processing, right to data portability, right to object and right not to be subject to automated processing, etc.). The UK GDPR gives data subjects control over their personal data and how it is handled.
- **Data Protection 'By Design' and 'By Default'** – Businesses must ensure that, in the planning phase of processing activities and implementation phase of any new product or service, data protection principles and appropriate safeguards are addressed/implemented.
- **Breach Notification** – Businesses must report a data breach to the ICO within 72 hours of their becoming aware of that breach, except where the data breach is unlikely to result in any harm to data subjects. Where there is a high degree of risk to data subjects, the business must notify the affected data subjects without undue delay.

Appointment of Data Processors

Where a business that is acting as a data controller appoints a vendor to provide services which will require that vendor to process or otherwise have access to UK personal data, the vendor must be appointed under a binding written agreement, which states that the vendor must:

- Only act on the data controller's documented instructions;
- Impose confidentiality obligations on all personnel who process the relevant data;
- Ensure the security of the personal data that it processes;
- Abide by the rules regarding appointment of sub-processors;
- Implement measures to assist the data controller in complying with the rights of data subjects;
- Assist the data controller in obtaining approval from data protection authorities, where required;
- At the data controller's election either return or destroy the personal data at the end of the relationship; and
- Provide the data controller with all information necessary to demonstrate compliance with the UK GDPR.

Compliance Checklists

The following checklists will be helpful for assessing your compliance with UK/EU data protection law.

Lawfulness, Fairness and Transparency

- ☐ Your business has conducted an information audit to map data flows.
- ☐ Your business has documented what personal data you hold, where it came from, who you share it with and what you do with it.
- ☐ Your business has identified your lawful bases for processing personal data and documented them.
- ☐ Your business has reviewed how you ask for and record consent.
- ☐ Your business has systems to record and manage ongoing consent.
- ☐ If your business relies on consent to offer online services directly to children, you have systems in place to manage it.
- ☐ Your business is currently registered with the ICO.

Individual Rights

- ☐ Your business has provided privacy notices to individuals.
- ☐ If your business offers online services directly to children, you communicate privacy information in a way that a child will understand.
- ☐ Your business has a process to recognise and respond to individuals' requests (e.g. to access their personal data).
- ☐ Your business has processes to ensure that the personal data you hold remains accurate and up to date.
- ☐ Your business has a process to securely dispose of personal data that is no longer required or where an individual has asked you to erase it.
- ☐ Your business has procedures to respond to an individual's request to restrict the processing of their personal data.
- ☐ Your business has processes to allow individuals to move, copy or transfer their personal data from one IT environment to another in a safe and secure way, without hindrance to usability.
- ☐ Your business has procedures to handle an individual's objection to the processing of their personal data.
- ☐ Your business has identified whether any of your processing operations constitute automated decision making and have procedures in place to deal with the requirements.

Accountability and Governance

- ☐ Your business has an appropriate data protection policy.
- ☐ Your business monitors your own compliance with data protection policies and regularly reviews the effectiveness of data handling and security controls.
- ☐ Your business provides data protection awareness training for all staff.
- ☐ Your business has a written contract with any data processors you use.
- ☐ Your business manages information risks in a structured way so that management understands the business impact of personal data-related risks and manages them effectively.
- ☐ Your business has implemented appropriate technical and organisational measures to integrate data protection into your processing activities.
- ☐ Your business understands when you must conduct a data protection impact assessment (DPIA) and has processes in place to action this.
- ☐ Your business has a DPIA framework which links to your existing risk management and project management processes.
- ☐ Your business has nominated a data protection lead or Data Protection Officer (DPO).
- ☐ Decision makers and key people in your business demonstrate support for data protection legislation and promote a positive culture of data protection compliance across the business.

Data Security, International Transfers and Breaches

- ☐ Your business has an information security policy supported by appropriate security measures.
- ☐ Your business ensures an adequate level of protection for any personal data processed by others on your behalf that is transferred outside the UK.
- ☐ Your business has effective processes to identify, report, manage and resolve any personal data breaches.

Processing Checklist

- ☐ Your business has reviewed the purposes of its processing activities and selected the most appropriate lawful basis for each activity.
- ☐ Your business has checked that the processing is necessary for the relevant purpose and is satisfied that there is no other reasonable way to achieve that purpose.
- ☐ Your business has documented its decision on which lawful basis applies to help you demonstrate compliance.
- ☐ Your business has included information about both the purposes of the processing and the lawful basis for the processing in your privacy notice.
- ☐ Where your business processes special category data, you have also identified a condition for processing special category data and have documented this.
- ☐ Where your business processes criminal offence data, you have also identified a condition for processing this data and have documented this.

Transfers of Personal Data from the UK to a Third Country

Transfers of personal data from the UK to other countries are subject to transfer rules under the UK GDPR (mirroring the EU GDPR rules). Care must be taken to ensure transfers are 'adequately safeguarded' and only done if necessary. Some countries are deemed 'adequate' (e.g. the EEA, Canada, Japan, etc.), while for others, data exporters must consider alternative safeguarding mechanisms.

On 10 July 2023, the EU Commission adopted an adequacy decision for the EU-U.S. Data Privacy Framework ("DPF"). This was followed by adequacy regulations in the UK for the UK extension to the DPF which came into force on 12 October 2023. Companies in the EU and UK can transfer personal data to organisations in the United States that have self-certified under the DPF. In order to self- certify under the DPF, an organisation must: (i) be subject to the jurisdiction of the Federal Trade Commission or Department of Transportation; (ii) comply with the DPF Principles (which includes, among other things, establishing an independent recourse mechanism for affected data subjects); and (iii) update its privacy notice to reflect the DPF Principles (which will then constitute a public commitment that is enforceable under United States law).

Data exporters in the UK can also transfer personal data from the UK to a third country if the exporter and data importer in that third country have entered into a contract incorporating standard data protection clauses recognised or issued in accordance with the UK data protection regime. These are known as standard contractual clauses ("SCCs"). The SCCs contain contractual obligations on the data exporter and the data importer, and rights for the individuals whose personal data is transferred. Individuals can directly enforce those rights against the data importer and the data exporter. The European Commission issued new EU SCCs on 4 June 2021, and the ICO has issued a new International Data Transfer Agreement (IDTA) and an International Data Transfer Addendum to the new European Commission SCCs (Addendum).

When undertaking a transfer on the basis of the IDTA or the Addendum, data exporters in the UK must carry out a risk assessment to make sure that the protection provided by the IDTA or Addendum, given the actual circumstances of the transfer, is sufficiently similar to the principles underpinning UK data protection laws

Transfers of Personal Data between the UK and EU

On 28 June 2021, the European Commission adopted decisions on the UK's adequacy under the EU GDPR, finding the UK to be adequate. This means that data can continue to flow from the EU and the EEA to the UK without the need for additional safeguards. This adequacy decision is due to expire on 27 June 2025, unless renewed by the European Commission.

Breaches of the UK GDPR

The consequences of breaching data protection laws in the UK can be serious. For example, UK GDPR fines are up to £17.5 million or 4% of a company's total annual worldwide turnover, whichever is higher.

If a company experiences a security breach, it may also face additional costs associated with investigating, addressing and responding to the breach, including (i) the preparation and mailing or other transmission of notifications or other communications to consumers, employees or others as required by the UK GDPR, (ii) the establishment of a call center or other communications procedures, (iii) legal or consulting fees and expenses associated with the investigation of and response to the breach, and (iv) credit reporting and monitoring services offered to individuals impacted by the breach. Also, there will, of course, be potential reputational damage associated with a regulatory breach of the UK GDPR and/or a security breach leading to the loss of personal data.

Conclusion

In summary, data protection is an important consideration for any business looking to establish itself in the UK (or Europe, for that matter), and those establishing themselves here should look to implement practices, processes and policies which are compliant with recent changes. If this area is not taken seriously then it could expose the company to fines comparable to those levied in antitrust cases.

11. UK Export Controls and Sanctions

Overview

To understand a company's exposure to UK export controls and sanctions, it is important to assess a company's geographical footprint, in particular focusing on: the jurisdictions to which the company sends or transfers strategic goods, software or technology (collectively, 'items'); the jurisdictions in which the end-users of the company's exported items are based; and the jurisdictions in which all parties that the company transacts with are based. Export control rules regulate the movement of items over UK borders— exports of controlled items require authorization from the UK government and there are also certain rules restricting the end use of certain items (requiring companies to have a clear idea of what an item is intended to ultimately be used for. For the purposes of a company, sanctions rules broadly impact who a company can transact with (i.e. provide funds, services, goods, etc. to).

Export Control Laws

The UK's export control regime encompasses a comprehensive set of laws and regulations governing the export items and certain related services. Relevant items include strategic military and dual-use items, goods that could be used for capital punishment or torture, non-military firearms and radioactive sources. The UK export control regime is designed to ensure that exports from the UK are made in alignment with national security and foreign policy objectives and requires businesses to obtain licences for restricted exports and services.

Key Legislation: The primary legislation governing export controls in the UK is the Export Control Act 2002 and the Export Control Order 2008. Additionally, the UK has retained certain EU regulations post-Brexit, such as the UK Dual-Use Regulation, UK Anti-Torture Regulation and UK Firearms Regulation, which continue to apply subject to certain amendments to fit the UK context. These regulations provide the legal framework for the UK's export control regime and outline the responsibilities of exporters and the authorities.

Scope and Applicability
Export controls in the UK apply to various activities including the physical export of goods, the physical export and intangible transfer of software or technology, and the provision of related technical assistance or brokering services. The regime covers a wide range of items which broadly includes:

- items specifically designed or modified for military use and their components;
- dual-use items that can be used for civil or military purposes;
- associated technology and software;
- goods that might be used for torture; and
- radioactive sources.

The UK Strategic Export Control List (known as the consolidated list) is a compilation of seven separate lists sourced from various legislative instruments and details all strategic military and dual-use items that require export authorization if exported from the UK. Businesses involved in exporting these items must be aware of the specific controls and licensing requirements applicable to their products and services.

Even if an item does not appear on the consolidated list, it may still require an export licence if there are concerns about its end use. End-use controls aim to prevent the proliferation of weapons of mass destruction and their delivery systems and component parts, or the supply of items intended for a military end use in a destination subject to an arms embargo.

Licensing and Enforcement
The Export Control Joint Unit (ECJU), sitting within the Department for Business and Trade, is responsible for administering the export control licensing regime in the UK. Businesses must obtain a licence from the ECJU if their activities fall within scope of the UK's export control restrictions. The ECJU offers several types of export licences, including:

- **Open General Export Licences (OGELs):** These are 'off-the-shelf' licenses for exporters who regularly send controlled items overseas to a range of consignees or end users. OGELs cover specific controlled activities and specify which items may be exported to which destinations. They generally cover low risk items and third countries.
- **Standard Individual Export Licences (SIELs):** SIELs permit the export of specific quantities of specified items to named consignees or end users. These licences are usually valid for two years and are tailored to individual export transactions.
- **Open Individual Export Licences (OIELs):** OIELs are more flexible than SIELs and cover multiple shipments of specific controlled goods in undefined quantities to named destinations. OIELs are typically valid for three or five years.

The ECJU maintains an online checker tool which can be used to establish: (i) if items are controlled; (ii) the appropriate control entry reference in the consolidated list; and (iii) if an appropriate OGEL exists.

Failure to comply with export control regulations can result in severe consequences, including criminal prosecution, civil penalties, and reputational damage. Therefore, UK businesses must ensure they have the appropriate licenses for their export activities.

Record Keeping Requirements

Exporters are required to maintain accurate records of their export transactions, including details of the goods exported, the recipients, and the end use of the items. These records must be kept for a specified period and must be available for inspection by the ECJU or other regulatory authorities.

Compliance Checks

The ECJU conducts compliance checks to ensure that UK businesses that have obtained licences adhere to the applicable terms and conditions and the broader export control regulations. These checks may include site visits, audits of export records and reviews of internal compliance procedures. Businesses will also be required to demonstrate that they have adequate policies in place to inform staff about changes to export control guidance and regulations and to train personnel on how to comply with export controls. Such policies should apply to staff who export goods, can export technology via electronic means, or are involved in arranging the movement of goods between foreign countries.

Businesses found to be non-compliant following an audit may face enforcement actions, such as licence revocation, penalties or prosecution.

Sanctions Laws

Sanctions are a foreign policy tool used to achieve national security objectives, promote international peace and security and uphold human rights. Sanctions can take various forms, including asset freeze and other financial restrictions, trade restrictions, travel bans and transport restrictions.

Legal Framework

The UK's sanctions regime is governed by the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), which provides the primary legal basis for implementing and enforcing sanctions in the UK. SAMLA allows the UK to implement both UN-mandated sanctions and autonomous UK sanctions. In addition to SAMLA, other legislation relevant to sanctions includes the Counter-Terrorism Act 2008, the Anti-terrorism Crime and Security Act 2001, and the Policing and Crime Act 2017.

Types of Sanctions

The key types of sanctions that may be imposed under UK laws include:

- **financial sanctions:** these include freezing the assets of designated individuals and entities, prohibiting financial transactions with them, restricting access to financial markets and services and restrictions on dealings in debt and transferable securities;
- **trade sanctions:** these involve restrictions or prohibitions on the import and export of goods, services and technology to and investments from targeted countries or entities. Trade sanctions can be comprehensive, targeting all trade with a country, or selective, targeting specific parties, goods, services or sectors;
- **immigration sanctions:** these include travel bans that prevent designated individuals from entering or transiting through the UK; and

- **transport sanctions:** these can restrict or prohibit the use of UK airspace or ports by targeted individuals, entities, or vessels.

Administration and Enforcement

- The Office of Financial Sanctions Implementation (OFSI) within HM Treasury is responsible for the implementation, licensing and civil enforcement of financial sanctions. OFSI maintains lists of individuals and entities subject to financial sanctions, issues licences for permitted activities, publishes guidance and monitors compliance. Suspected breaches of financial sanctions are assessed by OFSI and may be referred to His Majesty's Revenue and Customs (HMRC) for prosecution.
- The Office of Trade Sanctions Implementation (OTSI) is responsible for the implementation, licensing and civil enforcement of trade sanctions measures relating to: (i) professional services (including legal advisory services, engineering, accounting and management consultancy services); (ii) trade control sanctions (i.e. restrictions on activities, such as the supply or acquisition of sanctioned items between two overseas countries and related technical assistance and financial services, for example, where a UK person acquires sanctioned items while overseas or makes such items available from a third country to Russia). Suspected breaches of the trade sanctions specified above are assessed by OTSI and may be referred to HMRC for prosecution.
- HMRC is responsible for civil enforcement of trade sanctions relating to the import, export and/or transfer of goods and technology to or from the UK. It is also responsible for criminal enforcement of both financial and trade sanctions.
- The Sanctions Unit at the Foreign, Commonwealth & Development Office (FCDO) has overall policy responsibility for sanctions and represents the UK in sanctions discussions at the UN. Other government departments and agencies, such as the National Crime Agency (NCA) and the Serious Fraud Office (SFO), also play roles in investigating breaches and criminal enforcement of sanctions laws.

Licensing and Exceptions

The UK's sanctions regime provides for licensing arrangements that allow certain activities otherwise prohibited by sanctions. Specific licences may be granted for specified purposes, such as humanitarian aid, legal services or diplomatic activities. Additionally, sanctions regulations may include exceptions that automatically permit certain activities without the need for a licence, and sanctions authorities can also issue general licenses, which are generally subject to registration, reporting, or other conditions.

Impact on International Trade

Sanctions can significantly impact international trade by restricting or prohibiting trade with certain countries, entities, or individuals. UK businesses engaged in international trade must conduct due diligence to ensure they are not dealing with sanctioned parties or engaging in prohibited activities. This may involve screening transactions and customers against sanctions lists and obtaining licences for permitted activities.

12. Corporate Insolvency and Debt Collection

The UK insolvency regime has its origins in laws aimed at protecting creditors from defaulting debtors. While many of the principles of creditor protection remain, there have been substantial revisions to promote a rescue culture aimed at increasing rates of business rescue, saving jobs and improving returns to creditors. New insolvency legislation introduced in 2020 was aimed at assisting struggling businesses and avoiding insolvency.

In the UK, under section 123 of the Insolvency Act 1986, a company is deemed to be insolvent when it can no longer meet its financial obligations.

There are two tests for corporate insolvency:

- Is the company currently (or will it be in the future) unable to pay its debts?
- Is the value of the company's assets less than the amount of its liabilities, considering yet uncertain and future liabilities?

Furthermore, a company is deemed unable to pay its debts, and therefore insolvent, if:

- A creditor who is owed more than £750 has served a formal demand for an undisputed sum at the company's registered office and the debt has not been paid for three weeks; or
- A judgment or other court order has not yet been satisfied. Where a company is insolvent, the duties of its directors move from the interests of the shareholders to those of the creditors.

The UK regime includes a range of options when a company faces insolvency, including administration, administrative receivership, corporate voluntary arrangement (now rarely used), creditors' voluntary liquidation and compulsory liquidation. In June 2020, the UK enacted the Corporate Insolvency and Governance Act, which introduced a moratorium and a new 'restructuring plan' as additional legislative tools.

The question of which of the procedures is the most appropriate depends upon all the circumstances; however, the following brief summaries are intended to provide an overview of the various procedures.

Administration – A key feature of an administration application is that it brings into force a statutory moratorium in relation to claims against the company. Either the directors of the company or the holder of a qualifying floating charge may apply for an administration order and the appointment of an administrator who is an accredited insolvency practitioner. An administrator can also be appointed by a court order, following an administration application, provided that the court is satisfied that the company is deemed 'unable to pay its debts', as above.

The focus of the administration procedure is to rescue the company itself as a going concern so as to achieve a better result for the creditors of the company as a whole than would be likely in an immediate winding up, and/or to return monies to secured or preferential creditors by way of realising the company's assets for their benefit.

Corporate Voluntary Arrangement (CVA) – If a limited company is insolvent, it can use a CVA to pay creditors over a fixed period. The directors of a company can obtain a CVA by engaging and paying an accredited insolvency practitioner to administer it.

The insolvency practitioner will work out an 'arrangement' covering the amount of reduced debt the company can manage and a payment schedule. They will write to creditors about the arrangement and invite them to vote on it. The arrangement must be approved by creditors who are owed at least 75% of the debt.

Scheduled payments are made to the creditors through the insolvency practitioner until the debt is paid off. If payments are late or missed, any of the creditors can apply to wind up the business.

Creditors' Voluntary Liquidation (CVL) – A CVL is a terminal procedure, not a rescue option—a last resort where no other option is available, whereby the assets of the company that is in financial difficulties are realised and distributed to creditors in order of priority under the Insolvency Act 1986. It is commenced by the members passing a special resolution to the effect that the company cannot continue its business by reason of its liabilities and therefore it is advisable to wind up the company.

Under a CVL, a liquidator is appointed to wind up the company's affairs. The liquidator does this by calling in all the company's assets and distributing them to its creditors. Any remaining assets will be distributed to the company's members. A CVL enables an insolvent company to be wound up without a court order, and the creditors are given more control over the liquidation process, including control over the choice of the liquidator.

Compulsory Liquidation – A creditor may petition the court on the grounds that the company is insolvent or unable to pay its debts for the compulsory winding up of a corporate debtor in certain specified circumstances. A judge then decides at a court hearing whether it is appropriate to make a winding up order. If granted, the procedure allows the assets of a company to be realised and distributed to the company's creditors. Though uncommon, a company's directors may present a winding up petition against their own company.

Moratorium – The new moratorium on enforcement actions gives a company breathing space to attempt a rescue or restructure. Companies seeking to rely on the moratorium must apply to the court. They will be able to continue trading whilst the moratorium is in place and creditors will be prevented from initiating insolvency proceedings for the duration of the moratorium.

Restructuring Plan – This is intended to provide an alternative to insolvency. Either the company or its creditors may apply to court to propose that a restructuring plan is put in place. A court will sanction a restructuring plan which has been approved by at least 75% of creditors.

The restructuring plan is largely similar to a scheme of arrangement, but with the important distinction that it can be imposed on dissenting creditors in certain circumstances (cross-class cram down). The cross-class cram down feature was used for the first time in 2021. It has been used against dissenting secured creditors and landlords, and also in respect of a non-European company. Courts have refused to sanction a restructuring plan where it failed to satisfy the condition that no member of the dissenting class would be worse off as a result of the restructuring plan than in the alternative.

Debt Collection – If a foreign company is owed a debt by an English company, the foreign company will usually have the option of suing for payment in England provided that the contract with the English party does not require that claims be brought in a different jurisdiction. Alternatively, the foreign company may have the option of pursuing proceedings in its home courts and then seeking to enforce a judgment through the English courts.

English Court Proceedings – The English courts provide litigants with a broad range of options for enforcing a debt. Fast track procedures are available, in particular, for lower value claims, as are specialist courts for complex matters:

- County Courts (generally for claims under £100,000)
- High Court (generally for complex claims and those exceeding £100,000)
- Commercial Court
- Technology and Construction Court
- Banking Court
- Admiralty Court

The English courts offer range of mechanisms for the enforcement of a judgment, including:

- **warrant for execution:** for the seizure and sale of a judgment debtor's assets;
- **third-party debt orders:** requiring the debtor's bank to make payment from the debtor's bank account (known in some jurisdictions as a 'garnishment order');
- **charging order:** to protect against the disposal of a debtor's assets; and
- **attachment of earnings:** requiring payment by a debtor's employer from their wages.

Enforcement of Foreign Judgments in the UK – In order to enforce a foreign judgment against assets of a debtor in England or Wales, the enforcing party must seek to have the foreign judgment recognised by the English courts. To be enforceable, a foreign money judgment must be final and conclusive, and must not be for the enforcement of taxes, fines or penalties. The English courts will apply their conflict of laws rules to be satisfied that the foreign court had jurisdiction to determine the subject matter of the dispute underlying the judgment. Once jurisdiction is established, the foreign judgment can be challenged only on limited grounds, e.g. that it was obtained by fraud, is contrary to public policy or that the proceedings contravened principles of natural justice.

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with a particular focus on the technology & life sciences, energy, financial, and real estate & construction sectors. Recognized as one of the most innovative law firms by *Financial Times* and one of the top firms for client service by BTI Consulting, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their authoritative commercial awareness.

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