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Doing Business in the UK:

A Preliminary Guide for the Entrepreneur

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1. Introduction

In this Guide we address some of the issues which must be dealt with and provide an indication of some of the legal and tax concerns surrounding the establishment of a business in the UK. Please do not treat this Guide as an exhaustive summary nor as legal advice; it aims to outline in a few pages complex and detailed laws and regulations. The reader should contact us directly for legal advice specific to his plans before setting up, or investing in, a business in the UK.

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2. Jeffrey Green Russell

Jeffrey Green Russell is a full-service commercial law firm with strong international connections based in central London. Most of our clients are in commerce, finance and industry and range in size from small businesses to multi-national corporations. Their activities are wide-ranging and cover many commercial activities and include banking, finance, technology, leisure and property.

Our clients always come first and we are determined to excel on their behalf. We work hard to find the best and most cost effective solutions to their problems and aim to be innovators not imitators, providing a rapid and constructive response to our clients' increasingly specialised needs.

To service our clients' international business needs we have excellent professional and financial contacts in many countries. We are founder members of the International Alliance of Law Firms, an association of commercial lawyers whose members work for clients throughout the world. In addition, our lawyers have skills in many languages.

We provide a quality, value-added service at fee rates that our clients perceive as value for money.

3. The United Kingdom

The United Kingdom comprises England, Northern Ireland, Scotland and Wales. England, Northern Ireland and Wales are governed by English law. Scotland has its own legal system and its own courts.

England distinguishes between civil and criminal law. Although civil law is more applicable to most business situations, it is also necessary to be aware of, and avoid breaching, the criminal laws.

The United Kingdom is a member of the European Union (EU) which comprises Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Businesses throughout the EU are subject to its own legislation as well as that of the Member State (country) in which they are established, incorporated and/or doing business. We are able to advise on all relevant aspects of British and EU laws.

4. Establishing a Business Presence

Although it is possible to do business in the UK without establishing a formal presence here, there are often good reasons why a business should establish a formal structure within the UK. For example: there may be tax advantages for doing so; a particular business activity may be subject to less stringent regulation in the UK; or running a business from inside the UK may provide consumers or traders with more confidence. We can advise you whether the UK is an appropriate base for your business.

There are a number of different types of business structure available and the main ones are briefly described below. The structure ultimately chosen usually depends upon a mixture of commercial, taxation and legal factors.

4.1 Companies

English law recognises two main type of company: the private limited companies and the public limited company. Each is a limited liability corporation, recognisable by the suffix to its name; private limited companies by "Limited" or "Ltd", and public limited companies by "plc".

Both types of company are regulated by the Companies Acts and must be publicly registered. Each company is required to file stipulated information for public inspection and (other than the smallest) must have its accounts professionally audited. Many, but not all, public limited companies are listed on either the London Stock Exchange or the Alternative Investments Market (AIM).

Since public limited companies can invite the public to subscribe for shares they are subject to more scrutiny and regulation than private limited companies. If listed on an exchange they must also comply with the rules of that exchange, as well as those in the relevant legislation.

New private companies can be established easily and we can assist with registration and other regulatory requirements.

Alternatively, it is possible to enter the UK market by buying an existing UK company whose business fits with the intended operations here.

An acquisition of the entire company, or only of certain parts of its business, involves complex commercial, legal and taxation considerations. We have experience in all types of acquisitions and can advise accordingly.

4.2 Joint Ventures

Joint ventures take many forms. Several different factors influence the type and location of JV structure chosen since certain structures and jurisdictions may offer tax advantages or have less stringent competition law requirements.

The four basic legal forms of UK-based joint venture are the limited liability company in which the parties are shareholders; a limited liability partnership (LLP) (see paragraph 4.3); a partnership (or limited partnership) (see paragraph 4.4); and a purely contractual joint ventures (see paragraph 4.5). Of these, the most commonly chosen a limited liability company whose shares are jointly owned by at least two parties and where the relationship between those parties and the arrangements for the operation of the company are regulated by a shareholders' agreement, which sets out the rights, obligations and entitlements of each shareholder, including veto rights, decision making powers, board representation, profit distribution and dispute resolution.

4.3 Limited Liability Partnerships

A Limited Liability Partnership (LLP), while not a limited liability company, has its own legal personality which is distinct from that of its members. Thus only the LLP and not its members (except in the case of negligence or fraud on the part of a member) will be liable to third parties.

The LLP combines the organizational flexibility and tax status of a partnership with limited liability for its members.

4.4 Partnerships

A traditional partnership is a relationship between two or more parties carrying on business in common with a view to profit. Since English law recognizes a partnership by its substance rather than its title, care must always be taken to ensure that a contractual arrangement does not inadvertently become a partnership when this is not the intended effect.

The great disadvantage of a partnership is that each partner is jointly and severally liable *without limit* for the debts and obligations of the partnership and is fully liable for the wrongful acts and omissions of his/its co-partners.

Although generally a less popular option than a limited liability company, partnerships have traditionally been the business structure for groups of professionals such as doctors, lawyers and accountants, although these groups are beginning to convert into LLP's.

4.5 Contractual Joint Ventures

Also described as co-operation, collaboration or consortium agreements, this form of JV structure does not require the establishment of a legal entity, the parties operating independently subject only to their rights and obligations in the relevant agreement.

The main advantage is that neither party is automatically liable for the other party's or the joint venture's, acts or omissions: the extent of a party's liability in a given situation depending upon the wording of the governing agreement. Care must always be taken to ensure that the agreement is prepared so as to minimize the parties' exposure and ensure the arrangements do not inadvertently create a general partnership (see paragraph 4.4)

5. United Kingdom Business Rules

The UK actively encourages foreign investment but there are many rules to be observed in conducting business in the UK, especially in regulated sectors. Accordingly, authorisation may be required in areas such as banking, financial services, defence, telecommunications, broadcasting and many leisure activities including the sale of alcohol, the provision of public entertainment and gambling. If planning to conduct a regulated business in the UK, we recommend that consultation with one of our industry specialists to determine the level of authorisation required.

5.1 Money Laundering Rules

There are no exchange control or foreign currency regulations in the UK. However, foreign investment is not allowed if funded by the proceeds of illegal activity.

To this end there are detailed regulations to detect – and deter – money laundering. These regulations place a duty on those who suspect that they are handling such proceeds to report to the authorities.

5.2 Raising Capital

A business will usually need to fund its working capital from the funds invested by its promoters, or by funds raised from other investors (and perhaps the general public) or by borrowing

A company wishing to raise capital must address its constitutional documents and the wording of any relevant shareholders' agreements or other financing agreements. These may stipulate that the existing shareholders have the right to acquire further shares, or that whilst a particular borrowing is in place further share issues can take place only with the consent of the lender. If the company is listed on a stock exchange, the rules of that exchange will stipulate the procedures to be followed in the event of a further share issue.

5.3 Incentives for Foreign Investors

Depending upon the circumstances, non-UK investors may be eligible for UK Government financial assistance to set up business in certain "Assisted Areas" within the UK. We will advise on this option as relevant.

6. Taxation

The income and the gains of individuals and entities resident in the UK for tax purposes are currently liable to pay UK income and capital gains tax. In certain cases, even where residence is outside the UK, certain income and gains may be subject to UK taxation where derived from, or remitted to, the UK.

The UK shares a number of double-tax treaties with other countries.

6.1 Residence

In general, a company is considered to be tax resident in the UK if it is either incorporated here or if its "central management and control" takes place in the UK.

Central management and control refers to the highest level of control of the company. The location of board meetings is key in determining whether or not several management and control takes place within the UK, so long as key decisions are genuinely taken at such board meetings and the meetings do not merely "rubber-stamp" decisions really taken elsewhere.

The extent to which an individual is liable to UK income tax will depend upon whether he is "resident", "ordinarily resident" or "domiciled" within the UK. Resident individuals who are both ordinarily resident and domiciled in the UK are liable to pay tax on their income and capital gains, wherever they arise. Those not tax resident in the UK are normally only liable on overseas incomes and gains to the extent that they are remitted to or received in the UK.

There are detailed rules to decide if someone is normally resident in the UK for tax purposes.

Domicile is distinct from nationality, residence and citizenship. UK Domicile is acquired by right at birth (normally following the father's domicile) but there are also detailed rules as to any change of domicile. These are particularly relevant for UK death duty and gift tax ("Inheritance Tax").

6.2 Taxable Income

Taxable income for both individuals and companies is calculated using similar methods. Once income streams have been identified, those not subject to UK taxation will be set aside before various permissible deductions and allowances are applied to the remaining amounts. The result is taxable income (or, for companies, taxable profits), on which tax is charged.

Income tax for individuals is currently charged at rates which rise from 20% to a maximum of 40% (50% for 2010/2011) depending upon the bands of income relevant for the tax year in question.

Corporation tax is currently charged at rates which rise from 21% to a maximum rate of 28% also in varying bands and with marginal rates as the bands change. Again these bands change each tax year.

Marginal relief is available

A non-resident company with a UK-based branch is liable to pay corporation tax on the taxable profits of that branch, provided it is a "permanent establishment". In addition, corporation tax is payable by the company on gains following the disposal of UK-based assets where those are held for the purposes of the trade of the branch.

6.3 Capital Gains Tax

All chargeable gains above certain thresholds (which can change from year to year and are much greater for entrepreneurs) are taxed at 18% for individuals and trusts and at corporation tax rates for companies.

6.4 Profits and Dividends

The payment of a dividend, as a distribution, is not deductible for the purposes of calculating the taxable profits of a company. But from the point of view of the recipient a dividend carries a tax credit representing one ninth of its net value.

A dividend received by an individual is treated as that individual's income and taxed accordingly. Individuals taxed at the basic rate or less are liable to pay no tax on the dividend since the tax credit will satisfy their tax liability in full. Higher rate taxpayers, are taxed on the value of the dividend plus the tax credit.

There are detailed provisions covering dividends received by corporate shareholders.

6. 5 Value Added Tax (VAT) (Sales Tax)

Value Added Tax is levied on goods and services supplied within the UK by businesses, and on imported goods. The standard rate is payable on the value of the item or service in question. Certain supplies, including books and children's clothes, are zero-rated, whilst others, such as financial services, are currently exempt.

Exports of goods outside the EU attract VAT, although generally at the zero rate. VAT is payable by an importer of goods from outside the EU at the same rate as if those goods had been supplied within the UK.

Supplies between VAT registered traders within the EU are generally zero rated. Non-VAT registered customers must pay VAT. A registered trader may recover the VAT paid as an input against the VAT chargeable on sales and supplies.

6.6 Miscellaneous Taxes

Stamp duty land tax or stamp duty reserve tax is levied on transfers of property. The rates vary with the type of property.

7. Employment

Employment is subject to both UK and European employment law. Generally speaking, UK employees have fewer statutory protections than those working elsewhere in the EU but more protections than employees working in many other parts of the World, including the US.

Every UK employee must be provided with a written statement of the terms of employment. Although UK law implies certain duty of trust and confidence into an employment contract, these are always unsatisfactory and a specific written employment contract is always advisable.

The maximum working week for UK employees can be waived by employees but the minimum wage cannot. An employee's minimum holiday entitlement is four weeks paid leave (excluding the eight UK public holidays).

Employees must be consulted in the event of collective redundancies of twenty or more or before the sale of a business (but not a share sale), although it is not necessary for them to agree to the change in question. In the event of redundancy, an employee is entitled to redundancy pay determined according to his age, length of service and salary. This payment is in addition to any contractual compensation under the actual terms of his employment contract.

All employees with twelve or more months of continuous service are protected against unfair dismissal. Thus, an employer can only dismiss an employee where there are fair grounds for doing so, and a fair procedure (involving, for example, warnings and consultation) is followed. In the event of unfair dismissal, compensation (which can be significant) is payable by the employer to the aggrieved employee.

UK employees are taxed on their income and, in certain circumstances, on the value of non-cash employment benefits, such as healthcare or a car. In addition, both employers and employees must pay compulsory national insurance contributions.

8. Competition (Anti-Trust) controls

Both the UK and EU legislatures view with caution any mergers or ventures between competing or complementary businesses that could reduce competition. Also prohibited is abuse by a business of its dominant position in the market place.

A UK business may be subject to UK or EU competition legislation, or both. Businesses with a "community dimension" are subject to European law. Those without a community dimension fall within the scope of the UK's Fair Trading and Competition Acts.

Pre-clearance can be obtained and we will always advise on the competition issues of a transaction.

9. Intellectual Property

9.1 Trade Marks

In order to be registrable, a mark must be capable of graphic representation and of distinguishing the goods or services of one undertaking from those of another. Once these criteria are satisfied, the mark can be registered with the EU Trade Mark Registry which will protect it throughout the European Union, initially for ten years. It can be renewed indefinitely for further ten-year periods.

Unregistered trade marks also qualify for limited protection under the laws of passing off. However, since passing off is often difficult to prove, registration is prudent whenever possible.

9.2 Patents

For an invention to be patentable, it must be new, it must involve an "inventive step" and be capable of industrial application but not explicitly excluded from protection as a patent.

Applications to register and protect a patent must be made to the EU Patent Office *before* the specifics of the invention enter the public domain. Once registered (and the registration process takes years rather than months), the invention is protected , throughout the European Union, for twenty years.

9.3 Copyright

Under UK Law copyright arises automatically, without any registration requirements. The length of protection is for the life of the author plus seventy years.

Copyright subsists in original dramatic, artistic, musical and literary works, films, sound recordings, cable programmes, broadcasts, musical arrangements and the typographical arrangement of published editions. Computer software is also protected by copyright and some software – provided it meets the requisite criteria - can be protected by patent.

9.4 Design Rights

In order to qualify for registration, a design must be new and have individual character. In addition, it must relate to the appearance of all or part of a product resulting from certain features of the product or its ornamentation. Protection is for an initial five year period, renewable every five years for a maximum of twenty-five years.

Unregistered designs also benefit from certain legal protection, provided they are recorded in a design document or are the subject of an article made to the design. The design must relate to an aspect of the shape or configuration of an article and must not be commonplace. Unregistered designs are protected for the lesser of (a) ten years from the date that the article relevant to the design was marketed, or (b) fifteen years from the date that the design was first recorded in a design document.

9.5 Domain Names

Domain names should always be registered and care should be taken to ensure that they are renewed.

Domain names can also be registered as trade marks, subject to meeting the requisite criteria. Such registration can also be agreed as a means of preventing passing off in the event that a new domain suffix becomes available.

9.6 Confidential Information

UK law gives protection to the owner of any information that is confidential in nature and which was initially communicated in circumstances importing an obligation of confidence. However it is always advisable to secure the signature of an appropriate Confidentiality/or Non-Disclosure Agreement before passing such information to a third party. Protection will generally be granted if the information remains confidential, and a legitimate interest requires protection.

Data Protection

Records held in electronic form and manual records are governed by the data protection legislation. Particularly stringent rules apply to the processing of “personal data”.

A number of data processing principles must be followed, including the “fair processing code”, requiring that companies processing information identify themselves to data subjects, provide other relevant information and information on how the data is to be used.

Personal information may not be transferred to countries outside the European Economic Area (EEA) which lack the requisite protections.

10. Work Permits

In order to work in the UK, an individual requires a work permit, unless he is a national of an EEA member state. The applicant must meet a number of specified criteria, including suitability for the position and the inability of the employer to recruit from with the UK. Applications can take some weeks to process and if the individual requires entry clearance before he enters the UK the process takes longer.

DISCLAIMER

“Doing Business in the UK: A Preliminary Guide for the Entrepreneur” is prepared by Jeffrey Green Russell but it is not intended to be comprehensive, nor is intended to be a substitute for legal advice. Professional advice should be sought before applying the information to particular situations.

While all care has been taken in the preparation of this Guide, no liability is accepted by Jeffrey Green Russell for its contents.