

RSM Tenon



Doing business in the
United Kingdom



Canary Wharf, London

Foreword

Welcome to the United Kingdom

The United Kingdom has been pivotal for international trade for centuries - from the days of sail and exploration, through the development of core trade routes to today's fast moving world, made smaller by electronics and travel, we have been at the forefront of trade and business; a key gateway in and out of Europe and the wider world.

The UK offers many advantages for international business - the English language, business friendly laws and regulations, a well educated and flexible workforce, a stable political landscape and infrastructure that supports trade and the efficient movement of goods. This has served to make it the leading investment destination for companies developing their global business. With the current focus on London and the 2012 Olympics, the UK is one of the most exciting business prospects.

As a new business destination, the UK is as welcoming today as it has ever been, but with the global economic environment becoming increasingly regulated and complex, doing business in the UK has become more intricate. At RSM Tenon, we understand business and business people. We understand what it takes to be successful in the UK and are delighted to share some of that knowledge with our affiliates and contacts globally.

This guide is intended to provide general information about doing business in the UK. It outlines some of the key areas to consider when thinking about setting up a new business and ensuring that it is compliant with the regulations in the country. It covers the broad subject of the way that the UK operates as a Nation and Government and some of the details of how to arrange your affairs to best advantage.

Careful consideration of these issues and the options that you have at an early stage in your planning can yield marked benefits and avoid the costs that come with making changes mid-execution. We can't hope to cover all the things that you may need to take into account, but this guide will give you a strong base understanding and a start from which to open your dialogue with us or with one of our associate member firms in the RSM International network.

Details of how to contact us or one of the other RSM International members are included at the back of this book and we'd be delighted to hear from you.

Philip Coleman

International Contact Director
RSM Tenon
London

“In a world of different cultures, it is good to have an advisor who meets global requirements with local knowledge”

At home in over 70 countries, RSM International offers auditing, other assurance, tax accounting and consulting services, integrated for global success.



Contents

	Foreword	3
	Destination UK – 15 reasons for doing business in the UK	8
Section 1:	Country Information	11
	Geographic environment	
	Economic environment	
	Political environment	
	Social environment	
Section 2:	Investing in the UK	16
	General considerations	
	- UK Trade & Investment	
	- Regional Development Agencies	
	- Grants, subsidies and funds	
	Types of Business Structure	
	- Limited companies	
	- Partnership structures	
	- Alternative Structures	
	Setting up a private limited company in the UK	
	Audit requirements	
	Insurance requirements	
	Money laundering	
	- What is money laundering?	
	- Background and purpose	
	Bank accounts	
	- Legal requirements	
	- Opening an account	
Section 3:	Employment	27
	General considerations	
	Recruitment and Immigration	
	Contracts of employment	
	Rights during employment	
	- Minimum wage	
	- Working time and annual leave	
	- Sick leave and sick pay	
	- Employment protection	
	- Data protection	
	- Termination of employment	
	- Wrongful dismissal	
	- Unfair dismissal	
	- Redundancy	
Section 4:	Accounting	33
	General considerations	
	Reporting requirements	
	Accounting principles	
	Audit	
	- Ethical principles	
Section 5:	Tax System	43
	Introduction	
	Framework of the law	
	Corporation tax	
	- Taxable persons	

- Corporation tax and its rates
- The taxable basis
- Key book/tax differences
- Capital allowances
- Corporation tax losses

Related party matters

- Transfer pricing
- Worldwide debt cap
- Controlled foreign companies
- Group relief

Corporation tax compliance and administration

UK taxation of non UK resident companies

VAT and other indirect taxes and duties

- Value Added Tax (VAT)
- VAT rates
- VAT administration
- Customs and excise duties
- Stamp duty and stamp duty land tax

Personal income and capital gains tax

- General system
- The remittance basis
- Residency-related definitions
- Taxable income
- Administration of income tax, capital gains tax and national insurance
- Income tax rates and allowances
- Capital gains tax rates
- National insurance for employed persons
- Inheritance tax
- UK taxation of non-resident individuals

Northern Ireland

Section 6: Corporate Restructuring 57

General considerations

Procedures in cases of solvency

- Striking off
- Dissolution
- Members voluntary liquidation

Procedures in cases of insolvency

- Rescue procedures
- Termination procedures

Issues for Directors of troubled companies

- Personal liability
- Company Director Disqualification Act
- Wrongful trading, transactions at an undervalue and preferential

Issues for international companies with UK interests

Section 7: Intellectual Property Rights 62

General considerations

Registered Rights

- Patents
- Utility models
- Trade marks

	<ul style="list-style-type: none"> - Designs - Plant breeder's rights 	
	Unregistered rights	
	<ul style="list-style-type: none"> - Copyright - Database right - Unregistered design right - Know-how 	
Section 8:	Capital Markets	74
	General considerations	
	Main market	
	<ul style="list-style-type: none"> - Benefits - Areas to consider 	
	AIM	
	<ul style="list-style-type: none"> - Benefits - Areas to consider 	
	Professional securities market	
	<ul style="list-style-type: none"> - Benefits - Areas to consider 	
	PLUS	
	<ul style="list-style-type: none"> - Benefits - Areas to consider 	
	The roles of the Financial Services Authority	
	<ul style="list-style-type: none"> - The financial system 	
Section 9:	Isle of Man	80
	General considerations	
	<ul style="list-style-type: none"> - Economy - Taxation - Industry - Becoming a regulated entity - Companies Registry - Tenon Isle of Man - Gateway to Offshore 	
Section 10:	Channel Islands	86
	General considerations	
	Jersey	
	<ul style="list-style-type: none"> - Background - Regulatory environment - Tax 	
	Guernsey	
	<ul style="list-style-type: none"> - Background - Regulatory environment - Tax 	
Section 11:	Northern Ireland	90
	General considerations	
	<ul style="list-style-type: none"> - Northern Ireland Company Registry Integration - Tax 	
	Glossary of terms	93
	RSM International	94
	RSM Tenon	94
	About our contributors	96

Destination UK

What makes the UK one of the world's leading investment destinations for internationally dynamic businesses?

1. The easiest place to set up and run a business in Europe:

According to the World Bank, it takes 13 days to set up a business in the UK, compared to the European average of 32 days. It ranks the UK first in Europe and sixth in the world to operate a business.

2. An internationally competitive tax environment for foreign investors:

- One of the lowest main corporate tax rates in the European Union and the lowest amongst the G7 countries. The UK has reduced its corporate tax rate from over 50% in the early 1980s, down to one of the lowest in the industrialised world
- Generous tax allowances (such as the availability of research and development tax credits) and no local taxes on profits or surpluses
- The most extensive network of double taxation treaties in the world
- Low personal taxes and low social welfare contributions

3. One of the most flexible labour markets in Europe:

- According to the World Bank, the UK is the second best place in Europe to employ workers, just behind Denmark
- According to the Times Higher Education Supplement, the UK has the top six universities in Europe and two of the top three globally

4. The least number of barriers to entrepreneurship in the world:

The Organisation for Economic Co-operation and Development (OECD) noted that the UK is second in the world for Product Market Regulation behind Australia, has the least barriers to entrepreneurship in the world and has the third least barriers to trade and investment in the world.

5. World leader in innovation:

The UK is one of the most productive places for innovation firms in the world, ranking second only to the USA for the quality of its research base.

6. One of the most stable political and regulatory environments to do business:

According to Transparency International, the UK is one of the most transparent (least corrupt) countries in the world. It has a higher rating than France, Germany, USA and Japan. The UK has a consultative approach to the formulation of regulation, so there are no surprises for business.

7. Speaking in the international language of business:

Operating in English gives firms in the UK a natural advantage when communicating globally.

8. Progressive communications network:

The UK has the most extensive broadband market among the G7 countries and one of the strongest ICT infrastructures in the world.

9. Home to Europe's number one city for business for the 19th year running in 2008 by the European Cities Monitor:

London is the world's leading financial services centre on a number of key performance indicators and was voted top in Europe.

10. Springboard to Europe:

The UK is the number one gateway to Europe, giving easy access to the 27 member states of the European Union, the world's largest single market, with its population of nearly 500 million. More overseas companies set up their European headquarters in the UK than anywhere else.

11. The UK has claim to over 20 Nobel prizes in the life sciences:

UK researchers produce 16 research papers per US\$1 million of research funding (compared with 9.2 papers in the U.S. and 3.6 in Japan).

12. Olympic opportunities:

London will host the Olympic Games in 2012. Procurement started in 2007. Contracts are available for firms of all sizes and the total budget will run into billions.

13. Outstanding transport links:

The UK offers world class transport links. Heathrow's new Terminal 5 is now open and working efficiently. Additional expansion is planned for international airports at Stansted and London City; for sea container terminals at London Gateway and Felixstowe; and for the rail network, with investment in London Cross Rail and rail freight infrastructure.

14. Magnet for foreign investment:

In 2008, the UK attracted 501 new investments and expansion of existing investments, the highest in Europe.

15. Productivity rapidly increasing:

Over the last decade, UK productivity has gained substantial pace. With the UK now outperforming many other countries, and an increased focus on developing a stronger, more competitive workforce, a culture of entrepreneurship and home-grown technological innovation, this growth is set to continue.

Section 1

Country Information



Buckingham Palace, London

Country Information

Under the four macro-environments - geographic, economic, political and social - this section covers the basic information you need to know about the UK.

Geographic environment

- The United Kingdom, including Northern Ireland, the Isle of Man and the Channel Islands (Jersey and Guernsey), has a total area of approximately 245 square kilometres. It has a temperate climate with rainfall possible all year round
- The country has good transport links between main cities and, as it is a relatively small island; most travel is made by car or train, both of which are supported by excellent networks. Motorways and large roads are maintained by the Highways Agency - a Government owned Executive Agency of the Department for Transport (DfT), paid for with taxpayers' money. There are only a handful of toll roads in the UK. The rail network is divided into regional railway companies
- London's Heathrow airport is the World's busiest international airport, serving over 180 destinations in 90 countries. As well as Heathrow, the UK has international airports in most cities. The largest and busiest international business airports are:

London Gatwick	(England)
London Luton	(England)
London Stanstead	(England)
London City	(England)
Birmingham	(England)
Bristol	(England)
Manchester	(England)
Aberdeen	(Scotland)
Edinburgh	(Scotland)
Glasgow	(Scotland)
Cardiff	(Wales)
Belfast	(Northern Ireland)

- There are over 100 sea ports in the UK, some operating as ferry terminals for passengers and others dealing with cargo

Economic environment

- The unit of currency is the pound sterling (£GBP). The UK has been a member of the European Union (EU) since 1973. Being a member of the EU means that trading between members is easy, especially as most members have chosen to adopt the single European currency, the Euro. The UK has kept its own currency and controls its own economy
- The UK economy is the fifth largest in the world and the second largest in Europe. London is the financial centre for the UK and the City of London is the home of the London Stock Exchange (LSE), one of the largest stock exchanges in the world. The LSE is made up of three (primary) markets - Main Market, Alternative Investment Market (AIM) and PLUS
- The UK has an open economy where international trade plays a very important role. It has a gross domestic product (GDP) of US\$2,345 billion and is forecast to have the strongest business environment of all major European economies for the period 2007 to 2011
- With a population of 61.4 million, according to the National Statistics Office, the UK has a strong workforce of approximately 28 million, to support the economy. Over the last 20 years there have been massive changes in employment patterns allowing an increase in part-time work, self-employment and employment by small firms which account for 46% of employees. The public sector is a significant part of the economy

Political environment

- The United Kingdom is made up of four nations; England, Northern Ireland, Scotland and Wales. It is governed by a democratic parliamentary system with its seat of Government in the UK's capital, London, but with three devolved national administrations in Belfast, Edinburgh and Cardiff, the capitals of Northern Ireland, Scotland and Wales respectively
- The Monarch, currently Queen Elizabeth II, is head of state but she has no personal political involvement in the administration of the country. The role of the Monarch is ceremonial rather than constitutional and, although the Queen has many symbolic political duties, she has very little political power
- The parliament is the UK's legislative body and consists of the Queen and the two Houses of Parliament, the House of Commons and the House of Lords
The House of Commons is a representative body consisting of 646 Members of Parliament (MPs) who are elected regionally
The House of Lords is not elected and is not allowed to amend or change most bills passed by the House of Commons
- Scotland and Wales have regional bodies (The Scottish Regional Parliament and the Welsh Assembly). They have powers over regional issues but the UK Parliament has power over all matters relating to defence and economy

- The UK plays a prominent role in international relations and associations as one of the five permanent members of the United Nations (UN) Security Council, a member state of the EU and the progenitor of the British Commonwealth of Nations. It is a member of international bodies such as the UN and its special forces and missions, the organisation for Economic Cooperation and Development, the Council of Europe, the Commonwealth Secretariat, the North Atlantic Treaty Organisation and the North Atlantic Assembly. The United Kingdom is also a signatory to the General Agreement on Tariffs and Trade (GATT) and a member of the World Trade Organisation (WTO), the international trade liberalisation agency headquartered in Geneva
- The United Kingdom maintains diplomatic and consular relations with 184 countries and has 220 diplomatic posts worldwide. The Foreign and Commonwealth Office also administers Britain's 15 overseas territories
- The United Kingdom has also taken a leading role in international discussions on climate change. Climate change and sustainable environmental policies have become an important governmental focus, with increased legislation around waste, use of resources, building and construction and wildlife

Social environment

- The population at the most recent census in 2001 was 58.8 million but is thought to now be over 61.4 million (according to the National Statistics Office)
- The main language is English but there are also four Celtic languages still in use in the UK today; Welsh, Irish, Gaelic and Cornish
- There are no adverse cultural or religious influences or prohibitions on the way business is conducted
- The country operates on the metric system
- Generally business hours are from 9am to 5.30pm. Offices do not tend to shut for a break at lunchtime. A typical working week is 37.5 hours long. 24 hour trading was first introduced in the UK in 1998 and allows shops to stay open 24 hours a day, apart from Sundays. Most shops in cities and towns still shut by 6pm but supermarkets and grocery shops have extended their opening hours
- Statutory holidays in the UK are known as Bank Holidays - the name taken from their establishment in 1871 when it was decreed no bank trading could take place. Now shops continue trading, usually with reduced opening hours, similar to Sunday. The dates are not consistent every year, unless stated, but they always keep to the following pattern:

New Year's Day	1 January
Good Friday	The Friday before Easter Sunday
Easter Monday	The Monday after Easter Sunday
May Day Holiday	The first Monday in May
Spring Bank Holiday	The last Monday in May
Summer Bank Holiday	The last Monday in August
Christmas Day	25 December
Boxing Day	26 December

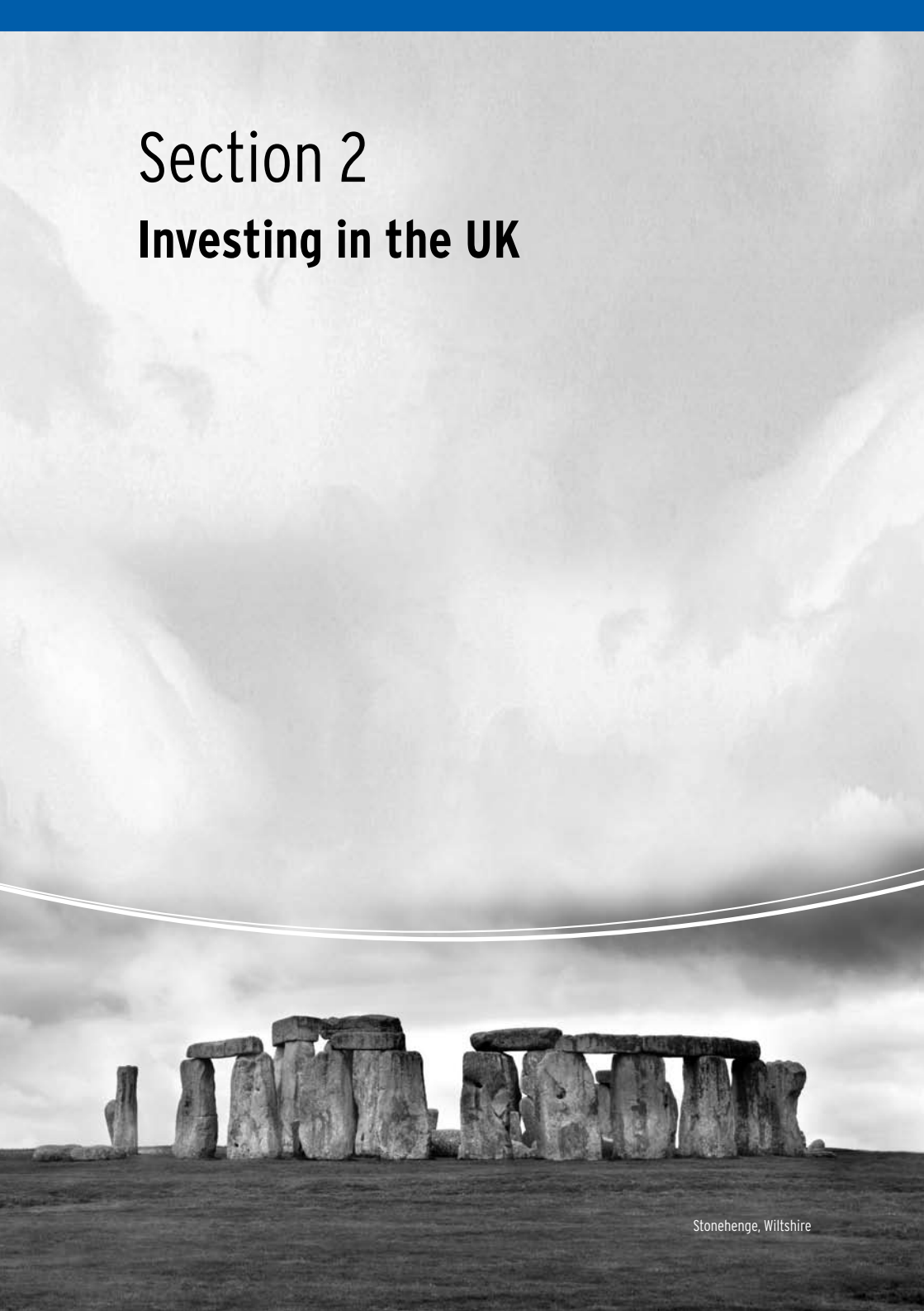
- The media sector in the UK is privately owned with the notable exception of the state-funded British Broadcasting Corporation (BBC)
- The Royal Mail is the dominant postal service provider in the UK. However its monopoly ceased at the beginning of 2006 and there is now competition from a number of private organisations. Courier services are supplied by independent companies

Useful websites

Bank of England	www.bankofengland.co.uk
British Chamber of Commerce	www.chamberonline.co.uk
Department for Environment, Food and Rural Affairs (DEFRA)	www.defra.gov.uk
Law Commission	www.lawcom.gov.uk
National Statistics Online	www.statistics.gov.uk
The Statute Law Database	www.statutelaw.gov.uk
UK Trade & Investment	www.uktradeinvest.gov.uk

Section 2

Investing in the UK



Investing in the UK

General considerations

The UK is a leading global trading nation; it is the second largest exporter and third largest importer of commercial services; it is the seventh largest exporter and fourth largest importer of merchandise.

There are a number of incentives to encourage foreign investment in the country, the availability of which depends upon where in the country you are planning to set up and what sort of entity you want to create. This section covers both of these areas and will offer an insight into the most suitable option for you and your business and will help you to understand some of the main rules and regulations you are likely to come across:

UK Trade & Investment

UK Trade & Investment (UKTI) is the government's international business development organisation that helps overseas companies establish and expand in the UK and offer business opportunities, trade advice and support to help UK-based businesses maximise their international success.

Their expert range of tailored services, including market entry schemes and aid-funded business services, aim to enhance the competitiveness of companies within the UK and attract a continuing high level of quality foreign direct investment.

Regional Development Agencies

The UK has 12 regions, each with their own development agency whose job it is to promote economic growth in the area. They do this by helping non-UK companies set up and expand within their region. Agencies can provide comparative economic data across regions and internationally. Up to date information can be found on the UK Trade & Investment website (see page 14).

The Department for Business Innovation & Skill uses Regional Development Agencies (RDAs) to meet their aim to help every region in England to increase sustainable economic development and narrow the gap in growth rates between regions by working to promote investment, skills, employment, efficiency, innovation and competitiveness.

There are 12 regions with an RDA assigned to each. Each RDA has its own website, which gives guidance on setting up a business in that specific region, information on funding and details of the RDA's priority sectors.

For example, the Yorkshire and Humber area, known as Yorkshire Forward, is focusing on five priority sectors which are key to the economic growth and development of this region, so are supporting these via targeted programs. The team which looks after these sectors works closely with the sector 'champions' to liaise with the industry and evaluate the business needs of each sector. The five sectors are:

- Advanced engineering and materials
- Digital and new media
- Environmental technologies
- Food and drink
- Healthcare technologies

Figure 1: Regional Development Agencies

Region	Agency Name	Website
East of England	East of England International	www.eei-online.com
East Midlands	East Midlands Development Agency	www.emda.org.uk
London	Think London	www.thinklondon.com
Northern Ireland	Invest Northern Ireland	www.investni.com
North East England	OneNorthEast	www.onenortheast.co.uk
North West England	Northwest Regional Development Agency	www.nwda.co.uk
Scotland	Scottish Development International	www.sdi.co.uk
South East England	SEEDA	www.seeda.co.uk
South West England	South West RDA	www.southwestrda.org.uk
Wales	International Business Wales	www.ibwales.com
West Midlands	Advantage West Midlands	www.advantagemw.co.uk
Yorkshire and the Humber	Yorkshire Forward	www.yorkshire-forward.com

Grants, subsidies and funds

The Assisted Areas of Great Britain are those locations where regional aid may be granted under EU legislation. The current Assisted Areas Map came into effect on 13 February 2007, and will remain in force until 31 December 2013. The majority of Government business support schemes do not rely on regional aid. The two qualifying regional aid discretionary grant schemes are: Grant for Business Investment (GBI) and Regional Selective Assistance (RSA) in Scotland and Wales. The whole of Northern Ireland is covered as an Assisted Area. If you choose to invest in an Assisted Area you will be able to apply for a 'Selective Finance for Investment in England' grant which will vary depending on which Assisted Area you choose and how soon you plan to invest. The rates vary between 10% and 30% of the project's capital expenditure.

Types of Business Structure

Limited Companies

By far the most common form of business structure utilised in the United Kingdom is the limited liability company. This structure has been established for many years and, as its name suggests, it generally provides the protection of limited liability to its owners, officers and managers.

There are a number of different types of limited liability companies but the two most common for business purposes are:

- Private companies limited by shares
- Public limited companies

Private Companies limited by shares - Private limited companies are the most common choice of entity for a foreign based group wishing to carry on business through a separate legal entity in the United Kingdom. As stated above, they have the benefit of limited liability status in most cases, although detailed advice should be sought as to the circumstances in which the limited liability protection can be challenged.

A private company requires at least one director. Under new rules, which came into force in October 2009, a company no longer requires a company secretary as long as at least one of the directors (or if there is only one director appointed, the director) is a natural person. There is no requirement in the United Kingdom for any of a company's officers to be British nationals although every company needs to have a registered office in the United Kingdom. There are no minimum requirements as to share capital for a private company and no minimum number of shareholders. In the case of companies that are wholly owned subsidiaries, many of the usual company formalities may be dispensed with.

Public Limited Companies - Public limited companies or 'plcs' are similar to private limited companies in that they are companies limited by shares and once again afford the benefit of limited liability protection to its owners and officers. Where a company is to be registered in the United Kingdom on a recognised stock exchange (most commonly The Main List of the Stock Exchange or AIM) that company must be a plc rather than a private company. The rules governing public limited companies are more onerous than those relating to private companies and PLCs generally offer less flexibility to overseas groups carrying on business in the United Kingdom. For example, the rules prohibiting companies providing financial assistance in connection with the acquisition of its own shares have recently been abolished for private companies but not for public limited companies.

A public limited company must have at least two shareholders and before it is permitted to trade, it needs to have issued at least £50,000 of share capital, of which at least 25% is paid up. In other words, share capital of at least £12,500 needs to have been provided with a liability to pay at least another £37,500 if required.

Partnership Structures

There are three main partnership structures used in the United Kingdom namely:

- Partnerships
- Limited liability partnerships
- Limited partnerships

Partnerships are a common structure used in relation to joint venture arrangements and limited liability partnerships (a reasonably recent concept in British law) have become more and more popular. Whilst the traditional partnership offers no limited liability to its partners (indeed all partners are as a rule jointly and severally liable for all liabilities of the partnership), limited liability partnerships offer similar limited liability to that of companies.

Partnership structures have a very different tax treatment to limited companies and it is important that detailed tax advice is obtained so that the tax position can be fully understood. Generally the management structure of partnerships offer more flexibility than that of a company although there are certain basic duties and obligations laid down by the relevant legislation. Having a properly drafted and well thought out partnership agreement (or 'members' agreement' in the case of a limited liability partnership) is of utmost importance to avoid, wherever possible, disputes in the future.

The principal benefit of the unlimited partnership structure over the limited liability partnership is, in theory, confidentiality. Because of its unlimited liability the partnership is not subject to the same requirements of public disclosure as a limited liability partnership, or indeed a limited company. However, corporate partners will generally have to file their own accounts and, very often, a corporate partner's interest in the partnership will need to be fully consolidated for the purpose of those accounts.

Limited liability partnerships must be registered with the Registrar of Companies and have to have a least two designated members.

Alternative structures

There are many alternative structures, with advantages and disadvantages to each, to consider when setting up business in the United Kingdom and careful thought should be given to ensure that your chosen route appropriately suits your requirements.

Branch or place of business – A foreign company can set up a business in the UK as a branch, without forming any UK legal entity. A branch is considered an extension of the foreign company and, as a result, the foreign owner is responsible for all the liabilities of the branch. Whilst not being a separate legal entity it must be registered with the Registrar of Companies under the Companies Act 2006.

Joint venture – A joint venture can be entered into with an existing UK entity so that a business is formed which is partly owned by the existing UK entity and partly by an overseas business. The most common forms of structure for joint ventures are private companies and limited liability partnerships. It is important that professional advice is obtained in relation to the appropriate business structure and the joint venture agreements which will regulate the relationships between the joint venturers.

Franchise – Buying a franchise allows you to take advantage of the success of an already established business. The franchisee pays to use the name, products, services and support systems of the franchisor. The payment to the franchisor will normally include a percentage of profits or turnover.

Sole trader – Being a sole trader is normally the simplest way to carry on business and only tends to be used in relation to small businesses. Whilst it gives rise to the least requirements in relation to regulation and administration, it offers no limited liability protection. It is unlikely to be a structure which is appropriate to overseas companies looking to do business in the United Kingdom.

Setting up a private limited company in the UK

In order to set up a company in the UK, the following documents must be filed at Companies House:

Form IN01 – Application to register a company. This is a series of forms which appoints the company's officers, establishes the registered office address and details the subscribers to the shares.

Memorandum of Association – This is a short, authenticated or signed statement of the intention of the subscribers to form a company.

Articles of Association – These detail the internal rules of the company and can take the form of adopting model articles or adopting bespoke articles. Professional advice should be taken when deciding what kind of articles the new company requires.

These documents need to be filed with the Registrar of Companies together with a nominal registration fee.

Once this information has been received and verified by Companies House, the Registrar will issue the company's Certificate of Incorporation. The company does not exist legally until the certificate has been issued as this will show a unique company number and the date of incorporation. The company number issued by Companies House will stay the same throughout the lifetime of the company.

There are restrictions as to the choice of company name and Companies House will not register a name that:

- Is identical to a name already registered
- Contains a word or words that the use of which would constitute a criminal offence
- Is likely to be considered offensive

Careful consideration should be given to choosing an appropriate name which is not too similar to the name of an existing company. If the chosen name is deemed to be too similar to another name, then notwithstanding that your company may have been using that name for some time, the Secretary of State may order you to change the name, possibly prejudicing significant goodwill that may have been built up in that name.

The Registrar of Companies will not register names which imply a connection with national or local government without the support of the specific government department or local authority.

There are lists of sensitive words and expressions that cannot be used without prior approval, be this from the Secretary State or from the relevant body, to ask if they have any objection to the use of the word. The lists may be obtained from the Companies House website.

Guidance is available from the Registrar of Companies as to names that can and cannot be used. To avoid delays in registering your new company, care should be taken to consult the Companies House register to see if a company has been formed with the name you would like.

It is possible to use a company formation agent to form a company either by purchasing a 'ready made' company or for the agent to form a bespoke company from scratch for you electronically. A 'ready made' company is one which the agent will have formed that may be purchased and used immediately as the Certificate of Incorporation will have been issued with model articles of association being in place. Of course, the fees levied by the agent will include the duty levied by Companies House together with the agent's fee for carrying out the formation on your behalf.

If a 'ready made' company is purchased then the changes to any details of the entity e.g. appointing directors, change of registered office must be filed at Companies House. A list of the forms to be used may be found on the Companies House website.

Audit requirements

For information on audit requirements see Section 4 which covers statutory filing requirements as well as audit conditions.

Insurance requirements

Compulsory insurance

When looking to establish an entity in the UK, you are legally required to have in place two compulsory insurance policies; employers' liability insurance and third party motor liability.

- Employers Liability insurance - required to provide cover against bodily injury or disease sustained by your employees in the course of undertaking their working duties for you (refer Employers Liability (Compulsory Insurances) Regulations 1998)

and

- Third party motor liability insurance - cover for death or injury, or damage to property as a result of the actions of a driver of one of your vehicles (refer Motor Insurances (Compulsory Insurance) Regulations 1992)

In both instances, there are substantial penalties for companies operating without these insurances.

Should your current insurance advisors be unable to arrange the necessary covers for you within the UK, then you will need to speak to a UK-based broker who will be able to arrange this on your behalf.

Other insurances

Any business setting up a new overseas entity/subsidiary, or even purchasing an existing business in an overseas territory, will want to ensure that their financial assets are sufficiently protected through insurance.

The attitude of individual organisations to insurance will vary and in many cases the current insurance intermediary should be able to arrange a level of protection in line with that available in the local market.

In most cases this cover will be sufficient, but in some cases the cover provided will not be as wide as that available within the UK insurance market and a policy placed locally, to fully protect your assets, may be required. Your insurance broker should be able to conduct a full and thorough review of the current insurance arrangements to ensure the type and level of cover needed is in place.

Money laundering

What is money laundering?

Money laundering is defined very widely, and includes all forms of handling or possessing criminal property, including possessing the proceeds of one's own crime, and facilitating any handling or possession of criminal property. Criminal property may take any form, including money, securities, tangible property and intangible property.

Money laundering activity may range from a single act, for example, being in possession of the proceeds of one's own crime, to complex and sophisticated schemes involving multiple parties, and multiple methods of handling and transferring criminal property as well as concealing it and entering into arrangements to assist others to do so.

Background and purpose

The UK anti-money laundering regime requirements are set out in the Proceeds of Crime Act 2002 (PoCA) (as amended by the Serious Organised Crime and Police Act 2005 (SOCPA), the Money Laundering Regulations 2007 (2007 Regulations) and the Terrorism Act 2000 (TA 2000) (as amended by the Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001) and the Terrorism Act 2006 (TA 2006). The Money Laundering Regulations 2007 came into force in December 2007. All businesses that are covered by the regulations have to put in place suitable anti-money laundering controls. If the regulations apply to your business, you must put these controls in place as soon as possible.

Money laundering regulations are designed to protect the UK financial system. If your business is covered by the regulations, you must put in place certain controls to prevent it being used for money laundering by criminals and terrorists. These include appointing a 'nominated officer', checking the identity of customers and keeping all relevant documents. You must also report any suspicious activity to the SOCA (Serious Organised Crime Agency).

If a business is covered by the regulations, it must be supervised by one of the supervisory authorities. It may already be supervised, for example by the Financial Services Authority (FSA) or by a professional body.

The regulations apply to a number of different businesses, including:

- Most UK financial and credit businesses such as bureau de change, cheque cashers or money transmitters
- Independent legal professionals
- Accountants, tax advisers, auditors and insolvency practitioners
- Estate agents
- Casinos
- 'High Value Dealers' - businesses that accept cash payments worth 15,000 euros or more for a single transaction
- Trust or Company Service Providers

Bank Accounts

Banks in the UK have a variety of different accounts and can often offer a service tailored to specific requirements, including a personal banking service and internet banking.

Legal requirements

It is not a compulsory pre-requisite to have a UK bank account in order to set up an entity in the UK, however, it is a legal requirement to keep personal and business financial activities separate. Therefore, in order to trade, a business bank account will be needed; whether for a sole trader, a limited company or a limited liability partnership.

Opening an account

In order to open an account with a UK bank, the person's identity must be proven. This is so that banks can be sure that a person is who they say they are and that they will have records to assist with law enforcement if required in the future. All financial institutions are required by law to identify their new customers under the PoCA and 2007 regulations, as referred to in the previous section.

Banks can request a variety of forms of identification; however you are likely to be required to provide the following information, which can be confirmed using the following proofs:

Individual/Personal	
Information	Forms of proof
<ul style="list-style-type: none">■ Full name, current personal address and contact details■ Date of birth, place of birth and nationality■ Occupation■ Current photograph with full name■ Signature	<ul style="list-style-type: none">■ A current government issued document with a photograph (passport, photocard driving licence or EU National Identity Card)■ A current government issued document without a photo■ A document issued by the FSA or a firm regulated by the FSA (e.g. bank statement or insurance certificate)

Business	
Information	Forms of proof
<ul style="list-style-type: none"> ■ Full company name, company registration number, company address and related details ■ Date the business was established ■ Predicted turnover details ■ Personal details (this is in order to prove your identity in relation to the business) 	<ul style="list-style-type: none"> ■ Original company formation documents (such as the Memorandum and Articles of Association) ■ A trading invoice ■ A utility bill ■ A piece of company stationery ■ Personal proof of ID (from the box above)

Fees

Most of the high street banks will offer a basic account that is free to set up and without any monthly charges for business or personal use. They also offer packages with additional benefits such as the use of their software packages and online systems but these come with a monthly fee.

Timing

Setting up a personal or business bank account does not need to take long but will require a visit to a local branch of the bank. If it is needed to be set up quickly, additional money will be required to do so.

Useful websites

Business Link	www.businesslink.gov.uk
Companies House	www.companieshouse.co.uk
Department for Business Innovation and Skills	www.bis.gov.uk
Financial Services Authority (FSA)	www.fsa.gov.uk
HM Revenue & Customs	www.hmrc.gov.uk
Money Made Clear	www.moneymadeclear.fsa.gov.uk
Office of Public Sector Information	www.opsi.gov.uk
The Bank of England	www.bankofengland.co.uk
UK Investment	www.ukinvest.gov.uk
UK Trade & Investment	www.uktradeinvest.gov.uk

Section 3

Employment



The Great Bell, (Big Ben) London

Employment

General considerations

The UK is considered by The World Bank to be the second only to Denmark as the best place in Europe to employ workers. Skilled labour is plentiful and on average employees have the longest working hours per week.

Legally, employers must attempt to recruit staff within the European Economic Area (EEA) before looking beyond this to the rest of the world.

The EEA countries are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Visas

If required, a UK visa will grant the holder to enter the country. There are a variety of visas available for entry into the UK, ranging from a short tourist visa up to a long term visa.

It is strongly recommended that you look into your access to the UK as soon as you start to plan a trip because it can take weeks to apply for the required documentation and the process may involve interviews and/or biometric tests/records.

- If you are not a British citizen or an EEA citizen, or a Swiss national, you may need a visa before you can visit the UK
- You can apply for a visa at a British Overseas Mission in your own country. If you are approved, the visa will be put in your passport
- Having a visa does not always mean you can work in the UK. Further information on Visas can be obtained from the British Government website (see page 33)

Recruitment and immigration

A radical overhaul of the UK immigration system commenced in 2008 and saw the introduction of a five-tier points-based system. The most significant aspect of these changes has been the abolition of the work permit system and its replacement with 'Tier 2', which covers 'skilled workers', under which an employer must be registered as a sponsor with the UK Border Agency and a migrant must be sponsored by that employer before they come to work in the UK. The points-based system only covers migrants from outside the European Economic Area and Switzerland, therefore such a national can be employed without the need for permission. There are some restrictions however on nationals of countries that have only recently joined the EEA. Migrants applying under Tier 1 as 'highly skilled workers', for example entrepreneurs and investors, do not need to be sponsored in order to be given permission to work in the UK.

Contracts of employment

A contract of employment can be made orally or in writing. However, in accordance with section 1 of the Employment Rights Act 1996, within two months of starting employment an employee must receive a written statement of terms and conditions which must contain key provisions, including: the employment commencement date, job title and description of work, remuneration and intervals of pay, hours and place of work, details of holiday, sick leave and notice provisions, and details of the employer's disciplinary and grievance procedures. This obligation is therefore satisfied by providing an employee with a written contract of employment that includes these terms as a minimum.

Certain terms are also implied into the contract through statute, common practice or by English common law. For example, terms implied by statute include provisions of the Working Time Regulations 1998, the National Minimum Wage Act 1998 and the Equal Pay Act 1970. Terms implied by common law include the mutual duty of trust and confidence between employer and employee, a duty of fidelity and good faith on the part of the employee and a duty to take reasonable care of the employee's safety and working conditions on the part of the employer.

Rights during employment

There is a plethora of legislation governing an employee's rights, not only during employment but also at the recruitment stage and following the termination of employment. Most employment rights are enforced through the jurisdiction of the Employment Tribunal, with some claims being capable of being heard by the civil courts.

Minimum wage

The National Minimum Wage Regulations 1999 set out the framework which implements the minimum wage in the UK, which is reviewed each year. The latest revision to the minimum wage rate is effective from 1 October 2009 and is £5.80 for workers who are aged 22 and over, £4.83 for those aged 18-21 and £3.57 for those aged 16-17 (except apprentices).

Working time and annual leave

In accordance with the Working Time Regulations 1998 (the WTR), workers in the UK are not permitted to work for more than an average of 48 hours per week (measured by reference to a 17 week period). This is subject to some limited exceptions. There is however the ability to opt-out of the WTR; this can be done by making provision in the contract of employment but current best practice dictates that it is preferable to ask a worker to sign a separate opt-out agreement. A worker can choose to opt back into the WTR, provided they give their employer not less than 7 days' notice.

It is illegal to subject a worker to detrimental treatment for refusing to opt out of the WTR and dismissal of an employee as a result of such refusal is automatically unfair, irrespective of length of service. The WTR also entitles workers to a daily rest period of 11 consecutive hours in every 24 hour period, an uninterrupted rest period of not less than 24 hours in every 7 day period or 48 hours in every 14 day period, and 20 minutes' rest break provided that the working day is longer than six hours (but note that this does not equate to a break of 20 minutes for every six hours worked). An employer cannot ask a worker to opt out of these provisions of the WTR.

The WTR provide for the statutory minimum holiday entitlement, which from 1 April 2009 has stood at 5.6 weeks/ 28 days (inclusive of public holidays, of which there are 8 in each year in the UK) for a worker who works 5 days per week. A worker's statutory leave entitlement may not be replaced by a payment in lieu (except where the worker's employment is terminated) and statutory leave entitlement may not ordinarily be carried over to the following leave year. However, arrangements are permitted to be made between employers and employees with regard to contractual holiday entitlements which exceed the statutory minimum. Holiday entitlement accrues monthly and is pro-rated for workers who commence employment after the beginning of the leave year. A worker is entitled to payment in lieu of accrued but untaken holiday upon termination of their employment. An employer is entitled to deduct from wages any holiday that has been taken but had not yet accrued by the time of termination of employment.

Sick leave and sick pay

The WTR set out that when a worker is on long-term sick leave, holiday entitlement does not continue to accrue. However, the recent case of *Stringer v HMRC* has laid down the principle that holiday entitlement does in fact continue to accrue during this time, and can be carried over to the next holiday year if a worker has not had the opportunity to take the leave in the current leave year. Further, if the worker has not had the opportunity to take the leave before their employment is terminated, it is now understood that they should be paid in lieu of the leave which has accrued.

An employee who is off sick for more than 3 consecutive days is entitled to receive Statutory Sick Pay (SSP) from his employer. From April 2009, the rate of SSP is £75.19 per week and employees are entitled to receive up to 28 weeks' SSP in any 3 year period. Employers sometimes supplement SSP with company sick pay for a specified period, in accordance with their sickness policy.

Employment protection

In addition to the protection afforded to workers and/or employees as described above, there are other legislative provisions in place which generally serve to protect workers and/or employees against less favourable treatment in a variety of forms.

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2002 make it unlawful for employers to treat part-time workers less favourably than full-time workers with regard to their terms and conditions, without objective justification.

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 make it unlawful for employers to treat fixed term employees less favourably than permanent employees without objective justification. Further, these Regulations provide that a fixed-term employee whose contract is renewed or extended beyond 4 years in duration becomes a permanent employee (this is not the case however for an employee who enters into a fixed-term contract which is longer than 4 years).

Employees are protected against unlawful discrimination on the following grounds: Age, Disability, Race, Colour, Nationality, Ethnic or National Origin, Religion of Belief, Sex and Sexual Orientation. No length of service is required to bring a discrimination claim (see below); in fact, a person can make a claim for discrimination in relation to an employer's recruitment process (ie they were not recruited because of discrimination). A person can also make a discrimination claim against a former employer, if they are discriminated against in post-termination dealings, for example, in drafting a reference or as part of a post-termination appeal. Unlawful discrimination takes four forms, namely: direct discrimination, indirect discrimination, harassment and victimisation. An Employment Tribunal award for compensation following a successful claim for discrimination is unlimited.

Data protection

Under the Data Protection Act 1998, employees have the right to have their personal data processed in accordance with certain data protection principles. They also have a right of access to personal data held about them by their employer, and to receive a copy. Employees have a right to prevent processing of their personal data if this is likely to cause damage or distress; they can also require an employer to ensure that no decision which significantly affects them is taken solely based on the automatic processing of their data.

Termination of employment

After one month's continuous employment, an employee in the UK is entitled to a statutory minimum notice period of 1 week if their employment is to be terminated. This minimum is increased yearly to the effect that after 2 complete years an employee is entitled to 2 weeks', and 12 weeks' notice after 12 years' continuous employment, beyond which the minimum remains at 12 weeks'. An employee is only ever required to give an employer a statutory minimum notice of 1 week after 1 month's continuous employment. The contract of employment will frequently provide for increased notice periods to be given by both the employer and the employee upon the termination of employment. Any contractual provisions will override the statutory minimum (provided they are not less than the statutory minimum).

Wrongful dismissal

An employee, who is dismissed without the proper notice they are entitled to in respect of the termination of their contract (i.e. the statutory minimum or a contractual notice period that is longer), will have a claim for 'wrongful dismissal. An employee can make a claim either in the Employment Tribunal or the County Court for damages (which are essentially, the sum due to

them in respect of their proper notice period). There is a time limit of three months to make such a claim in the Employment Tribunal and six years to do so in the County Court.

Unfair dismissal

Whether proper notice is given or not, employees who have one year's continuous service at the time of their dismissal are eligible to make a claim for 'unfair dismissal' in the Employment Tribunal (with a time limit of three months after the dismissal to make the claim). The Employment Rights Act 1996 sets out six fair reasons that an employer may rely upon in countering a claim for unfair dismissal. These are: capability, conduct, redundancy, retirement, illegality and 'some other substantial reason'. An employer must ensure that proper processes are in place when dismissing an employee, and that the dismissal falls within one of the fair reasons. Furthermore, in defending a claim, even if a dismissal falls within one of the fair reasons, an employer will also have to satisfy the Tribunal that it acted reasonably in the circumstances and that the dismissal fell within the 'band of reasonable responses open to a reasonable employer'.

It should be noted that there are certain protected categories where an employee can claim "automatically unfair dismissal," irrespective of their length of service. Examples include where a dismissal is connected with pregnancy/maternity, for making a protected disclosure ('whistle-blowing'), or for trade union membership.

An award for unfair dismissal is made up of two elements - the basic award, which is based on a set formula and is subject to a maximum, which was set at £11,400 from 1 October 2009, and the compensatory award, which in most cases is subject to a current maximum of £66,200.

Redundancy

Employees with 2 years' continuous service are eligible for a redundancy payment if they are made redundant. This is calculated on a set formula which is based on an employee's age, length of service (up to a maximum of 20 years) and a week's pay, which is subject to a maximum cap, and which increased to £380 as of 1 October 2009. Contractual enhanced redundancy packages may also be provided for. An employer must go through a consultation process when making an employee redundant. If the number of employees to be made redundant is 20 or more, collective consultation obligations (which differ depending on whether 20 or more or 100 or more employees are to be made redundant) must be adhered to.

Useful websites

British Government website	www.direct.gov.uk
UK Workforce Hub	www.ukworkforcehub.org.uk
UK Border Agency Visa Services	www.ukvisas.gov.uk/en

Section 4

Accounting



Edinburgh Castle, Scotland

Accounting

General considerations

All businesses in the UK are required to maintain proper accounting records for tax purposes. For all corporate entities, there are also legal requirements for accounting, reporting and filing financial information.

The accounting framework in the UK is based along similar lines to many other countries. There is an over-arching regulatory system that sets standards and requirements and monitors compliance; an accepted set of standards that comprise UK generally accepted accounting principles (UK GAAP); and an audit framework that reflects the structure, size and relative public interest of the entity.

Corporate entities are required to be registered with Companies House and are required to file financial statements for each financial year. These are held on the public records and are accessible for a small fee. There is no pre-set or standard date for an entity's year end, which can be set to meet the entity's own requirements.

UK accounting principles are overseen by the Accounting Standards Board (ASB). This is a division of the Financial Reporting Council (FRC), which is the principal regulatory body.

There are three principal platforms for reporting requirements in the UK:

- IFRS - applicable for all listed companies, including AIM listed entities, in respect of their consolidated financial statements. This represents IFRS as adopted in the European Union
- UK Financial Reporting Standards - representing UK GAAP, applicable to all other reporting entities that are not defined as small
- The Financial Reporting Standard for Small Entities (FRSSE) - a single standard that applies to small corporate entities as defined by the Companies Act. This represents some simplification on the full suite of Financial Reporting Standards (FRSs), particularly as relates to disclosure requirements, and provides some relief from more complex or onerous disclosures

At the current time, there is some debate about the future of UK GAAP. Increasingly, new standards are being introduced that largely mirror equivalent IFRS as a feature of the progression towards globally accepted standards. The ASB is undertaking consultation on the future of UK GAAP, although, it is not expected that significant changes will be made in the immediate future.

Reporting requirements

Corporate and other entities registered at Companies House, including limited liability partnerships and branches of overseas entities, are required to prepare and file at Companies House financial statements in respect of each financial year.

This largely arises from the Companies Act 2006, which places into statute the requirement to prepare financial statements that comply with relevant GAAP (i.e. IFRS or UK GAAP). This responsibility is placed on the directors, although clearly their advisors often have a key role to play in this process.

Financial statements for this purpose consist of a profit and loss account, a statement of recognised gains and losses, a balance sheet, a cashflow statement and related notes. The financial statements are usually required to be filed within nine months of the end of a financial period (or six months for Public Limited Companies whether listed or not). There are penalties for late filing.

Figure 3: Late filing penalties

Length of period late	Private company		Public company	
	Old	New	Old	New
Up to 1 month	£100	£150	£500	£750
1 to 3 months	£100	£375	£500	£1,500
3 to 6 months	£250	£750	£1,000	£3,000
6 to 12 months	£500	£1,500	£2,000	£7,500
More than 12 months	£1,000	£1,500	£5,000	£7,500

If accounts are filed late under the Companies Act 2006 in two successive years the penalties are doubled. That could be a massive £3,000 for each overlooked dormant company.

Particular care is required in respect of the first year of a new company. It is strictly enforced that the first set of financial statements of a new company must be filed no later than 21 months from the date of incorporation of the company. As an example, if a company is incorporated on 9 March 2008, commences trading on 1 October 2008 and has an accounting reference date of 30 June 2009, its first accounts must be filed by 9 December 2009, not 31 March 2010.

There are filing exemptions open to medium sized and small companies, as defined by the Act. These need to be considered on a case by case basis and relate to lower levels of disclosure or content for the filed financial statements.

Accounting principles

UK GAAP has similar principles to the other main accounting platforms. In general, the UK approach is principles based, rather than rules-based, with some basic accounting concepts that apply to all aspects of accounting and detailed rules on the application of those principles to a limited number of specific circumstances.

The key overriding principles are:

- Accruals - accounts should reflect the transactions that arose in an accounting period rather than the transactions completed in a period
- Going concern - unless there are indications to the contrary, financial statements should be drawn up on the basis that the entity will continue to trade for the foreseeable future. If there is some reason to doubt this assumption, the directors must explain the approach adopted in the financial statements
- Accounting policies must be selected for the entity which is relevant to its business, reliable as a basis for measurement, comparable to other similar businesses and understandable to a reader of the financial statements

Some of the key differences between UK GAAP and other accounting platforms include:

- Revenue recognition - whilst generally applying the accruals principle to the recognition of revenue in a specific accounting period, the UK has fewer specific rules on the timing of revenue recognition than, for example, US GAAP. In general US principles would be equally acceptable in the UK
- Intangible assets are less likely to be recognised in UK GAAP than in IFRS, particularly in relation to the identification of intangible assets on acquisition
- Goodwill is amortised under UK GAAP over its expected useful economic life. There remains a requirement for periodic impairment review, but the underlying balance is amortised over a period not exceeding 20 years
- Acquisition accounting is similar to both IFRS and US GAAP, although the fair value and asset recognition exercise is unlikely to be reflected in the acquired entity (so-called 'push-down' accounting) but generally only on consolidation
- Pensions accounting under FRS17 is similar to IAS19 in that deficits or surpluses arising on defined benefit pension schemes or post retirement benefits are recognised in full, based on a set of valuation principles. The cost of defined contribution schemes is recognised as it arises
- Joint ventures are recognised on the investment method, not on the basis of grossed up assets and liabilities
- Associates are accounted for on the equity method, adjusting the carrying value of the investment each year to the proportion of net assets owned

Audit

There is a requirement for all companies' financial statements to be audited each year unless the entity or the group of which it is part meets certain requirements.

Companies Act size tests

The current accounts-related provisions were introduced by the Companies Act 2006 and are effective for accounting periods commencing on or after 6 April 2008 i.e. April 2009 year ends onwards in most cases.

Size limits

The size limits for qualification as a small or medium sized business, and therefore for audit exemption, have increased for accounting periods commencing on or after 6 April 2008. The new limits are as follows:

Figure 4

	Turnover (not more than)	Balance sheet total (not more than)	No. of employees (not more than)
Small company	£6.5 million	£3.26 million	50
Small group	£6.5 million net or £7.8 million gross	£3.26 million net or £3.9 million gross	50
Medium sized company	£25.9 million	£12.9 million	250
Medium sized group	£25.9 million net or £31.1 million gross	£12.9 million net or £15.5 million gross	250

The detailed rules underlying the qualification process are set out in the Companies Act and require interpretation based upon individual circumstances. We recommend that professional advice is sought to clarify your position. The increased limits do not apply to limited liability partnerships (LLPs) until accounting periods commencing on or after 1 October 2008.

Changes in accounts

In respect of the implementation dates arising from the Companies Act 2006, the main changes for accounting periods commencing on or after 6 April 2008 are detailed below:

- Statements must be included on the balance sheet and director's report stating that they are prepared in accordance with the Companies Act 2006 and related regulation
- Medium sized companies are now required to disclose their turnover figure in abbreviated accounts
- Medium sized groups lose their exemption from preparing consolidated accounts, although, this remains for small groups. The only exemption that remains, subject to conditions, is where the company is an intermediate parent company within a larger group that prepares consolidated accounts

There are a number of implications arising from the removal of the medium-sized group exemption beyond the obvious change in the content of the financial statements. For example:

- It will require consolidation of not only the current year's figures, but also the comparative and pre-comparatives, in order to provide opening figures for the consolidated group position and to prepare the cash flow statement
- It will be necessary to revisit the accounting for any business acquisition and consider issues such as fair values of assets acquired, goodwill, pre-acquisition profits, minority interests etc
- Training may be required on consolidation techniques and relevant financial reporting requirements

The Companies Act 2006 requires the appointment of a named Senior Statutory Auditor who must be appropriately qualified and registered to undertake audits.

Ethical principles

Appointed auditors are required to comply with the Ethical Standards issued by the Auditing Practice Board (APB), part of the Financial Reporting Council (FRC). These are designed to preserve the position of independence for the auditors by identifying potential threats to their independence and a series of safeguards that may be applied to address those safeguards.

In general, these standards are broadly comparable with other regimes around the world. They are less stringent than some jurisdictions and, for example, do allow the auditors' firm to undertake other services such as tax compliance and accounting, as long as the appropriate safeguards are in place. These may include separation of responsibility for different services and ensuring that the audit firm does not have a management or oversight responsibility.

Figure 5: Key GAAP principles

The objective of Financial Reporting Standards is to ensure that for all material items:

1. an entity adopts the accounting policies most appropriate to its particular circumstances for the purpose of giving a true and fair view
2. the accounting policies adopted are reviewed regularly to ensure that they remain appropriate, and are changed when a new policy becomes more appropriate to the entity's particular circumstances
3. sufficient information is disclosed in the financial statements to enable users to understand the accounting policies adopted and how they have been implemented

An entity should adopt accounting policies that enable its financial statements to give a true and fair view. Those accounting policies should be consistent with the requirements of accounting standards, Urgent Issues Task Force (UITF) Abstracts and companies legislation.

Financial statements need to reflect, in an appropriate manner and as far as is practicable, the effects of transactions and other events on an entity's financial performance and financial position. Accounting policies assist in this process by providing a framework within which elements of financial statements, such as assets and liabilities, are recognised, measured and presented. They enhance the comparability of financial statements by helping to ensure that similar transactions are reflected in a similar way.

Two concepts - the going concern assumption and accruals - play a pervasive role in financial statements, and hence in the selection of accounting policies.

Going concern

An entity should prepare its financial statements on a going concern basis, unless:

- The entity is being liquidated or has ceased trading
- The directors have no realistic alternative but to liquidate the entity or to cease trading

In these circumstances, the entity may, if appropriate, prepare its financial statements on a basis other than that of a going concern. Financial statements are usually prepared on the basis that the reporting entity is a going concern because measures based on break-up values tend not to be relevant to users seeking to assess the entity's cash-generation ability and financial adaptability.

When preparing financial statements, directors should assess whether there are significant doubts about an entity's ability to continue as a going concern. If the directors, when making this assessment, and taking into account all available information about the foreseeable future, are aware of material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern, they must disclose those uncertainties.

Accruals

An entity should prepare its financial statements, except for cash flow information, on the accrual basis of accounting. This requires the non-cash effects of transactions and other events to be reflected, as far as is possible, in the financial statements for the accounting period in which they occur, and not, for example, in the period in which any cash involved is received or paid. The accruals concept lies at the heart of the definitions of assets and liabilities.

Accounting policies

The objectives against which an entity should judge the appropriateness of accounting policies to its particular circumstances are:

- Relevance
- Reliability
- Comparability
- Understandability

Relevance

The objective of financial statements is to provide information about an entity's financial performance and financial position that is useful for assessing the stewardship of management and for making economic decisions. Financial information is relevant if it has the ability to influence the economic decisions of users and is provided in time to influence those decisions. Relevant information possesses either predictive or confirmatory value, or both.

Appropriate accounting policies will result in relevant financial information being presented. Where more than one accounting policy would achieve this result, an entity will consider which of those policies presents the most relevant financial information in the context of the financial statements as a whole. In identifying that accounting policy, an entity will consider which measurement basis is most relevant and how to present information in the most relevant way.

Reliability

Financial information is reliable if:

- It can be depended upon by users to represent faithfully, what, if either, purports to represent or could reasonably be expected to represent, and therefore reflects the substance of the transactions and other events that have taken place
- It is free from deliberate or systematic bias (i.e. it is neutral)
- It is free from material error
- It is complete within the bounds of materiality
- Under conditions of uncertainty, it has been prudently prepared (i.e. a degree of caution has been applied in exercising judgement and making the necessary estimates)

Appropriate accounting policies will result in financial information being presented that is reliable. They will present transactions and other events in a way that reflects their substance. A transaction or other event is faithfully represented in financial statements if the way in which it is recognised, measured and presented in those statements corresponds closely to the effect of that transaction or event.

Often, there is uncertainty, either about the existence of assets, liabilities, gains, losses and changes to shareholders' funds, or about the amount at which they should be measured. Prudence requires that accounting policies take account of such uncertainty in recognising and measuring those assets, liabilities, gains, losses and changes to shareholders' funds. In conditions of uncertainty, appropriate accounting policies will require more confirmatory evidence about the existence of an asset or gain than about the existence of a liability or loss, and a greater reliability of measurement for assets and gains than for liabilities and losses.

However, it is not necessary to exercise prudence where there is no uncertainty. Nor is it appropriate to use prudence as a reason for, for example, creating hidden reserves or excessive provisions, deliberately understating assets or gains, or deliberately overstating liabilities or losses, because that would mean that the financial statements are not neutral and therefore not reliable.

Comparability

Information in an entity's financial statements gains greatly in usefulness if it can be compared with similar information about the entity for some other period or point in time, and with similar information about other entities. Such comparability can usually be achieved through a combination of consistency and disclosure. The disclosures required in respect of an entity's accounting policies, and any changes to those policies, are set out in paragraph 55.

Appropriate accounting policies will result in financial information being presented in a way that enables users to discern and evaluate similarities in, and differences between, the nature and effects of transactions and other events taking place over time. In selecting accounting policies, an entity will assess whether accepted industry practices are appropriate to its particular circumstances. Such practices will be particularly persuasive if set out in a SORP that has been generally accepted by an industry or sector.

Understandability

Information provided by financial statements needs to be capable of being understood by users having a reasonable knowledge of business and economic activities and accounting and a willingness to study with reasonable diligence the information provided. Appropriate accounting policies will result in financial information being presented in a way that enables its significance to be perceived by such users.

Figure 6: Commonly used accounting and reporting terms

UK	US	IFRS
Profit and Loss Account	Net income statement	Income and Expenditure Statement
Turnover	Income	Revenue
Profit	Net income	Net income
Stock	Inventory	Inventory
Debtors	Receivables	Receivables
Creditors	Liabilities	Liabilities

Useful websites

Companies House	www.companieshouse.co.uk
Institute of Chartered Accountants in England and Wales	www.icaew.com

Section 5

Tax System



Tax System

Introduction

The majority of taxes in the UK are imposed by national government. Taxes include personal income and capital gains taxes, tax on the profits and gains of companies, social security, sales taxes (VAT), tax on property transfers, excise taxes (petroleum duties) estates and gifts taxes and many others.

Local services are financed from central sources and a property tax (business rates, a national charge for business properties and council tax for households).

It is not possible for a brochure of this kind to give details of all taxes; however, when considering establishing a business in the UK the national taxes addressed below are usually the most important to consider.

Framework of the law

The UK tax legislation is passed by parliament in the (usually) annual Finance Act, although minor legislation can also be passed by government without the approval of parliament. The volume of tax legislation has grown significantly in recent times. It undergoes frequent changes and an effort to simplify the wording of existing legislation has further added to the volume of legislation. Retrospective legislation is not often experienced and the principal of retrospective legislation is generally opposed; however, government has announced that it will use retrospective legislation to stop certain tax-avoidance schemes, so it may become more common in future.

The majority of taxes are managed and collected by H M Revenue & Customs (HMRC) which was formed in 2005 by merging the Inland Revenue (which dealt principally with income taxes) with HM Customs and Excise (which managed principally customs duties and value added tax). Although one department is responsible for the majority of taxes they are still largely managed separately and it is necessary for taxpayers to register separately for the taxes which will apply to them.

The UK's tax legislation is not all in accordance with European Law so, particularly in an international context, it can be advisable to consider the potential impact of European Law on UK tax legislation.

HMRC issues statements of practice and other guidance, which set out its interpretation of the legislation and recently a procedure for obtaining upfront pre-transaction rulings has been introduced (which is much wider than a long-standing clearance procedure for certain types of transaction).

England, Wales, Scotland, and Northern Island are all within the UK taxation regime. The Isle of Man and the Channel Islands (principally Jersey and Guernsey) are subject to their own tax rules.

Corporation tax

Taxable persons

Corporation tax is payable by companies resident in the UK. A company is resident in the UK if it is incorporated in the UK, or if its' central management and control is exercised there. If a company is resident in the UK and is also resident in another country with which the UK has a tax treaty, then the treaty will usually decide in which state the company is tax resident. If this is not the UK, the company will be treated as non-UK-tax resident for all purposes.

In addition, non-UK-resident companies are subject to UK corporation tax if they carry on a trade in the UK through a permanent establishment, such as a fixed place of business, a branch, office, or agency. Non-resident companies can also be subject to UK income tax or withholding tax, see below.

Corporation tax and its rates

The main rate of corporation tax is 28%. UK-tax-resident companies with profits of less than £1,500,000 can be subject to tax at lower rates depending on the number of companies under common control and the level of profits. From April 2013 a new "patent box" regime will tax profits from certain patents at 10%

Similar rules apply to the UK permanent establishment of a non-UK-resident company resident in a jurisdiction which has a tax treaty with the UK.

The taxable basis

Corporation tax is charged on the worldwide profits and chargeable gains of a company. There is no tax on corporate capital, no excess profits tax, no branch profits tax and no alternative minimum tax.

As a starting point, companies are assessed to corporation tax on the profits in their published accounts which must have prepared in accordance with generally accepted accounting practice. This means that items such as exchange gains on currencies or liabilities are often taxable on an accruals basis rather than when realised.

There are several special regimes:

- Real Estate Investment Trusts (REITs) are not subject to tax on income or gains; however, they are required to distribute the vast majority of their profits
- Shipping companies can elect to be subject on a special "tonnage tax" regime whereby the taxable profits are based on the tonnage of the ships, rather than the profits
- Special rules apply to oil companies operating in British territorial waters and insurance companies

Key book / tax differences

Various adjustments must be made to the accounting profit in order to determine the taxable profits subject to corporation tax.

For a trading company expenses are allowed for corporation tax as long as they are incurred wholly and exclusively for the purposes of the company's trade. Companies with investment business can deduct the costs incurred in managing their investments.

Common disallowable items include:

- Depreciation and amortisation (except on intangible assets acquired from third parties after 31 March 2002)
- Dividend payments
- Entertaining customers (but not staff entertaining)
- Purchases of fixed assets (see capital allowances below)
- UK corporation tax, tax penalties and criminal fines
- General provisions for bad debts etc
- Pension costs, staff bonuses and interest to connected individuals, which are not paid within certain periods
- 15% of the operating lease cost of cars which have carbon dioxide emissions greater than 160 g/km
- Certain capital costs such as:
 - professional fees to acquire/sell assets
 - costs re new leases on properties
 - initial costs of incorporating new companies
 - certain professional costs of reorganising companies
 - certain initial costs to set up share schemes

Whilst charitable donations are not trading expenses they are generally allowed for tax purposes.

Deductions from book profits can include:

- A worldwide dividend exemption has recently been introduced. Companies are not subject to corporation tax on dividends received in respect of ordinary shares from companies in most circumstances (although there are exceptions which need to be considered). For a "small" company it is necessary that the payer is resident in a territory with which the UK has a treaty with a non-discrimination article (or is a UK company)

- Capital gains on the sale of a substantial shareholding in a trading company, or trading sub-group, are exempt from corporation tax where a shareholding of 10% has been held for a period of at least 12 months (as long as the group is still a trading group after the disposal)
- Capital gains benefit from a relief for inflation on the initial cost (or, if higher, the market value at 31 March 1982) of the asset sold and if the value at 31 March 1982 is higher than the cost the 31 March 1982 value is deducted (rather than the cost)
- A research and development tax credit is available. For “large” companies an additional tax deduction of 30% of qualifying expenditure is allowed. For companies with fewer than 500 employees and either turnover below £100m or balance sheet total below £86m, the additional tax deduction is 75% of the expenditure and if the company does not have sufficient profits the loss can be surrendered for a cash refund of up to 24% of the qualifying expenditure
- In certain circumstances corporation tax relief can arise on the exercise of employee stock options when there is no charge in the accounts

Capital allowances (tax depreciation)

Depreciation of most fixed assets is not deductible. Instead statutory capital allowances enable a company to claim tax relief on certain expenditure on fixed assets. (An exception is for intangible fixed assets acquired or developed after 31 March 2002, where the debit or credit per the accounts is tax-deductible or taxable.)

A company may claim a 100% allowance on the first £100,000 spent on plant and machinery (but note this is effectively restricted to one company per group and the relief is less for periods commencing before 1 April 2010). 100% relief is available on capitalised research and development costs, certain environmentally friendly plant and machinery and on low-emission cars.

A 20% annual writing-down allowance is generally available on a reducing-balance basis for other expenditure on qualifying plant and machinery. For assets with useful lives of 25 years or more (and certain defined fixtures within buildings and cars with carbon dioxide emissions above 160 g/km), a 10% writing down allowance is given.

Tax relief for expenditure on industrial buildings and on other premises such as hotels will be phased out by April 2011.

When a company sells assets that were originally eligible for capital allowances (excluding industrial buildings allowances), a tax charge or tax allowance can arise. If the proceeds exceed original cost (or the value at 31 March 1982) then there can be a chargeable capital gain.

Where a lease is considered to be a “long-funding lease” the capital allowances can be claimed by the lessee, or they can claim tax relief for the rental payments. Capital allowances cannot be claimed by the lessor. (A “long-funding lease” is a lease of more than 5 years which is either: a finance lease, where minimum rental is more than 80% of the fair value of the asset, or a lease where the minimum term is more than 65% of the expected remaining life of the asset.)

Corporation tax losses

The UK has different rules for trading losses, losses arising from an investment business, capital losses and losses on loans, foreign exchange and derivatives arising from non-trading situations.

Trading losses can be set against profits and gains of the same period. Any excess can be carried back 1 year (and for a limited period there is an ability to carry back £50,000 up to three years). On cessation of trade it is possible to carry back trading losses for up to 3 years.

It is possible to carry forward trading losses for an unlimited period but they can only be set off against future profits from the same trade

Losses from an investment business can be set against the total profits (and gains) of the year and subsequent years. Non-trading losses on loans, derivative contracts and foreign exchange can be set against other profits of the same period, carried back against non-trading profits of the previous 12 months, or carried forward to set against non-trading profits in the future. Capital losses can only be set against capital gains for the same period or a future period.

Losses can be surrendered within a 75% owned group of companies or in a consortium situation. See related party matters below for more on this.

Rules exist to deny the carry forward of losses of the company where there is, or has been, a major change in its activity in the three years before or after a change of control.

Related party matters

Transfer Pricing

Transfer pricing provisions (an arm's length test) apply to goods, services and interest charges involving UK or foreign affiliates. Certain exemptions are available for small and medium-sized companies (per the EU definition).

If both parties to a transaction are subject to UK tax and one has to increase taxable profits under the arms length test, the other is generally allowed a corresponding adjustment. 'Advance pricing agreements can be made with the UK tax authorities. Thin capitalisation rules are included within the transfer pricing legislation, but in future these provisions will be largely superseded by the worldwide debt cap (see below).

Worldwide debt cap

For accounting periods beginning on or after 1 January 2010 the amount of interest that can be deducted against UK taxable profits is restricted based on the level of external interest in the worldwide group.

Only large groups (per the EU definition) should be affected by this cap (including wholly UK-based groups). The legislation works in two stages, initially comparing the total level of debt in each UK company with the total debt of the consolidated group. If the level of UK debt is considered excessive then the second stage applies which compares the total net finance cost of each UK company with the total finance cost of the consolidated group. To the extent that the total UK net finance costs exceed the consolidated finance cost then the excess is not deductible for corporation tax purposes.

If the interest deduction is restricted the receipt may still be taxable, so mismatches can arise and careful planning is necessary regarding group debt.

Controlled foreign companies

In relation to a non-UK-resident company controlled by UK persons and paying an average tax rate less than 75% of the UK corporation tax rate, UK corporate shareholders are potentially assessable to UK tax on their share of the controlled foreign company's profits. Various exclusions apply and the legislation is under review.

Group relief

The UK allows for the surrendering of losses between companies rather than having a consolidated tax return (or "fiscal unity"). Companies generally need to be owned 75% directly or indirectly by a company (which does not have to be UK-tax-resident) and there is also provision for relief between members of a consortium.

The rules only applied to UK-resident companies and UK branches, but following a decision of the European Court of Justice it is possible for a non-UK-resident company to surrender losses to a UK company if there is no way of using the losses in the state where the company is resident. The limits of this legislation are as yet not clearly defined.

Corporation tax compliance and administration

The UK corporation tax year runs from 1 April to 31 March, but a company may prepare its accounts and tax returns to another date. The main impact of the tax year is for defining the rate of tax applicable.

A corporation tax return and computations must be filed by a company with the tax authorities within 12 months from the end of its accounting period. Returns filed late are subject to penalties which can be tax geared if the return is more than 6 months late (and the tax is not paid). From 2011 it is proposed that all corporation tax returns will be filed electronically.

Large companies must make quarterly instalments based on their expected profits commencing 6 months and 13 days after the start of the accounting period and then 3, 6 and 9 months later. Small and medium companies (generally those with profits of less than £1.5m divided by the number of associated companies) must pay their corporation tax 9 months and one day after their accounting period end.

HMRC can usually enquire into a return and a taxpayer can amend a return within the period of 12 months from the due filing date (or later if the return is filed late) and if HMRC discovers that a return may include an error they have an opportunity to raise enquiries up until 4 years after the accounting period end (extended to 6 years if the taxpayer is careless and 20 years if the error is deliberate). If a taxpayer believes a return includes an error or mistake they have up to 4 years from the period end to claim for this.

Companies are required to collect income tax and national insurance (social security). See below.

UK taxation of non-UK-resident companies (inc. withholding taxes)

As is stated above, non-UK-resident companies with a UK permanent establishment (where the definition largely follows OECD guidelines) are subject to corporation tax on the profits and capital gains of the permanent establishment and there is no branch profits tax.

Non-resident companies with UK rental income are subject to UK income tax (at 20%) on the profits. Apart from this and withholding tax (see below) the UK does not tax the profits of non-UK-resident companies without a UK permanent establishment.

Apart from gains on assets attached to UK permanent establishments (or unincorporated businesses) the UK does not tax the capital gains of non-residents disposing of UK assets (including no taxation of gains on UK real estate).

The UK has the largest number of tax treaties with other states (over 100), most of which are comprehensive and follow the OECD model.

Withholding tax

Dividends - Dividends paid by UK companies are not subject to withholding tax (except for UK REITs where payments to non-residents are taxed at 20%).

Interest - A 20% withholding tax is usually applicable to interest on loans (other than short-term loans and loans from banks in the UK). Relief from this withholding tax can be obtained under the UK's tax treaties or the EU Interest and Royalties Directive (however, to qualify under the directive requires either a direct holding of 25% of the votes or shares by one company in the other, or a third company must have a direct interest in both companies affected, so the directive is not often applicable). Advance clearance from HMRC is required before a reduced (or nil) rate of withholding tax can be applied by the payer of the interest.

Royalties - A 20% withholding tax can apply to certain royalties, which can be reduced under a tax treaty or the EU Interest and Royalties Directive. No advance clearance is required for royalties.

Rental income - A 20% withholding tax should be applied to payments to non-resident landlords, but exemption is available for taxpayers with a good compliance record.

VAT and other indirect taxes and duties

The main indirect taxes are discussed below. Other indirect taxes not covered include petroleum revenue tax, insurance premium tax and air passenger duty.

Value Added Tax (VAT)

VAT is levied on the supply of taxable goods and services in the UK, and input VAT incurred on their supply may be deducted or refunded. It is essentially a tax on expenditure by consumers and VAT-exempt business (see below) and is collected on business transactions, imports and acquisitions.

Most businesses will charge VAT on their sales and recover all or most of the VAT that they pay, so whilst they act as VAT collectors for HMRC VAT is not usually a cost to them.

Business providing VAT-exempt supplies, such as many financial services, rent (but landlords can elect to tax rent in some circumstances), education and healthcare, do not charge VAT but cannot recover the VAT they pay on their costs.

Certain services that are received from persons outside the UK may involve the UK trader having to account for VAT under the so-called reverse charge mechanism.

Care must be taken when supplies are made to other EU customers, as this may produce a requirement to additionally register for VAT in other Member States.

Significant VAT issues can arise on property transactions and it is recommended that professional advice is sought prior to effecting the transactions.

VAT Groups can be set up in relation to companies under common control, which may minimise the VAT administration on intra-group sales.

Figure 7: VAT rates etc. in force at April 2010

Registration threshold	Businesses with turnover (and imports etc.) subject to VAT above £70,000 must register for UK VAT
Rates	
Standard rate	17.5%
Reduced rate	5%
Zero rate	0% (exported goods, children's clothing, new residential houses, certain foods etc)

VAT administration

VAT returns can be prepared on a monthly, quarterly or yearly basis depending on the amount of VAT payable.

The monthly and quarterly returns for most businesses must be filed online with HMRC within 1 month of the month/quarter end together with the VAT payment, although in certain circumstances companies paying their VAT electronically have an additional 7 days to file their returns and make their payment. For companies with annual VAT returns the returns and payments must be made within 2 months.

Customs and excise duties

The EU operates a “customs union”, i.e. no customs duty is charged on the movement of goods within the EU, so customs duties are set on an EU basis. The duty is usually a percentage of the cost, insurance and freight (the “cif” cost) of the goods. Unlike VAT this is a cost to the importer.

Excise duties are charged on products such as petroleum, alcohol and tobacco at nationally fixed rates. (And VAT is usually charged on the price including excise duty.)

Stamp duty and stamp duty land tax

Stamp duty is charged on the transfer of UK shares at 0.5% (and stamp duty reserve tax can be charged at 0.5% on agreements to transfer UK shares, but there is relief from a double charge).

Stamp duty land tax is taxable on transfers and leases of UK real estate. Purchases of freehold land and lease premiums are taxed at rates of up to 4% for prices exceeding £500,000, with a special rate of 5% for residential property purchases exceeding £1m. Lease rentals are taxable at 1% (on the net-present value of the rents).

Personal income and capital gains tax

General system

The UK income tax system takes into account an individual's residence, ordinary residence, and domicile position.

Resident, ordinary resident and domiciled individuals are liable to UK income tax on their worldwide income and gains.

The remittance basis

Resident and ordinarily resident individuals who are not-UK domiciled (see below) may elect to be taxed in the UK on the remittance basis, however, individuals with non-UK source income exceeding £2,000 per year who have been resident for 7 out of the previous 9 years can only benefit from this if they pay a £30,000 flat annual tax charge.

Individuals taxable on the remittance basis can avoid UK income tax on any non-UK employment income where the duties are carried out wholly outside the UK as long as it is not remitted to the UK. They can also avoid paying UK income tax on investment income (and capital gains tax on gains) accrued abroad that is not remitted to the UK.

There are both significant savings and pitfalls that can affect individuals who come to the UK. Professional tax advice is strongly recommended due to the complexity of the rules.

Other tax reliefs historically available to non-UK-domiciled individuals have also been abolished.

Residency-related definitions

There is no statutory definition of residence; however, a person is treated as UK resident if:

- He resides in the UK for 183 days or more in a tax year; or
- His visits to the UK over 4 consecutive tax years average 91 days or more

It is generally more difficult for a person to lose UK residence than to gain it, hence particular care needs to be taken when leaving the UK.

A person is treated as UK domiciled if:

- His visits to the UK over 4 consecutive tax years average 91 days or more

A person is treated as UK domiciled if:

- **His father was domiciled in the UK; or**
- If he has made a choice to make the UK his permanent home by his intentions and actions which also take into account his wider family and various other factors

Note

1. For these purposes the number of days is generally the number of days when the individual is present in the UK at midnight.
2. An individual may be tax-resident in both the UK and another state. If there is a full tax treaty with the other state with a “tie-breaker” clause which gives primary taxing rights to the other state, the UK will usually only tax UK source income.
3. The UK has no codified rules for determining UK residence and determining whether a person is or is not resident can be very difficult. Recent court decisions have further added to the problem and it is essential that specialist advice is taken in any case where a person’s residence status is critical.

Taxable income

Resident, ordinary resident and domiciled individuals are liable to UK tax on their worldwide income and gains.

Earned income includes taxable benefits-in-kind (including employer healthcare payments) and expatriate allowances (but there is exemption for certain subsistence payments where an individual intends to remain in the UK for 2 years or less). Employment income can be reduced by expenditure wholly, exclusively and necessarily incurred in the performance of the duties, but the cost of travel from home to the normal place of work is not tax-deductible.

Share incentive schemes may be taxed favourably if they are approved by HMRC.

There are few deductions allowed, in particular there is no tax deduction for mortgage interest to acquire a personal residence, or maintenance payments.

Tax relief is obtained for qualifying pension payments (but note that this is generally restricted to 20% for those earning more than £130,000 per year) and certain charitable donations.

Administration of income tax, capital gains tax and national insurance

The UK income tax year for individuals runs from 6 April to 5 April of the following year.

Husbands and wives are taxed separately.

Income tax on earnings and employee’s national insurance contributions are deducted from an employee’s earnings by the employer and must be paid to HMRC along with the employer’s national insurance contributions by 19 of the month following the month of payment.

Taxable income (mainly employment income, benefits in kind, income from self-employment, pensions, investment income, other income) and capital gains should be included in an individual’s self-assessment tax return which should be submitted by 31 January of the following year at the latest (of 31 October if a paper return is filed).

Income tax rates and allowances

2010/11 tax year (i.e. the year to 5 April 2011) Individuals under 65 years of age are entitled to a tax-free personal allowance of £6,475, but this allowance is withdrawn progressively for persons with taxable income exceeding £100,000 per year.

- Income between £0 and £37,400 is taxed at 20%
- Income between £37,401 and £150,000 is taxed at 40%
- Any income above £37,400 is taxed at 40%

Capital gains tax rates

Each individual is entitled to a capital gains exemption in 2010/11 of £10,100. The balance of gains is charged at 18% (except for certain relatively small-value business and share disposals).

Gains on the disposal of a person's main residence are generally exempt from capital gains tax.

National insurance for employed persons

The UK has a social security system called national insurance. There is no direct link between contributions and benefits so it is usually considered to be an additional tax.

National insurance for an employee is 11% on employment income between £5,715 and £43,875 and 1% thereafter for 2010/11. Furthermore, employers are required to pay national insurance on earnings over £5,715 per year at 12.8% and at 12.8% on many benefits in kind provided. Increases in the rates of national insurance with effect from April 2011 have been pre-announced.

Inheritance tax (IHT)

Each individual is allowed an exemption from IHT of £325,000 (for 2010/11). Above this figure, 40% IHT is payable on an individual's worldwide assets if they are UK domiciled or if they are deemed for IHT purposes to be UK domiciled (i.e. he has been UK resident for the last 17 out of 20 tax years). For non-UK-domiciled individuals IHT is only payable on UK assets. Many reliefs are given e.g. business property relief (to exempt trading businesses) and transfers between married couples (which is limited where one partner is domiciled outside the UK). IHT is usually payable on death, but can be payable during an individual's lifetime on certain gifts, particularly into trusts.

UK taxation of non-resident individuals

Non-UK residents are generally only taxable on:

- Profits from a UK trade or business
- UK earnings from work performed in the UK
- UK pensions (subject to tax treaty relief)
- UK interest (other than interest free of tax for non-residents)
- UK royalties
- Rental income from UK properties

The UK tax on interest is usually limited to UK tax withheld at source and the liability on UK dividends is usually covered by a non-refundable tax credit.

Non-UK-residents are not subject to UK capital gains tax on the disposal of assets situated in the UK (including UK real estate) except where the asset is used in a UK trade or business.

Useful websites

Citizens Advice Bureau	www.adviceguide.org.uk
HMRC	www.hmrc.gov.uk
Tax section of RSM Tenon	www.rsmtenon.com/tax

Section 6

Corporate Restructuring



Corporate Restructuring, Insolvency and Liquidation

General considerations

Corporate restructuring involves the financial or economic restructuring of companies (or individuals), or the winding down and closure of groups. Corporate restructuring can also be a useful tool in an insolvency procedure or in debt collection if a debtor is unwilling to meet his debts.

Most of the formal insolvency procedures available in the UK and outlined here will require, by Law, the appointment of a licensed insolvency practitioner as the insolvency officeholder. It is a criminal offence to act as an insolvency officeholder without a licence.

This section outlines some of the more common formal insolvency procedures divided into three categories:

- Solvent procedures - where a company can pay all its creditors in full
- Rescue procedures - where a company or business is insolvent but has value as a going concern and can be sold or rescued
- Termination procedures - where a company or business needs to be brought to a permanent end

Issues for Directors of troubled companies and issues for international companies with interests in the UK are also covered in this section.

Procedures in cases of solvency

Striking off

If a company has been dormant for 3 months and has no assets, the Directors may apply to the Registrar of Companies (the body responsible for the registration of companies in the UK) to have the company struck off the register of companies. Whilst this is a simple process, it is limited to dormant companies. The Government will take any assets remaining in the company. The company may also be restored to the Register at any point within 20 years of the Liquidation.

Dissolution

Where a company is dormant and has failed to send annual returns and accounts to Companies House, the Registrar of Companies may have the company struck off. The registrar will advertise this in the London Gazette. Once a company is struck off in this way, it can be restored to the Register at any point within 20 years but doing so requires significant professional fees.

Members Voluntary Liquidation (MVL)

Where the Directors wish to close a company, they may call a members meeting requesting that the members vote to have the company wound up. The Directors must sign a statutory declaration stating that the company is solvent. The process is longer and more expensive than a Striking Off but the procedure provides protection from creditors by ensuring that the liquidation is well advertised. It also limits any claims against the company and its Directors to a two year period following the liquidation.

Procedures in cases of insolvency

Rescue Procedures

Administration – This enables creditors or Directors of an insolvent company to have the company managed by the administrator in liquidation, with the business either sold-on or traded-out of administration as a way of maximising value for the creditors, rather than being closed with the assets broken up and sold. A 'Pre Pack Administration' process represents an important type of administration whereby a distressed company is marketed prior to the appointment of the Administrators. The business is then sold immediately following the appointment as a way of maximising the value of the company.

Company voluntary arrangement – This is a useful procedure for a company with a viable business that is essentially profitable but is unable to pay its debts. An arrangement is made, with the creditors' approval, to alter the terms of repayment of any debts. The Directors remain in place but a nominee is appointed to monitor the arrangement. This procedure can lead to a better return than a liquidation or administration, has less stigma attached to it and does not require advertising.

Administrative receivership – This is a procedure similar to an Administration and available to secured creditors, but only applicable if the secured charge dates are before 15 September 2003. Directors will not be able to influence the procedure other than by meeting the debt owing to the lender.

Law of Property Act (LPA) receivership – Where a borrower is unable to pay his debt, a lender secured over a property that is not the home of the landlord may appoint an LPA receiver to collect any rents or profits off the property and sell it on their behalf. This can be a useful alternative to bankruptcy or other insolvency procedures as it is relatively simple and cost-effective to enforce.

Termination procedures

Creditors' Voluntary Liquidation (CVL) – This is the insolvent alternative to a MVL. It is called by the members passing a resolution to the effect that the company cannot continue to trade because of its liabilities. Meetings between co creditors and members are then held to appoint the liquidator and the Directors lose their powers. The Directors also have to swear a statement of affairs laying out the extent of the company's assets and liabilities. The company is then liquidated with the creditors and, if there is sufficient money after they have been paid off, the shareholders then receive their share of the company's assets.

Compulsory liquidation – This procedure can be initiated by a number of different interested parties and requires the permission of the Court which retains a high degree of control over the procedure. If permission is given, the company is put into liquidation and wound up as with a CVL. Compulsory liquidation is an expensive process but provides the Liquidator with a number of powers over the Directors, such as being able to cross-examine them under Oath and bring proceedings for Perjury if they fail to cooperate.

Issues for Directors of troubled companies

Whilst the issues outlined below apply to the Directors of all companies it is usually when a company is wound up or declared insolvent that questions of liability come to the fore. Insolvency practitioners have a duty as officers of the Court to report and investigate wrongdoing of Directors and any implicated Associates to the appropriate authorities.

Personal liability

Directors must sign a sworn statement laying out the company's affairs at the start of a liquidation or administration. This statement is a statutory declaration and a Director will be committing perjury if he does not tell the truth. A Director may be open to civil action in the event that shareholders feel that the Directors have not performed their statutory duties properly.

Company Director Disqualification Act

Where a company is subject to an insolvent procedure, the liquidators or administrators must present the Secretary of State with appropriate evidence if they feel that the Directors have acted with unfit conduct. The Court may also make such a ruling in certain cases. People so disqualified will be forbidden to act as Directors or shadow Directors for up to fifteen years.

Wrongful trading, transactions at an undervalue and preferential treatment of creditors

Wrongful trading, completing transactions at an undervalue and giving preferential treatment to creditors are the most common offences that can be committed by Directors that are specific to insolvency. Wrongful trading or trading whilst insolvent is a serious offence that is committed if a Director trades a company knowing that it is unable to pay its debts as they fall due. All transactions dating back three years from the start of the insolvency can be examined by the appointee and preferential payments to creditors (commonly Directors loans) or transactions at an undervalue (company vehicles given to senior staff for example) discovered can be restored with the recipient ordered to repay the difference in value or deliver up the goods.

Issues for international companies with UK interests

- **Dormant or non trading, solvent UK subsidiary** - See 'Procedures in cases of solvency'
- **Insolvent UK subsidiary** - See 'Rescue procedures' and 'termination procedures'
- **A group or several UK companies** - An MVL and distribution of the assets of the company in specie can be used to reorganise a group structure. This is a complex procedure that requires expert tax as well as insolvency advice
- **Secured creditors** - Creditors with secured assets are in a strong position with an insolvent company. They have the ability to apply to the Court without a hearing for the appointment of an administrator or liquidator following a failure to make a required payment. A secured creditor may also have the option to place mortgaged real estate into LPA receivership from which no other creditor can benefit and has preference over unsecured creditors when assets are distributed
- **Unsecured creditors** - Unsecured creditors have to apply to the court and have a hearing to either wind-up the company or to appoint Administrators. There is also a significant delay between the application and the hearing. As an unsecured creditor, you will rank behind any secured creditors when the assets are distributed, this can mean that if you choose the wrong insolvency procedure the fact that there are assets in the company does not mean that you will necessarily recoup any money
- **Litigation and insolvency** - If you have successfully pursued someone through the Courts for a money judgement then you can issue proceedings to place the company into an insolvency procedure as soon as payment is not made. Such debts do not necessarily have preferential status

Useful websites

R3 - Association of business recovery professionals	www.r3.org.uk
The Insolvency Service	www.insolvency.gov.uk



Section 7

Intellectual Property Rights

Intellectual Property Rights

General considerations

Intellectual Property (IP) is a catch-all term for the various rights available to protect intangible assets such as technological innovations and inventions, trade marks, the appearance of articles and the content of literary and artistic creations. The term is generally considered to cover patents, trade marks, designs, copyright (and related rights) and 'know-how'. Each right protects a different area, and a single product or service can have multiple rights associated with it.

For example, a drinks carton might have associated with it patents relating to the carton (say, the technology involved in the carton and the technique for making the drink), along with trade mark protection for the manufacturer's logo, design protection for the shape of the carton, copyright protection for the text and artwork on the carton, and know-how associated with the secret blend of juices, herbs and spices that go to give the drink its unique flavour.

An important advantage of owning such Intellectual Property is that it facilitates the commercialisation of otherwise insubstantial property. This might be by way of granting permission to use the particular right in question in return for a licence fee, or pursuing unauthorised infringers through the courts, or by buying, selling or assigning the right in the same way as tangible property.

In the event that parties infringe an owner's IP rights without permission, then IP rights generally provide the owner with various remedies for infringement, such as an award for damages or an account of profits, delivery up or destruction of infringing articles and a permanent injunction to stop the infringing use.

Intellectual Property should always be considered not only from the point of view of what you might own, but also what others might own. Searches of appropriate databases can often reveal what IP has already been protected and help avoid wasted development and other commercial costs. Equally, it is also important to consider the rights of third parties in order to avoid infringing those rights.

In the UK, the profession that covers all the activities discussed above is the Patent and Trademark Attorney profession.

Registered and unregistered rights

Many IP rights require registration, the process for which involves varying degrees of complexity according to the IP right in question. Registered rights cover patents, utility models, trade marks, designs and plant breeder's rights (PBRs). There are also a number of unregistered property rights that do not usually require registration.

Registered rights: **Patents – protecting your more important technical innovations**

Important things to remember:

- Always ensure that you have your patent application actually on file at the Patent Office before publicly disclosing any information about your innovation
- Remember that owning a patent of your own does not mean that you do not infringe another patent belonging to a third party
- A patent is a commercial tool and, like all tools, it is only as good as the hand that wields it; strategies for the exploitation of any patents should be a central part of any business plan
- A patent is both a legal and a technical document which may have commercial importance for up to two decades; when filing a patent application it is therefore important to seek professional advice

What the right means

Patents are fixed term, territorial monopolies conferring the exclusive right to a technical innovation in return for a full disclosure of that innovation.

Like any other property, patents can be bought, sold, and commercially exploited in several different ways. The technical innovation which a patent protects can be used by the patent's owner, to the exclusion of others, for example, to provide a commercial edge, or it can be licensed to third parties to provide an additional revenue stream. A patent can also be used as commercial leverage, for instance, to obtain the rights to use other patented technology on favourable terms. Indeed, in some areas (e.g. mobile telecoms) it can be very difficult to gain entry to the market without the leverage that patents can provide.

What can be protected?

Innovations in essentially all fields of technology can be protected, from biotechnology to software and business related methodologies. Patents are now being obtained by organisations well removed from traditional manufacturing, including organisations in the financial services sector, software houses, charities, and the like.

Duration of the right

A patent normally lasts 20 years from filing of the patent application; the patent needs to be renewed annually.

Geographical scope

In the UK, as in general, patent rights are mostly national in nature. However, a European patent (covering the UK as well as most European countries) can be obtained via a unitary granting procedure, although, after grant it can only be enforced nationally.

It is not necessary to be a UK or EU national to obtain patent protection in the UK.

Requirements for registration

Both the UK Intellectual Property Office and the European Patent Office operate a first-to-file system, meaning that, in the case of dispute, the patent will be granted to the person who first applied for a patent, and not necessarily to the person who first made the invention.

In order to obtain a patent, the invention must be new, not obvious and capable of industrial application. In order to be 'new', an invention must generally have been kept completely confidential up until the day a patent is applied for. There is a great deal of debate about what constitutes 'not obvious', in particular, in relation to the protection of computer programs, but, in practice, the more common limiting factor determining what is sought to be patented is a prevalent - but erroneous - belief on the part of inventors that inventions are more 'obvious' and hence less patentable than they actually are.

Process for registration

To obtain a patent, a description of the invention which provides sufficient disclosure of the invention to allow it to be recreated, along with so-called 'claims' that define the extent of the monopoly requested must first be submitted to the Patent Office.

The Patent Office will then conduct searches for previous disclosures of the claimed invention, and examine the application as to both form and substance, to ensure that it meets all the criteria required for a patent to be granted. The patent applicant will have the opportunity to make amendments and provide counter-arguments in order to overcome any objections raised.

Obtaining a patent can be a slow process which can be a disadvantage in areas where technology is developing very quickly. However, even if the technology is no longer relevant to you by the time the patent is granted a patent can form an effective defence against your competitors working in the same area. Seek commercial advice from a Patent Attorney before you make any assumptions about the possible value a patent might afford you.

In the UK and Europe, the examination and grant process can be accelerated in certain circumstances. In the case of inventions which have environmental benefits, for example, the UK Intellectual Property Office will 'fast-track' the application (as a matter of government policy) if requested to do so.

In normal circumstances all patent applications will be made publicly available before they are granted, although there are certain exceptions for inventions deemed prejudicial to national security.

Patent protection is usually obtained, and often enforced using the services of a Patent Attorney.

Registered rights: **Utility Models – protecting your less important technical innovations**

Important things to remember:

- Utility models represent an inexpensive and quick route for obtaining protection for more minor innovations
- In certain cases it is possible to convert an application for a patent into an application for a utility model

What the right means

Similar to patents, utility models provide a fixed term, territorial monopoly conferring the exclusive right to a technical innovation. Utility models are suitable for protecting incremental innovations, and are sometimes referred to as 'petty patents'.

What can be protected?

In certain territories, utility models cover a narrower range of innovations than patents.

Duration of the right

Utility models normally provide a shorter term than patents; for example, in many territories utility model protection lasts for between seven and 10 years.

Geographical scope

Utility models are national rights. There is no European Community utility model system, and no utility model protection is available in the UK, though it is available in many other European countries.

Requirements for registration

The level of innovation required is normally somewhat lower than for patents.

Process for registration

The process for registration is similar to that for patents, though in certain jurisdictions applications for utility models are examined with respect to form only, and not substance.

Registered rights: Trade Marks – protecting your trade marks, trade names and trade get-up

Important things to remember:

- Trade mark registration typically operates on a ‘first to register’ basis; thus, it is the first to register a trade mark that acquires the right
- Once registered, your trade mark becomes tangible property and can be licensed, assigned or franchised for valuable consideration
- Whilst some rights may exist in a trade mark even when unregistered, protecting your trade mark against competitors is much more effective if the trade mark is registered

What the right means

A trade mark is a sign which distinguishes the goods / services of one business from those of its competitors. It is an important badge indicating the origin of goods and services, and therefore, potentially, the quality of the goods or services. It sets you apart from your competitors.

The trade marks system protects business goodwill. A trade mark is the manifestation of that goodwill that customers associate with goods or services they want to buy. The process of registration enables this valuable goodwill to be protected, so that others cannot appropriate or misuse it. When valuing a business for sale or flotation, goodwill is an important consideration, and with trade mark protection the value assigned to goodwill will be greater.

A trade mark registration affords a monopoly right in a given mark in respect of given goods or services. In the UK (and Europe) trade marks must nearly always be registered in order to confer protection.

What can be protected?

Trade marks can take many forms including words, logos, colours, shapes, personal names, signatures, jingles, gestures, smells, forms of packaging, and combinations of letters / numerals, or a combination of any of these.

Duration of the right

A trade mark registration lasts for 10 years but unlike a patent a trade mark can be renewed indefinitely. In fact, the first ever trade mark applied for in the UK, the Bass beer red triangle, is still in use and registered today.

Geographical scope

Trade marks are, by their very nature, territorial and, as such, most countries in the world, including the UK, operate their own national trade mark systems. In addition, there is a Community Trade Mark system (where EU protection can be obtained in a single application) and the Madrid Protocol system to which some 79 countries are a party including the UK, USA and Japan.

Requirements for registration

Typically, trade marks merit protection if they are not confusingly similar to another trade mark for identical or similar goods/services and they are distinctive and not descriptive.

Process for registration

Trade mark registration is obtained via application to the relevant Patent Office or Trade Marks Registry in any given country. In the UK the process takes approximately six months from application through to registration.

Trade marks are granted for specific groups of goods or services called 'classes', of which there are 45 (for example Class 15, musical instruments).

A trade mark grants the exclusive right to use a mark only in relation to the class in which it is registered. In this way, it is possible to allow companies with the same trade mark, but operating in different fields, both to own the same or similar mark. It is worth employing the services of a Trade Mark Attorney when choosing the classes in which to register your trademark, and indeed for preparing and filing a trade mark application. If you own a consumer brand, then you may wish to diversify your business in the future and having rights in a wider range of classes affords you greater scope to follow the market.

Registered rights: Designs – protecting your aesthetic creations

Important things to remember:

- A registered design covers the aesthetic appearance of a product rather than the underlying functionality or technology (covered by patents)
- In many territories, including Europe and the UK, it is possible to file for registered design protection within a year of public disclosure
- In certain jurisdictions, including Europe, it is possible to cover a set of related designs within a single registration

What the right means

A registered design is a monopoly right for the appearance of the whole or part of a product. It gives the exclusive right to make, use, sell, import or stock any product incorporating your design, and take action against those who infringe this right.

What can be protected?

In Europe, it is possible to protect any design applied to a product resulting from the features of lines, contours, colours, shape, texture and materials of the product or its ornamentation. Products are defined as industrial or handicraft items, and may include inter alia packaging, get-up, user interfaces, graphic symbols and typographic typefaces.

Duration of the right

Registration in Europe and the UK lasts for five years initially, and can then be renewed every five years for a maximum of 25 years.

Geographical scope

Registered design rights are mostly national in nature. However, it is also possible to obtain a Registered Community Design which covers the entire European Union.

Requirements for registration

In Europe, it is possible to protect any design which is both new and has individual character, that is, the overall impression the design produces on the informed user is different from the overall impression produced on such a user by any publicly available design. It is not, in general, possible to secure protection for designs which are dictated by their technical function, or designs of interconnections (certain spare parts).

Process for registration

In most jurisdictions, it is necessary to prepare and file a registered design application including a set of representations which depict the design, and/or a specimen of the design. The Patent Office or Designs Registry will then examine the form and, in many cases, the substance of the design application before allowing the application to proceed to registration where appropriate. Patent and Trade Mark Attorneys are skilled in obtaining registered design protection, and it is common to engage them for this.

Registered rights: **Plant Breeder's Rights – protecting your plant varieties**

Important things to remember:

- Plant Breeder's Rights (PBR) are not the same as patents, and some things that would be considered infringement of a patent are not considered to be an infringement of a PBR

What the right means

Plant Breeder's Rights (also known as Plant Variety Rights) are rights conferred to the breeder of a new variety of plant.

What can be protected?

The rights extend to seeds, cuttings, divisions, tissue cultures, cut flowers, fruit and foliage, but only where these are produced for the purposes of sale.

Duration of the right

The length of right varies between varieties, but is generally between 15 and 25 years.

Geographical scope

PBRs are mostly national in nature. However, a European Community Plant Variety Right is also available.

Requirements for registration

The variety must be new, distinct, uniform and stable.

Process for registration

Entitlement to the right is dependent on testing performed by the Plant Variety Rights Office.

Unregistered rights: Copyright – preventing copying of your literary, artistic and similar works

Important things to remember:

- Copyright only protects against direct copying of a work; it does not afford a monopoly right to prevent independent creation of a work
- To ensure protection it is a good idea to mark your work with a © symbol, the date and the copyright owner

What the right means

Copyright is a right that exists, usually automatically, in certain original works. Copyright only protects against the copying of the work; hence it is not a monopoly right: unlike patents or registered designs, no protection is conferred where another person independently creates a potentially similar work.

What can be protected?

Copyright can exist typically in literary (this includes software), dramatic, musical and artistic works, sound recordings, films and broadcasts, where sufficient “skill, labour and judgment” are invested.

Copyright applies to any expressible form of an idea, but does not protect the idea itself (patent rights are usually more appropriate to protect an idea).

Duration of the right

Copyright generally lasts for 70 years after the death of the creator, with an exception for sound recordings and broadcasts where the time limit is 50 years from release. There have recently been high profile campaigns to bring all the time limits into line, as aging rock stars realise that they might outlive their rights in their own works.

Geographical scope

Although each nation has its own copyright law, and the protection conferred by that law is limited to that nation, there are a number of International treaties that require individual countries to recognise the copyright in works emanating from other territories. In essence then, copyright can be seen as a global right.

Requirements for registration

Copyright exists from the moment a copyright work is created in some tangible way; there is generally no requirement for registration. It is, however, a good idea to mark any work with a copyright symbol ©, the date of creation and the copyright owner, in case of future dispute.

Unregistered rights: Database Right – preventing copying of your databases

Important things to remember:

- Database right confers protection on collections of information that would not otherwise be protected by copyright

What the right means

In Europe, database right is an extension of copyright. It is a sui generis right that is available for databases not meeting the originality criteria inherent in copyright. The right protects against the extraction and/or re-utilisation of a substantial part of the database, or the database as a whole.

A 'database' means a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means.

What can be protected?

To be protected, a database must be original. A database is 'original' if, and only if, by reason of the selection or arrangement of the contents of the database, the database constitutes the author's own intellectual creation.

Duration of the right

The database right lasts for 15 years from the year of creation, but, if the database is significantly updated, the 15 year duration starts again.

Geographical scope

The database right is available in the UK and the European Community.

Requirements for registration

As with copyright, there is no requirement for registration.

Unregistered rights: **Design Right – preventing copying of certain aesthetic features of your designs**

Important things to remember:

- Unregistered design right is similar to copyright in that it is not a monopoly right, and so protection only extends to the direct copying of the design, not independent creation of a similar design

What the right covers

Unregistered design right protects the shape of an original three dimensional design.

What can be protected?

To be protected, a design must be original: a design is defined as not being original if the object so designed is commonplace in the field when designed. Design right subsists if a design is recorded on paper, or if an article has been made according to that design. Design right does not subsist in parts of a design necessary to connect to another article, to surface decoration, to methods and principles of construction or to those parts of a design which are dependent on the appearance of another article, where that article and the article that design right applies to is an integral part of the second article. There are no requirements for any aesthetic quality.

Geographical scope

Unregistered design rights are available in the UK and in the European Community.

Duration of the right

In the UK, the right lasts for the shorter of 15 years from the year of creation of the design, or 10 years from the year that the design was first made available for sale to the public. In the European Community the right lasts for three years from first disclosure in the EU.

Requirements for registration

As with copyright, there is no requirement for registration.

Unregistered rights: **Know-how – keeping your commercial information confidential**

Important things to remember:

- Know-how is only valuable while it remains confidential. Therefore, an appropriate level of care must be taken to ensure that the know-how is not disclosed except under strict conditions of confidentiality

What the right means

Know-how derives much of its value from the law of breach of confidence. It can afford protection for technical or business information, provided that such information is not publicly available. In the UK, the law of confidentiality also includes, at least in part, Official Secrets legislation and the Data Protection Act 1998.

What can be protected?

In essence, almost any information can be protected by keeping that information confidential. However, where the know-how could be protected by alternative forms of protection, such as patents, it is often advantageous to seek such alternative protection.

Duration of the right

As long as the know-how remains confidential.

Geographical scope

Although the geographical scope is limitless since the right is based on confidential information, each country's law regarding breach of confidence differs, and so, the consequences of such a breach also varies from country to country.

Requirements for registration

There is no requirement for registration of know-how. However, confidential information should be stored and communicated securely:

- Security measures should be appropriate to both the storage method and the value of the information
- Communication should be by secure methods, and the information should be marked as confidential
- Wherever possible express confidentiality obligations should be imposed when know-how is communicated

Useful websites

Copyright registration service	www.copyrightregistrationservice.com
Patent and trade mark attorneys	www.cipa.org.uk

Section 8

Capital Markets



St. Paul's Cathedral, London

Capital Markets

General considerations

London is home to some of the largest, most successful and dynamic companies in the world. There is a wealth of choice available to companies considering becoming listed in the UK which have been set up to offer listing to large, well established entities to young, growing entities.

The London Stock Exchange (LSE) offers three key markets, outlined below, but there are other markets one should consider.

Main Market

The Main Market (MM) is London's flagship market for large, well established entities who are seeking to expand. It is an environment suitable for listing and trading equity, debt and specialist securities. Primary and secondary listing is available.

Benefits

- High profile - the LSE Main Market is considered to be one of the world's most prestigious markets
- Access to deep pools of capital
- Global focus
- Flexibility offered by tiered listings
- High corporate governance standards

Areas to consider

- The admission process is relatively complex, can take over a year to floatation and will involve a large number of advisors and cash
- Demanding list of requirements to be eligible to float
- Strict continuing requirements for companies once listed

AIM

The Alternative Investment Market (AIM) is the most successful growth market in the world. Using the tag line of 'Powering the companies of tomorrow', AIM is suited to smaller and growing companies and can be used as a method to raise the capital needed for expansion. The criteria for joining AIM are much more flexible than requirements for listing on the Main Market therefore it is ideal for younger entities.

Benefits

- Fast growing and successful market
- Admission documents are not pre-vetted by the Exchange or the UK Listing Authority (UKLA)
- Quicker than a Main Market listing
- No prior shareholder approval is required for transactions (unless involving reverse takeover or fundamental disposal)
- Fast track process is available to entities that have already had securities traded on an AIM designated market

Areas to consider

- Nomad (Nominated Advisor) and Broker are required at all times
- Admission document must be drafted
- Continued requirement to adhere to AIM Rules once listed

Professional Securities Market

The Professional Securities Market (PSM) is aimed at professional investors. It enables companies to raise capital through the issue of specialist securities (debt and depository receipts) from professional investors. It is the market most suited to the specific needs of companies from outside the EU or emerging markets. PSM may be used when a company, looking to list on the Main Market, does not have IFRS or equivalent financial information available as it is not a prerequisite for floating.

Benefits

- A flexible alternative to the Main Market listing
- Financial information can be provided in national GAAP rather than IFRS
- No working capital requirement
- Prior shareholder agreement not required for transactions
- No sponsor required for transactions

Areas to consider

- A minimum of 25% of all Global Depository Receipts (GDRs) must be in public hands
- Adherence to the continuing obligation requirements of the UKLAs Listing, Disclosure and Transparency Rules

PLUS

PLUS Markets Plc is an independent stock exchange for small and mid-cap companies. As with all the key markets, it is regulated by the FSA and provides a full range of services for companies looking to join London's capital markets.

PLUS offers companies two routes:

- The PLUS listed market which is for established companies seeking full UKLA listing and a presence on an EU regulated market and which can act as a stepping stone to AIM
- The PLUS quoted market which is for growing companies who are seeking access to a public market for the first time

Benefits

- Dedicated to the needs of smaller companies
- Relatively quick and cost-effective listing process
- Easy to be a prominent company - all other companies listed are of a similar size
- Smaller list of admission requirements and continuing obligations for listed entities
- No restriction on the transferability of shares

Areas to consider

- Lower profile than the LSE markets
- A PLUS Corporate Advisor is required at all times
- One independent non-executive director required to demonstrate appropriate levels of corporate governance

Figure 8: Comparison between the key markets

		MM	AIM	PSM	PLUS
Suited to		Established companies seeking further growth	Mid-cap companies	Companies issuing specialist securities	Small and mid-cap companies
Admission Requirements	Advisor	Sponsors needed for significant transactions	Nomad and broker required at all times	N/A	Corporate Advisor required at all times
	Financial information	Three years of audited historical financial information	N/A	Three years of audited historical financial information for GDRs, two years for debt	N/A
	Public shares	Min. 25% of all shares must be in public hands	N/A	Min. 25% of all GDRs must be in public hands	N/A
	Minimum market cap	£700,000	N/A	N/A	N/A
	Working capital	12 months	12 months	N/A	N/A

The roles of the Financial Services Authority

The aim of the Financial Services Authority (FSA) is to promote efficient, orderly and fair financial markets. It was set up by the Government which is responsible for the overall scope of the FSA's regulatory activities and for its powers.

The FSA regulates most financial services markets, exchanges and firms. It sets the standards that they must meet and can take action against firms if they fail to meet the required standards.

The Financial System

The Financial System is ruled by the Financial Services and Markets Act 2000 (FSMA). The FSA is an independent, non-government owned body, given statutory powers by the FSMA. The FSA is accountable to Treasury Ministers and, through them, to Parliament. It is operationally independent of Government and is funded entirely by the firms it regulates. The FSA is an open and transparent organisation and provides full information for firms, consumers and others about its objectives, plans, policies and rules.

The FSA has three main objectives:

- Promoting efficient orderly and fair markets
- Helping retail consumers achieve a fair deal
- Improving our business capability and effectiveness

The FSA took responsibility for enforcing the FSMA from the Bank of England following a series of high profile errors. The Financial Services and Markets Act has four statutory objectives:

- **Market confidence:** maintaining confidence in the financial system
- **Public awareness:** promoting public understanding of the financial system
- **Consumer protection:** securing the appropriate degree of protection for consumers
- **The reduction of financial crime:** reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime

These principles are in place to:

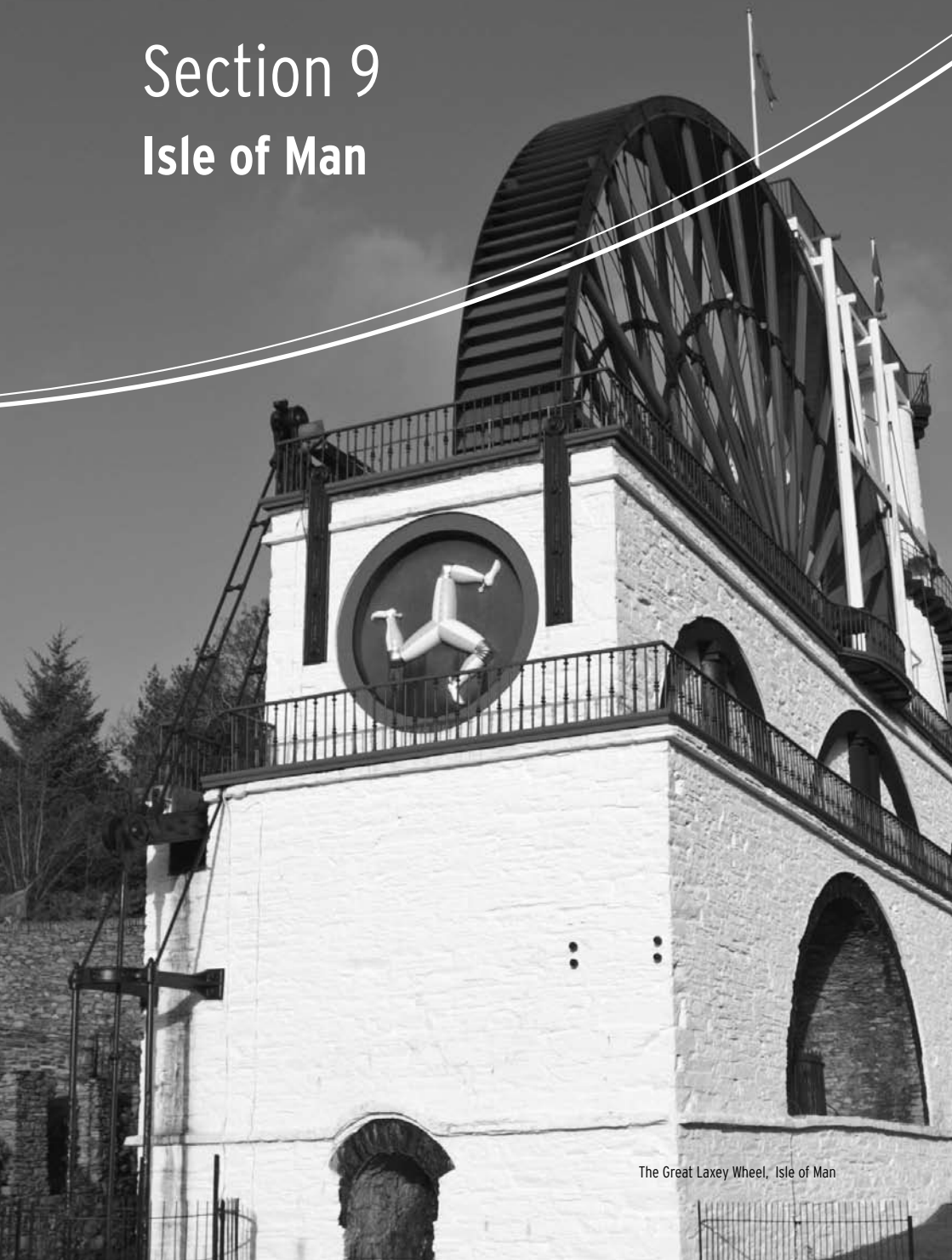
- Provide political and public accountability
- Govern the way the FSA carries out general functions e.g. rule-making, giving advice and guidance, and determining general policy and principles
- Assist in providing legal accountability

Useful websites

FSA (UK Listing Authority)	www.fsa.gov.uk
PLUS Markets Group	www.plusmarketsgroup.com
The Committee of European Securities Regulation	www.cesr-eu.org
The London Stock Exchange	www.londonstockexchange.co.uk

Section 9

Isle of Man



The Great Laxey Wheel, Isle of Man

Isle of Man

General considerations

The Isle of Man is located in the Irish Sea. At its closest point the Island is approximately 30 miles from mainland Britain and 30 miles from Ireland.

The population is approximately 80,000 people. The Isle's main language is English and the Island uses the British pound as its retail currency.

The Isle of Man's status as a Crowned Dependency gives the island constitutional rights of self government and judicial independence. The Isle of Man is not part of the European Union, but it has limited relationship with the Union through protocol 3 to the United Kingdoms Act of Accession in 1972. The Isle of Man is part of the European Common Customs Area.

The Isle of Man has been a major offshore financial centre for a number of years. The Island prides itself its innovative thriving, diverse economy which has developed in the last decade internationally respected shipping register e-gaming and space industries.. The Isle of Man is the preferred location for many non UK companies wishing to incorporate when listing on the London Stock Exchange's Alternative Investment Market (AIM). The Isle of Man holds a AAA sovereignty rating with both Moody's and Standard & Poors.

Economy

The Island economy has enjoyed great success over the last 25 years, experiencing continuous growth throughout this period. The government estimates that the economy is expanding in the region of 5% per annum in real terms.

The economy's strong performance is based upon key sectors including financial and related services, manufacturing and tourism, the finance industry represents the strongest area of the economy which contributes about 35% annually to the Manx GDP.

The strength of the Island's banking and insurance industry matches that of any of its competitors.

Both Banking and Insurance services represent the most significant financial service business on the Island. In a recent report published by the International Monetary Fund it was noted that there are:

- 40 licensed banks on the Island. 2 of which are locally owned with the remainder being branches or locally incorporated subsidiaries of banking groups headquartered predominantly in the UK or Ireland. As well as taking deposits banks are also permitted to undertake a normal range of banking services including lending, money transfers, currency exchange etc.

- 3 branches of UK building societies
- 3 licensed stockbrokers, all are Members of the London Stock Exchange and have access to the London Market via the Automated Quotations System, which is open during virtually all possible trading time.
- 23 companies providing assets management services to collective investment schemes and portfolio management.
- 26 firms provide management and administration services to collective investment schemes
- 38 Financial advisers who provide a whole range of services to private clients

The Isle of Man also operates a Deposit Compensation Scheme which covers bank accounts held by trusts, companies and individuals.

Both Manx trust law and company law is based very closely to its UK equivalents.

Taxation

The Island has a strong Fiduciary Services Industry and as a result of its favorable tax regime is ideally suited as a location for the establishment of trusts, with discretionary and non-discretionary private trusts and Isle of Man companies being commonly used vehicles for tax planning and asset protection..

In the normal trust situation, i.e. with settlor, life tenants and beneficiaries all being non-resident, full exemption from Isle of Man taxation is given to foreign income and local bank interest, by concession.

Isle of Man companies are subject to a zero-ten taxation system which also creates tax planning opportunities for non resident individuals.

The Island's government is committed to developing tax co-operation with other countries and has developed a policy of positive engagement with other countries and with international organisations such as the European Union ("EU") and the Organisation for Economic Co-Operation and Development ("OECD") to demonstrate that the Island is a responsible and co-operative economic partner.

The Islands efforts are not better demonstrated than the signing of Tax Information Exchange Agreements with 18 countries around the world. The Islands efforts in developing and maintaining quality in its regulatory regime and co-operation with other countries was acknowledged by the OECD when it placed the Isle of Man on the "white list" of countries which have substantially implemented the internationally agreed tax standards.

Industry

The manufacturing sector is a main provider of full-time employment in the Island and is second only to Finance in terms of growth and contribution to the economy. Firms engaged in the sector are eligible for support from the Government under a discretionary financial incentive scheme, provided that they can satisfy the commercial and environmental criteria laid down by the Department of Trade and Industry.

Environmental considerations are high on the Government's list of priorities, with preference being given to small non-polluting operations.

The Island has its own Customs and Excise Service and, an agreement with the UK ensures that, goods can move between the two countries without delay or documentation.

Provided they can meet the conditions laid down by the Manx government, companies can apply for capital grants. These grants can relate to: the cost of new buildings, extensions and plant machinery and non-recurring first year expenses such as key employee transfer costs. Marketing ventures, energy conservation and consultancy costs and training expenses are other areas where similar levels of assistance can be offered.

Europe's first and only offshore Freeport has been established since 1988. A Freeport is an enclosed, secure area where manufacturers can build, create and store commodities and components free from normal customs and excise charges under certain conditions. The Isle of Man Freeport has easy access to European markets and the extra financial advantage of being associated with an established offshore centre.

Becoming a regulated entity

Any persons wishing to undertake a "regulated activity" in or from the Isle of Man by way of business must first be licensed by the Financial Supervision Commission (FSC). The FSC was established in 1983 as an independent statutory body of the Isle of Man. The FSC's functions are described in the Financial Services Act 2008 and include:

- The regulation and supervision of person undertaking regulated activities
- The maintenance and development of the regulatory regime for regulated activities
- The oversight of directors and persons responsible for the management, administration or affairs of commercial entities
- The operation of the Companies Registry

"Regulated activity" is defined in the Financial Services Act 2008 and the Regulated Activities Order 2008. The Financial Services (Exemptions) Regulations 2009 sets out the circumstances in which there are specified exemptions from the requirement to hold a license. Financial Services Licenses can be applied for through the Authorisations Division of the FSC.

The assessment process for license applicants involves a thorough examination to ensure the FSC's fitness and propriety criteria, including integrity, competence and solvency, are met.

Before entering into any financial agreements with an Isle of Man incorporated company, or with any company holding itself out as operating from the Island, investors should consult the list of licenseholders on the FSC website.

The Commission's Enforcement Division is a dedicated enforcement unit that ensures that unlicensed business does not take place, and exercises powers of remedial action in appropriate cases. Under the Financial Services Act 2008, the Commission has important 'gateways' to pass supervisory information and evidence to other supervisors and similar bodies. In addition, the Commission can provide mutual assistance to other regulatory bodies to assist them in the exercise of their function. The Commission has powers under to issue a public statement regarding any matters relating to a regulated activity or persons carrying on a regulated activity where the Commission believes it is desirable in the public interest to do so.

The Insurance and Pensions Authority is responsible for ensuring those who operate insurance companies in or from the Isle of Man are fit and proper and companies have sufficient resources at all times. Companies must maintain a statutory solvency margin and if reinsurance protection is purchase the security of this must be demonstrated.

Companies Registry

The Isle of Man Companies Registry has been in existence since 1865 and became part of the Financial Supervision Commission in 2000. Companies Registry's functions require it to:

- Examine and store company information
- Make this information available to the public
- Ensure that filing requirements are met and take remedial action where necessary
- Dissolve or deregister defunct businesses

Companies legislation requires the submission of specified documents to the Companies Registry periodically. Companies that are licensed by the FSC under the Financial Services Act 2008 should note that the requirements of companies law are separate from and additional to any requirements for submission of documents to the regulatory divisions of the Commission under the Financial Services Act, the Collective Investment Schemes Act or linked secondary legislation such as the Financial Services handbook. As a result, licensed entities may need to provide similar documents or information to both Companies Registry and to the Supervision Division of the FSC.

All public documents filed with the Registry may be examined upon payment of the requisite fee at the Company Registry offices located in Douglas. An electronic database of all Isle of Man company records going back to 1865 provides details of all Isle of Man Companies, Overseas Companies registered in the Isle of Man, LLCs and Business Names. It is possible to also purchase company documents, check the availability of company names and submit an application to reserve a company name.

Tenon Isle of Man - Gateway to Offshore

Tenon (IOM) Ltd ("TIOM") was incorporated in October 2002 and is the trust and fiduciary arm of RSM Tenon Group and is a leading provider of corporate and trust solutions in the Isle of Man.

TIOM has a wealth of experience with over 45 employees including company secretaries, accountants, trust and tax professionals. Its core fiduciary business is the establishment and administration of companies and trusts to assist with tax planning and asset protection for individuals and corporates. In addition to the traditional services mentioned above TIOM are also able to provide more specialised services to suit its client's needs.

TIOM can also advise companies and individuals who wish to move to the Island to set up business or create a new life. The opportunities offered to both businesses and individuals by the Isle of Man government makes this a attractive opportunity.

Useful websites

Financial Supervision Commission	www.gov.im/fsc
the Online Isle of Man portal	www.isleofman.com

Section 10

Channel Islands



Channel Islands

General considerations

The Channel Islands are self-governing, British Crown dependencies and not part of the UK.

The Islands are considered to be the UK's primary tax havens and are both internationally respected offshore business centres.

The Channel Islands consist of eight inhabited islands with a total population of approximately 158,000. Jersey (capital, St Helier) and Guernsey (capital, St. Peter Port) are the two main administrative units (or Bailiwicks) and the major offshore financial centres. The two Bailiwicks are often assumed to form one common unit, however in reality they have very few common institutions.

Jersey

Background

Jersey is the largest of the British Channel Islands. The island is located 85 miles south of mainland Britain and 14 miles from the coast of France.

Its population is approximately 87,000. The island's main language is English. The British pound and Jersey pound form its retail currency.

Jersey's status as a Crowned Dependency gives the Island constitutional rights of self government and judicial independence. Jersey is not within the European Union and therefore is not subject to its Directives.

It has been a major offshore financial centre since the 1960s.

Regulatory environment

Jersey has an independent regulatory body - The Jersey Financial Services Commission.

Jersey is fiscally autonomous and the recent international monetary fund report places Jersey in the top division of international financial centres.

A wide variety of structures can be used including transparent and opaque vehicles. Jersey also has specific legislation covering Protected Cell Companies and Incorporated Cell Companies and has recently introduced the concept of Jersey foundations which are a quasi-corporate form of trust.

Tax

Jersey has an income tax rate of 20%.

There is a zero rate of corporation tax which came into effect on 1 January 2009, although, a recent warning has been raised that this conflicted with the 'spirit' of European Union rules on harmful tax competition. There is a special 10% rate applying to certain regulated financial businesses.

Jersey has recently introduced a Goods and Service Tax (GST). This is a modern form of sales tax on the domestic consumption of imported and locally-produced goods and services, paid as a percentage of their value at the time they are sold or exchanged.

There are no estate or inheritance duties, nor capital gains tax or withholding taxes in Jersey.

Jersey has recently entered into a number of Tax Information Exchange Agreements with other jurisdictions.

Guernsey

Background

Guernsey is 60 miles south of England and 30 miles west of France.

Guernsey has a population of just over 60,000 people. The island's main language is English. The British pound and Guernsey pound form its retail currency.

Guernsey's status as a Crowned Dependency gives the island constitutional rights of self government and judicial independence. Guernsey is not within European Union and therefore not subject to its Directives.

The Bailiwick of Guernsey includes Alderney, Sark, Herm, Jethou, Brecqhou and Lihou in addition to Guernsey.

It has been a major offshore financial centre for many years and has recently established itself as a nouveau centre for captiva insurance companies.

Regulatory environment

Guernsey has an independent regulatory body - The Guernsey Financial Services Commission.

Guernsey is fiscally autonomous.

A wide choice of vehicles including transparent and opaque vehicles are available and Protected Cell Companies have been used for many years particularly in relation to captive insurance.

Tax

Guernsey has an income tax rate of 20%.

A zero rate of corporation tax has applied since 2008. A recent warning has been raised that this conflicts with the 'spirit' of European Union rules on harmful tax competition. Banking businesses pay at 10% and certain utilities and income from the ownership of land and buildings are taxed at 20%.

There are no estate or inheritance duties, nor VAT or capital gains tax in Guernsey.

Guernsey has recently entered into a number of Tax Information Exchange Agreements with other jurisdictions.

Useful websites

The Jersey Financial Services Commission	www.jerseyfsc.com
The Guernsey Financial Services Commission	www.gfsc.com
Reads & Co*	www.readsco.com

*Reads & Co Chartered Accountants based in Jersey became a correspondent firm of RSM International in March 2010. Reads & Co is one of Jersey's largest independent firms of Chartered Accountants and business advisors. The firm is well respected in the financial community and has considerable experience of local, national and international accountancy, audit, taxation and business advisory work.

Section 11

Northern Ireland

Northern Ireland

General considerations

Ireland is the third largest island in Europe and lies to the west of Great Britain, separated by the Irish Sea. The sovereign state of Ireland (referred to as the Republic of Ireland) covers five-sixths of the island, with Northern Ireland (which is part of the United Kingdom) covering the remaining one-sixth of the island, located in the northeast.

Northern Ireland has a population in excess of 1.75 million, approximately 30% of the island's population and its capital is Belfast.

Whilst Northern Ireland is a part of the United Kingdom, it does have a distinct legal jurisdiction, separate from England, Wales and Scotland.

However, the accounting framework for Northern Irish companies is now the same as that of British companies and the same legislation applies. There is one specific exception; a Northern Irish company must have a registered office in Northern Ireland. There is still a registry function in Belfast where documents for Northern Ireland companies are filed.

There are approximately 38,000 live companies registered in Northern Ireland.

Northern Ireland Company Registry Integration

The commencement of the Companies Act 2006 on 1st October 2009 has provided a single company law regime that applies to the whole of the United Kingdom, including Northern Ireland. Companies are UK companies rather than GB or Northern Ireland companies, and the same legislation applies to all. As a consequence, Companies Registry Northern Ireland (CRNI) has integrated with Companies House, under the Department for Business, Innovation and Skills (BIS).

Northern Ireland has retained a registry function and presence similar to that of Companies House Scotland, however, to all intents and purposes, they are part of Companies House, sharing the same website and contact details. The office will remain in Belfast with a Registrar for Northern Ireland.

Northern Ireland companies are still required to have a registered office in Northern Ireland after 1 October 2009, in spite of the single company law regime for the United Kingdom.

Under the 2006 Companies Act, overseas companies will be companies registered outside the UK. If a Northern Ireland company wants to open a branch in England, Wales or Scotland they will no longer have to register separately with the specific jurisdictions.

Northern Ireland companies retain the prefix NI in their company numbers.

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Northern Ireland companies retain the prefix NI in their company numbers.

Tax

Northern Ireland is also subject to the same tax legislation as the rest of the United Kingdom. Individuals and companies from Northern Ireland are treated for tax purposes exactly as they would for the rest of the United Kingdom. Although, technically, Northern Ireland has its own National Insurance Contribution legislation, that legislation is, to all intents and purposes, identical to that of the rest of the United Kingdom.

In order to stimulate investment in the Province, certain government grants specific to Northern Ireland are tax free. Enhanced capital expenditure allowances are available on the renovation of business premises throughout Northern Ireland, whereas, the equivalent allowances are restricted to specified areas in the rest of the United Kingdom.

Useful websites

FGS Partnership*

www.fgspartnership.com

*FGS Partnership (FGS), Ireland's 7th largest financial advisory firm, became a member of RSM International in May 2009. With revenues of over €30million, FGS has a team of 300, including 30 partners, providing a range of core services from audit, accounting and taxation to specialist expertise in areas including property, wealth management, corporate restructuring, insolvency and forensic and transaction services.

Glossary of definitions and acronyms

AIM	Alternative Investment Market
APB	Auditing Practice Board
ASB	Accounting Standards Board
ATCSA	Anti-Terrorism, Crime and Security Act 2001
BBC	British Broadcasting Corporation
CIF	Cost, Insurance and Freight
CVL	Creditors' Voluntary Liquidation
DfT	Department for Transport
EEA	European Economic Area
EU	European Union
FMSA	Financial Services and Markets Act
FRC	Financial Reporting Council
FRS	Financial Reporting Standards
FRSSE	Financial Reporting Standard for Small Entities
FSA	Financial Services Authority
GATT	General Agreement on Tariffs and Trade
GBI	Grant for Business Investment
GDP	Gross Domestic Product
GDRs	Global Depositary Receipts
HMRC	Her Majesty's Revenue and Customs
IHT	Inheritance Tax
IFRS	International Financial Reporting Standards
IP	Intellectual Property
LLP	Limited Liability Partnership
LPA	Law of Property Act
LSE	London Stock Exchange
MPs	Members of Parliament
MVL	Members Voluntary Liquidation
OECD	The Organisation for Economic Co-operation and Development
PBR	Plant Breeder's Rights
PE	Permanent Establishment
PLC	Private Limited Company
PoCA	Proceeds of Crime Act 2002
PSM	Professional Securities Market
RDAs	Regional Development Agencies
REITs	Real Estate Investment Trusts
RSA	Regional Selective Assistance
SOCA	Serious Organised Crime Agency
SOCPA	Serious Organised Crime and Police Act 2005
SORP	Statement of Recommended Practice
SSP	Statutory Sick Pay
TA	Terrorism Act 2000
UITF	Urgent Issues Task Force
UK GAAP	UK Generally Accepted Accounting Principles
UKTI	UK Trade and Industry
UN	United Nations
VAT	Value Added Tax
WTO	World Trade Organisation
WTR	Working Time Regulations

About RSM International

RSM International is a global network of independently owned and managed professional service firms, united by a common methodology and desire to provide the highest quality of services to their clients. The network is the 6th largest worldwide, with over 730 offices in over 70 countries, and employing more than 32,000 people.

RSM International is divided regionally. The UK is part of the European region.

About RSM Tenon

RSM Tenon is regarded as one of the most progressive and entrepreneurial professional services firms in the UK today, with leadership in the provision of risk management, tax, recovery, financial management and business advisory services. We offer intelligent solutions and international to a national client base that ranges from individuals and entrepreneurially led owner managed businesses, to large corporations and public sector organisations.

RSM Tenon takes pride in delivering recognised year-on-year improvements in market performance and real development in client focus, internal effectiveness and innovation. Our exceptional talent-base, of over 3,000 people, focuses on providing premier value solutions to clients.

We strive to be the best and exceed expectations through the services we offer.

- We have a market leading specialist tax division covering compliance and advisory issues relating to corporate, VAT, employment and tax investigations with success in winning landmark investigation cases
- Award winning outsourcing team
- Our corporate finance and transaction support team is recognised as one of the largest and most successful at mid-market M&A in the UK. We are previous winners of the British Private Equity due diligence specialists of the year award
- Alone, our audit, tax and advisory business would be the 11th largest in the UK, with fees of £130m
- We have the largest Financial Management business of a firm of accountants in the UK
- We have one of the largest IT audit practices in the UK
- Our recovery division is the second highest corporate appointment taker and highest bankruptcy appointment taker in the UK

Our international services

RSM Tenon is one of the UK's leading providers of services to overseas companies establishing in the UK and moving abroad. With a genuine focus on entrepreneurial business, we are dedicated to providing fast start finance functions to allow corporate executives to free up time, reduce risk and get timely information to make better decisions.

We have helped thousands of companies, pre and post IPO, to successfully expand internationally. Our experience has helped us to develop a ten step process to ensure successful entry and, as clients go on to thrive, we are able to offer ongoing support so that they make the most of the opportunities available.

Our international audit, outsourcing, taxation and financial management services help internationally active, growing organisations derive maximum value from their global business strategies and to offer the smartest possible solutions as they develop.

Our locations

Full UK coverage with offices in all the key business centres.

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RSM Tenon would like to thank the following contributors for providing expert advice on specific sections of this document.

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Cobbetts is a top 40 full service law firm with offices in Birmingham, Leeds, London and Manchester. Their focus is on delivering innovative, real and value-for-money solutions based on astute and practical legal advice. They aim to establish long term relationships with their clients, rather than just a quick fix. They are a law firm known for their technical expertise, for providing real life advice and for adding real value to their clients' businesses. Clients can rely on their commitment to their relationship with them, their high standards of service and the quality of their people.

- **Giles Insurance**

Giles Insurance Brokers Ltd is a customer focused organisation, driven by delivering great value, service and integrity to their clients. They provide their clients with direct access to their specialist teams who take the time to get to know client's organisations and can make decisions quickly, providing clients with a highly responsive service. They have been appointed to act as insurance brokers to several professional bodies, trade associations and membership organisations. They have offices located throughout the UK, including major business centres in Glasgow, Leeds, Manchester, Birmingham, Cardiff and London.

- **Mathys & Squire LLP**

Mathys & Squire LLP is a specialist Intellectual Property (IP) attorney advising on all aspects of IP including Patents, Designs and Trade Marks. They combine technical expertise, specialist legal skills and commercial awareness to help maximise their clients' rewards from their innovations, designs and brands. They have a reputation for securing valuable IP rights. They take pride in communicating advice to clients clearly, without hiding behind legal jargon, and, through their creativity and sound commercial judgment, consistently deliver added value to their clients. They thrive on challenges whether defining an elusive concept, distinguishing from apparently identical prior rights, or winning the seemingly unwinnable case for a client.

- **Other RSM member and correspondent firms**

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