

UK  
TRADE &  
INVESTMENT



# Setting up in the UK

A handbook for overseas law firms



*Fast track to the world* <sup>UK</sup>

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I am delighted to introduce this handbook and to commend the work that UK Trade & Investment and their partners are doing to help lawyers from overseas who are thinking of working in the UK.

The Ministry of Justice is committed to supporting the UK legal service sector. It may therefore seem counter-productive for me to welcome a handbook that gives foreign lawyers practical advice on how to work in the UK. Some might think that the Ministry of Justice's role should be to protect our lawyers from foreign competition and to concentrate on helping UK lawyers to find work.

In fact, much of the success of the legal sector in the UK is due to the international nature of the legal service market. London is home to hundreds of foreign law firms from all over the world. The presence of lawyers and law firms from the US, the rest of Europe, and increasingly from Asia, creates a rich, diverse landscape where advice is available in multiple jurisdictions. Such an atmosphere helps us to learn from each other – to share best practice and to develop new ways of doing business. The UK experience is that competition has led to innovation and growth. The foreign law firms in London have helped the UK to become a truly international centre for legal services.

Whatever your plans – to develop contacts in the UK, to work here for a time, or to make the long-term investment of opening an office here, I hope you will enjoy the unique atmosphere of the UK's legal world and contribute your own particular skills and knowledge to it.

**Suma Chakrabarti**

Permanent Secretary, Ministry of Justice



England and Wales is open for legal business. We welcome lawyers from other jurisdictions to our shores, whether on a temporary or permanent basis, whether they want to practise as lawyers under their home title or whether they want to requalify as English solicitors. We take this approach because we know that lawyers from other countries who come here will bring new opportunities with them. They either come with their clients, who will inevitably have other legal needs which they will need the domestic profession to satisfy; or they come with new expertise which enhances this country's reputation as an unrivalled hub for legal advice. As you will see from the contents of this useful handbook, our regime for foreign lawyers is both flexible and light-touch.

The benefits to the profession in England and Wales of an open legal market have been considerable. Over a quarter of our law firms earn fee income from international work – serving clients from abroad in the UK or vice versa. An estimated 40,000 legal jobs have been created by financial and legal liberalisation since the late 1980's and four English law firms are now in the world's top ten, compared to twenty five years ago when there were no English law firms in the world's top 100. Opening up to the world has made law firms in England and Wales both innovative and globally competitive. We look forward to welcoming more of the world's best lawyers and law firms to the UK and the Law Society of England and Wales is here to assist in any way it can.

**Robert Heslett**

President, Law Society of England and Wales

## The UK: A Destination for International Business

The UK Government welcomes and supports overseas companies in establishing themselves and investing in the UK. The UK is one of the largest recipients of foreign direct investment (FDI) worldwide and the Government actively encourages foreign businesses to set up in the UK.

There are few restrictions on FDI into the UK and it is possible to invest in almost any sector. Moreover, a transparent tax regime, the familiarity of the English language and, in some cases, similar legal and accounting systems makes the UK an appealing destination for law firms from across the globe.

The UK's regulatory environment has been designed to be supportive of the needs of both business and the investor community. Regulations in the UK are generally developed in consultation with the business community and are transparent, easy to understand and encourage investment and healthy competition. Foreign-owned companies are treated in the same way as their domestic counterparts with very few restrictions on foreign ownership and no limitations on the free flow of capital.

The UK is at the heart of European business and many corporations have set up their European headquarters in the UK. The European Union is one of the largest single markets globally with 492.8 million residents and it makes strategic sense for companies from elsewhere in the world to establish a presence in the UK to access the European market.

Foreign entrepreneurs and companies are increasingly making use of the dynamic and international business climate that is to be found in the UK, as well as a highly skilled workforce. In spite of testing economic conditions, acquisitions of UK businesses by foreign owners totalled £31 billion, in 2009<sup>1</sup>.

<sup>1</sup> Office of National Statistics – Statistical Bulletin: Mergers and Acquisitions of UK Companies Q4 2009

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“The ever changing international market and the demands of servicing and retaining a global client base necessitates lawyers being able to access consistent high quality advice quickly and seamlessly. For an international law firm seeking to expand its business footprint into Europe, access via the UK is an ideal route. There are compelling business merits in having either a presence in the UK as a stepping stone to Europe or, alternatively, forming an alliance with a UK law firm as a way of accessing Europe.

“At Nabarro our international alliance has helped us win and retain international clients. Many UK firms benefit from a “best friends” relationship with international firms and undertake joint promotions, branding and marketing.”

**Ian Binnie**

Partner, Nabarro

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FoxMandal Little, India’s largest and oldest law firm, recently set up their office on King Street in the city of London because they understood that a city location could lead to new opportunities for the firm.

Ajit Mishra of FoxMandal Little stated: “As India’s largest law firm, we saw expansion into the City of London as a natural step. London is the world’s leading financial centre and foreign firms are attracted here to take advantage of the global opportunities present here.

“We set up our branch office here in the city to work with UK and EU companies both looking to invest in India and also to guide Indian companies while setting up operations in the UK. In the UK we practise only Indian laws but when Indian companies target the UK as their place of business, through our extensive network and knowledge of the market, we introduce them to appropriate law firms, accountants, bankers and organisations such as the City of London, Think London, the UK India Business Council and UK Trade & Investment.”

**Ajit Mishra**

Partner, FoxMandal Little

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# The UK: the Best Choice for International Law Firms

The UK is a leading international law centre, home to three of the four largest law firms in the world (measured by fees) and playing host to hundreds of law firms from other jurisdictions. Contributing £14.9 billion to the UK's GDP, the sector employs around 145,000 solicitors and 19,000 barristers.

UK firms feature prominently in The Global 100, a list of the top 100 firms compiled annually by Legal Business and The American Lawyer. A record total of 17 UK firms were listed in the top 100 in 2008. These firms generated 20.5 per cent of the top 100's total revenue. UK firms are also among the biggest in the world, with four out of the top six places in terms of the numbers of lawyers employed.

The strength of the UK as an international centre for legal services is reinforced by the expertise of barristers involved in international practise. Over 1,000 members of the Commercial Bar Association practise in the field of international commercial law, with many cases heard in the Commercial Court.

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“London is a legal hub as well as a business gateway to Europe and the world. Our clients are increasingly international in outlook, and it made perfect sense for the firm to be where its clients need it to be. Merging with one of the most cosmopolitan law firms in London provided McGuireWoods with a unique opportunity to expand internationally – its London lawyers are qualified in 12 jurisdictions, speak 24 languages and the firm has key connections in 120 cities spread across 50 countries.”

## **Bengt Grundberg**

Manager of European Marketing  
McGuireWoods London LLP

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### **Market Opportunities**

International law firms in London have grown significantly in recent years. Based on gross fees, three out of the largest four firms in the world are international law firms based in London.

International law firms based in London are leading advisers in deals taking place in international capital markets. They offer a substantial range of services. Other smaller firms offer expertise in certain services such as shipping or international insurance, being world leaders in their own niche practice.

### **Law firms from other countries**

England and Wales are very open and allow virtually unrestricted access for foreign law firms. There are hundreds of foreign law firms in London, many of which have capability in both English law as well as their home country law.

They may operate as full service firms or specialist or niche firms in a particular area of law. Often foreign law firms in London will service clients from their own jurisdictions looking to invest into the UK and continental Europe, as well as servicing the needs of UK, and Europe-based corporations and financial institutions undertaking business in the country from which they originate.

Law firms from a wide range of jurisdictions have found it beneficial to have offices in the UK, including most European countries, Russia, China, Kazakhstan, Australia, Canada, South Africa, Ghana, Brazil, India and many from the United States of America.

## Global Reach: International Dispute Resolution

English law is, like the English language, commonly used in international commerce and international dispute resolution. More international and commercial arbitrations take place in London than in any other city in the world, and 90 per cent of commercial cases handled by London law firms involve an international party.

Up to 9,000 international disputes a year take place, mostly by institutions such as the International Chamber of Commerce, London Court of International Arbitration, Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution and the London Maritime Arbitrators Association.

The International Dispute Resolution Centre is the largest of a number of specialist centres developed in London in recent years for hosting the resolution of disputes. It opened in 2000 and in 2004 had to move to larger premises due to the strength of demand.

Since 1895 the High Court has incorporated a separate Commercial Court where the procedures are geared to reflect the special requirements of the international commercial community. The international standing of the Commercial Court is such that around 80 per cent of the claims brought to the Commercial Court involve overseas parties and, in around 50 per cent of cases, there is no link to London except for the parties' choice of London for dispute resolution. Between 1,500 and 2,000 cases are started every year, of which around 5-10 per cent typically go to trial.

The biggest dedicated business court in the world is due to open in 2010. The new Business Court will match and maintain London's world-class reputation as the first choice for business law. For the first time, the specialist jurisdictions of the High Court dealing with business disputes will be brought together under one roof. The new "super court" – believed to be around four times bigger than its nearest competitor – will provide 29 courtrooms, 12 hearing rooms (for related work such as bankruptcy hearings), 44 public consultation rooms, waiting facilities for parties involved in proceedings, as well as administrative office space for court staff and judicial accommodation.

# Introduction to the Legal System

The United Kingdom of Great Britain and Northern Ireland contains three different legal jurisdictions: England and Wales, Scotland and Northern Ireland. Each of these has its own court system and legal professions; and in the case of Scotland, a different legal system which is influenced by Roman or Civil law.

Further information of the legal systems of Scotland and Northern Ireland can be found at [www.lawscot.org.uk](http://www.lawscot.org.uk) and [www.lawsoc-ni.org](http://www.lawsoc-ni.org) respectively.

## The Court system in England and Wales

The **Supreme Court** is the final court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland and hears appeals on arguable points of law of general public importance.

Within England and Wales there are separate court systems dealing with criminal and civil cases. The hierarchy of the English and Welsh courts below the Supreme Court is as follows:

The **Court of Appeal**, which consists of two divisions:

- The civil division which hears appeals from the High Court.
- The criminal division which hears appeals from the Crown Court.

The **High Court**, which is divided into:

- The Queen's Bench Division (dealing with contract and tort issues as well as admiralty and commercial court matters).
- The Chancery Division (dealing with estates, mortgages, trusts, partnership and bankruptcy issues).
- The Family Division.

The **Administrative Court** (formerly known as the Crown Office) deals with a range of cases including Judicial Reviews and statutory appeals and applications.

**Crown Court** (local criminal courts and appeals from Magistrates courts)

**County Courts** (local civil courts)

**Magistrates Courts** (criminal and some family cases).

The **Commercial Court** (a specialist part of the High Court) sits in London, but judges with commercial expertise also sit in Birmingham, Bristol, Leeds and Manchester.

### **Impact of the European Union on English Law**

The UK joined the European Economic Community (now the European Union) in 1973, since when it has been a requirement to incorporate European legislation into UK law and to recognise the jurisdiction of the European Court of Justice (ECJ) in matters of EU law.

### **Human Rights Act**

The UK is a signatory of the European Convention on Human Rights and this has now largely been incorporated into UK law with the passing in 1998 of the Human Rights Act, which requires judges in domestic courts to apply the provisions of the European Convention on Human Rights directly in those courts.

# The Legal Profession in England and Wales

The UK's legal profession is split into two main types: solicitors and barristers (advocates in Scotland).

The distinction between the two has been eroding over time but the main difference is that solicitors provide continuous services to clients whilst barristers act as sources of specialist legal advice on particular points of law, or as advocates in courts, arbitrations and mediations.

## **Solicitors**

The work of solicitors is highly varied. They advise and represent clients of all shapes and sizes – whether governments, companies or individuals.

For governments, solicitors may undertake a wide variety of work, from acting as advisers on issues such as employment, public procurement and public international law, to representing the UK government in the courts.

For companies, solicitors may draw up contracts and partnership agreements, and assist in all the stages of a company's life from its formation onwards, including purchase and sale of major assets, mergers and acquisitions, handling disputes, employment tribunals and competition enquiries through to liquidation or take-over.

For private individuals, solicitors' work ranges from handling property transactions, tax planning, dealing with wills and probate issues, handling divorce, insurance claims and other types of civil dispute.

There are also solicitors who specialise in criminal and other types of legal aid work eg immigration and family law cases.

The majority of solicitors work in private practice for firms of solicitors. These firms range in size from big City firms with thousands of lawyers working for them to sole practitioners who have traditionally been found on the high streets up and down the country. Nearly 40 per cent of solicitors work for the top 100 firms.

## The Legal Profession in England and Wales (continued)

Solicitors are increasingly becoming more specialised and focusing on specific areas of law and legal practise. However, around 10-15 per cent are generalists working in smaller high street practices and as sole practitioners.

### **Sectors where UK solicitors have particular expertise include:**

**Financial services** – UK law firms' expertise in this sector has developed in parallel with the growth of the City of London as a leading international financial centre. Financial services are a global business and the UK's global law firms have the capability to deliver legal advice in multiple jurisdictions and on multiple disciplines. London law firms have also developed expertise in new areas of financial services such as Islamic finance.

**ICT, creative and media** – UK law firms have a depth of experience and specialisms in new media and telecommunications unrivalled around the world. Telecommunications transactions are frequently governed by English law and disputes are often subject to resolution before the English courts or through arbitration in London.

**Energy and renewables** – Much of the lending for significant projects is led by international lenders operating from the City of London. UK law firms have good links with these lenders and regularly advise on risk analysis and the development of loan and security documentation for projects.

**Transport** – aviation, rail and shipping – the UK has particular experience in these areas drawing on its international status as an insurance and dispute resolution centre. Worldwide, English law governs 75 per cent of all shipping contracts and 90 per cent of all shipbuilding contracts.

**Competition Law** – UK competition lawyers have a reputation for being practical and commercial in their approach. The training regime for UK lawyers which allows individuals who have not studied law at undergraduate level at university to convert to the law, helps to bring in expertise from other sectors (eg in economic analysis) that is frequently a critical element of competition advice.

### **Barristers**

Barristers in England and Wales form a corps of specialist consultants with particular expertise in advisory, drafting and advocacy work. There are slightly more than around 12,200 individuals in private practice with the Bar. Around 3,000 are employed as in house lawyers offering legal advice to their employers or in firms of solicitors. Barristers in private practice are generally used for providing advice on complex questions of law or litigation which are outside the normal expertise of solicitors and for advocacy in court or alternative dispute resolution.

Until recently, barristers in private practice had to work as sole practitioners, although often working collectively in chambers. The sole practice rule exists in order to ensure that access to barristers is not limited by conflicts of interest. As sole practitioners, barristers in the same chambers can work on different sides of the same case. Since November 2009, barristers have also been able to join a Legal Disciplinary Partnership (LDP) and thereby partner with other legal professions as well as up to 25 per cent of non-lawyer managers.

The Bar contains individuals with expertise in all areas of the law. Many will also have knowledge of other systems of law and be able to advise on complex international questions. Although barristers no longer have a monopoly on the right to appear in the superior courts (The Crown Court, High Court [all divisions], Court of Appeal and Supreme Court), in practice the bulk of advocacy in those courts is undertaken by barristers. Barristers also frequently have rights of audience in other common law jurisdictions (or can obtain them on a case by case basis) and in the courts of the EU institutions and Member States as well as in international tribunals.

Barristers can be instructed directly by foreign lawyers. If a solicitor's firm is needed, a barrister will be able to advise on which solicitors are best for the job.

### **Regulation of solicitors and barristers**

Following the entry into force of the Legal Services Act 2007, the Law Society and the Bar Council are both designated frontline regulators with overall responsibility for the regulation of solicitors and barristers respectively. Both professional bodies have independent regulatory arms within them known respectively as the Solicitors Regulation Authority and the Bar Standards Board. The Solicitors Regulation Authority, within the Law Society, sets standards and oversees the application of rules and disciplinary arrangements governing the practice of solicitors. The Bar Standards Board performs the same functions for barristers. However, qualification rules and discipline for the bar are governed jointly by the Bar Council and the Four Inns of Court. The Legal Services Board acts as an oversight regulator for all legal services.

An Office for Legal Complaints was established from the beginning of 2010 to handle service complaints from the public about legal service providers.

# Practising Law in England and Wales

## Your Options

England and Wales, and London in particular, is one of the world's most cosmopolitan legal environments and is home to lawyers from nearly a hundred jurisdictions. They practise English law, European law, public and private international law, and the law of their state/jurisdiction of origin to provide a local and global service for their clients.

It is not necessary to be a solicitor, barrister or other recognised professional to practise law in England and Wales. Legal practitioners do not have to be British nationals. Anyone is free to offer legal advice and services in England and Wales, with the following restrictions:

- Only those duly qualified and certificated as solicitors or barristers in England and Wales can call themselves by those titles.
- Certain limited areas are reserved to nationally qualified solicitors and barristers. These areas include the exercise of a right of audience, conducting litigation, certain reserved instrument activities (including the conveyancing of land and property), probate (succession) activities, notarial activities and the administration of oaths.

- Some of these above-mentioned reserved areas are also open to other UK legal professions (notaries, licensed conveyancers, etc) and, under certain conditions, to lawyers qualified in the European Union (EU), the European Economic Area (EEA)<sup>2</sup> and Switzerland.
- Special rules also apply for all persons seeking to offer financial advice or immigration and asylum advice.

The purpose of these limitations is simply to protect vulnerable members of society and the public interest in the good administration of justice through the courts.

Lawyers from other countries can practise law in the UK subject to the above reservations. Lawyers from other countries can practise English law, as well as the law of their own country, in any of the following ways:

- As a sole practitioner.
- As a Registered European Lawyer (NB: This status is only required of lawyers practising in the UK under the title of another EU/EEA jurisdiction or Switzerland and under conditions of citizenship).
- In a partnership of foreign lawyers.
- As an assistant or consultant in a law firm of any jurisdiction.

<sup>2</sup>The European Economic Area is the 27 countries of the European Union plus Iceland, Liechtenstein and Norway

## Practising Law in England and Wales (continued)

- In partnership with English solicitors and/or Registered European Lawyers (but only if registered with the Law Society as a “registered foreign lawyer” or a “registered European lawyer”).
- In employment with English solicitors.
- In employment as an in-house lawyer (eg in the legal department of a commercial company).

Alternatively, a foreign lawyer may re-qualify as an English solicitor or barrister.

### Requalification

Subject to complying with the relevant training requirements, a foreign lawyer may seek to be admitted as a solicitor or be called as a barrister in England and Wales. It is not necessary to have British nationality to qualify or practise as a solicitor or barrister, but normal immigration requirements would apply in respect of training, practise or employment.

Lawyers from other countries wishing to sit the requalification examinations, run by the Law Society or Bar Council, should check the latest requirements for their jurisdiction with those organisations (see contact details at the back of this handbook).

Foreign lawyers who hold a dual qualification as English solicitors must comply with the same professional rules and obligations as those whose first qualification was as an English solicitor. If they wish to hold a current practising certificate which allows them to hold themselves out as a Solicitor of the Senior Courts of England and Wales, they must have professional indemnity insurance to the prescribed level of minimum cover and, if practising in the UK, must contribute to the compensation fund and fulfil annual requirements for continuing professional development. The solicitor’s practising certificate is renewable annually in November and requires payment of an annual registration fee and the completion of a registration form available from the Solicitors Regulation Authority (SRA).

### Professional Title

Section 21 of the Solicitors Act 1974 prohibits an unqualified person from taking or using any name, title or description implying that he/she is qualified to act as a solicitor. The object of the following guidelines (which are obligatory in the case of the notepaper of Registered European Lawyers [RELs], and of foreign lawyers practising together with solicitors or RELs) is to

inform members of the public of the status of the foreign lawyer concerned in a way that distinguishes foreign lawyers from members of the local profession. This avoids the inadvertent commission of a criminal offence, or of unfair trading practices.

Foreign lawyers from non-EU jurisdictions should describe themselves on office stationery, business cards, nameplates and in all communications and publications (including law lists, telephone, telex and street directories, professional journals and conference brochures) either by their own untranslated professional title or by the word “lawyer”, together with a reference to the country or jurisdiction of their qualification.

### **Rules of Professional Conduct**

Foreign lawyers establishing offices or providing legal services in England and Wales are expected to observe the standards which apply to the legal profession in England and Wales. This is so whether or not the rules of conduct and disciplinary procedures of the foreign lawyer’s home Bar apply to practise. Observing ethical standards means acting as befits a lawyer, rather than complying with all local rules.

As noted above, lawyers in England and Wales do not have a monopoly of legal services. Subject to the restricted (reserved) areas of work, foreign lawyers in England and Wales are free to practise the law of their choosing including English law. However, no lawyer should undertake work unless it can be handled promptly and with due competence.

### **Registration with the Law Society**

Unless they wish to enter a multinational partnership or multinational corporate practice with solicitors and/or registered European Lawyers, with foreign lawyers practising in England and Wales do not have to register with the Law Society or notify the Law Society of their presence.

### **The Law Society International Division**

Any foreign lawyer, wherever based, may apply to join the Law Society’s International Division on payment of an annual fee. The status does not confer any professional title but provides information, networking and business promotion opportunities to its members.

# Practice Issues for Foreign Lawyers in England and Wales

In common with most jurisdictions, certain types of legal work in England and Wales are reserved to solicitors, barristers or other recognised professionals. The reserved areas of legal work include the exercise of a rights of audience, the conduct of litigation, certain reserved instruments (including for the conveyancing of land and property and the drawing of trust deeds for the disposal of capital), the preparation of applications (or opposition to the application) to administer a deceased's estate, notarial activities and the administration of oaths.

Lawyers from the EU, EEA and Switzerland, whether they are established in England and Wales or practising on a temporary basis, have general access to all areas of practice reserved to solicitors and/or barristers. They must however appear in courts in conjunction with a local lawyer and can only practice conveyancing and/or probate activities in England and Wales if these activities are not reserved to a specific notarial profession in their home state.

Other foreign lawyers do not have rights of audience in the courts, or the right to conduct litigation. Lawyers from other countries may however apply to the Chairman of the Bar Council for permission to appear in the English courts on an ad hoc basis where a matter from their jurisdiction is concerned.

In most tribunals (such as employment tribunals), there are no restrictions on rights of audience. However, this does not apply to the Employment Appeals Tribunal or the Solicitors' Disciplinary Tribunal, which are equivalent to courts. Nor does it apply to Immigration Adjudicators or the Immigration Appeals Tribunal, where rights of audience are restricted to solicitors, barristers and legal executives qualified in this jurisdiction; European/EU and EEA lawyers; and persons (including foreign lawyers) who are registered with the Office of the Immigration Services Commissioner.

There is no restriction on rights to represent parties at arbitrations conducted in England and Wales.

## **Land and Succession**

The Solicitors Act 1974 reserves the following activities to solicitors and other specified professionals:

- Drawing or preparing any instrument of transfer or charge for the purpose of the Land Registration Act 1925, or making any application or lodging any document for registration under that Act at the Land Registry.
- Drawing or preparing any other instrument relating to real or personal estate, except a will or other testamentary instrument, an agreement not under seal, a letter or power of attorney, or a transfer of stock containing no trust or limitation.
- Drawing or preparing papers on which to found, or oppose, a grant of probate of a will or of letters of administration of the deceased's estate.

Registered European Lawyers from countries in which probate and conveyancing are not activities reserved to a separate legal profession (eg notaries) can also practice the above-mentioned activities in England and Wales.

## **Financial Services**

Under the Financial Services and Markets Act 2000, the Financial Services Authority (FSA) is the regulator for investment business. Solicitors and “registered European lawyers”, and their partners, are permitted to carry on certain categories of investment business without authorisation from the FSA. Other foreign lawyers will require authorisation if they are to do any investment business.

## **Immigration advice and immigration services**

Under the Immigration and Asylum Act 1999 the Office for the Immigration Services Commissioner (OISC) is the regulator for immigration advice and immigration services. Foreign lawyers who are partners or employees of solicitors; European lawyers registered in the UK under the Establishment Directive and their partners and employees; and other EU lawyers and their employees; are permitted to provide immigration advice and immigration services without registering with OISC. Other foreign lawyers will have to be registered with OISC if they are to provide immigration advice or immigration services.

**Foreign lawyers practising with solicitors in England and Wales**

English solicitors may practise in partnership or corporate practice with foreign lawyers who are registered with the Law Society as registered foreign lawyers (RFLs) or as registered European lawyers (RELs).

A partnership of solicitors (and/or RELs) and registered foreign lawyers is known as a multi-national partnership (MNP). The rules of conduct applicable to solicitors apply also to an MNP. An MNP can employ practising solicitors and RELs.

A mixed corporate practice is also permitted between solicitors (and/or RELs) and registered foreign lawyers. Such a corporate practice can be either a company or a limited liability partnership (LLP). Under a new regime which introduced firm-based regulation from 31 March 2009, all partnerships which contain English solicitors need to be recognised by the Solicitors Regulation Authority (SRA), regardless of whether they are a company or partnership.

Following the adoption of the Legal Services Act in 2007, new forms of practice are becoming available in England and Wales. Since March 2009, Legal Disciplinary Practices (LDPs) enable solicitors, barristers and other UK legal professionals as well as European and Registered Foreign lawyers and up to 25 per cent of non-lawyer managers to practice together.

In 2011-12, Alternative Business Structures (ABSs) will be introduced, thereby enabling new forms of non-lawyer involvement in legal practices.

**Employment of an English/Welsh solicitor by a Foreign Lawyer**

The professional rules by which solicitors in England and Wales are bound prevent a practising solicitor employed by a foreign (non-European) lawyer or a foreign law firm to provide legal services in some of the above-mentioned reserved activities, including the exercise of a right of audience, conducting litigation or providing any immigration advice or immigration services (unless the employer, or a senior fellow employee, is registered with the Immigration Services Commissioner).

The restrictions noted do not apply to employment of a solicitor by an MNP, or by a “recognised body”, or by RELs, or if the solicitor is practising abroad. They are also currently under review by the Law Society.

### **Employment of Foreign Lawyers by Solicitors**

Subject to their home rules, foreign lawyers may practise in the employment of solicitors, RELs, MNPs or recognised bodies.

### **Sharing of Facilities**

The sharing of facilities in solicitors’ offices by a foreign lawyer and the appearance of a foreign lawyer’s name as a consultant or as an associated practice on a solicitor’s professional stationery or name plate or brochure is permissible, but the foreign lawyer must not be improperly held out as a partner or held out as a solicitor, or as qualified to act as a solicitor. The solicitor will have an obligation to ensure that any sharing of facilities will not give rise to a breach of client’s confidentiality and to ensure compliance with the Solicitors’ Practice Rules.

### **Other Professional Arrangements**

Foreign lawyers, wherever based, are entitled to enter into professional arrangements with solicitors. Rules 8 on fee-sharing and 9 on referrals of business in the Solicitors’ Code of Conduct and the home rules of foreign lawyers, if relevant, will govern these arrangements. Specifically, the Solicitors’ Practice Rules provide that:

- A foreign lawyer may enter into an arrangement with a solicitor to introduce clients to the solicitor.
- A solicitor may agree to refer clients to a foreign lawyer.
- A solicitor may agree to share his professional fees with a practising lawyer of a jurisdiction other than England and Wales.

Professional arrangements with foreign lawyers that are part of an entity where a controlling majority of the owners and managers are non-lawyers could still be possible under the conditions set out by Rule 8, but not in the context of European Cross-Border Practice (Rule 16).

### **Relations between foreign lawyers and barristers**

The rules for foreign lawyers in Chambers in England and Wales are set out in Annex H of the “Code of Conduct for the Bar of England and Wales”, issued by the Bar Council.

### **The Future of Structures of the Provision of Legal Services in England and Wales**

In October 2007 the Legal Services Act became law and this new piece of legislation is paving the way for some potentially radical changes in the way in which legal services can be delivered in the UK. The Act permits the following new forms of legal structure:

Legal Disciplinary Practices – which were introduced in March 2009 and which allow solicitors, barristers, other UK and foreign legal professions and up to 25 per cent of non-lawyer managers’ participation in a legal partnership.

Alternative Business Structures will be introduced from around 2011-12. These structures will allow any forms of non-lawyer involvement in a law firm, including up to 100 per cent non-lawyer ownership of a law firm, subject to the satisfaction of various “fitness to own” criteria.

Further details can be obtained from the Legal Services Board at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

# Becoming a Solicitor of England and Wales

If you wish to call yourself a Solicitor of England and Wales, and to practise the reserved areas of law you will need to requalify. Until 2011, the Qualified Lawyer Transfer Regulations (QLTR) are in force. These will be replaced with new regulations from around the beginning of 2011 which will introduce a new test regime and open this to a wider number of non-European and non-common law jurisdictions.

At present the QLTR allows certain overseas lawyers and other UK qualified lawyers to become solicitors in England and Wales.

There are three basic requirements that applicants applying under the QLTR are required to meet (depending on which primary jurisdiction that they are qualified in) before they can apply for admission as a solicitor of England and Wales.

1. Pass as many “Heads” (or individual examinations) under the Qualified Lawyers Transfer Test as required.
2. Satisfy a two year legal experience requirement of which at least one year must have been gained by practicing law in England & Wales (this does not apply to lawyers qualified in the EU/EEA and Switzerland on conditions of citizenship).

3. Meet character and suitability requirements which will include the submission of references.

## Experience Requirement

Qualified lawyers from outside the European Union, the European Economic Area and Switzerland are required to show that they have gained two years experience of working in legal practice in a common law jurisdiction. At least one year must have been gained by practising the law of England and Wales. Such experience:

- must have been undertaken in three areas of common law, and
- must have covered contentious and non-contentious areas of practice.

## Qualified Lawyers Transfer Test

The Qualified Lawyers Transfer Test is a conversion test. It enables lawyers who are qualified in certain jurisdictions outside England and Wales (and barristers of England and Wales) to qualify as solicitors in England and Wales.

The test covers four heads (subject areas):

- Head 1 – **Property**
- Head 2 – **Litigation**
- Head 3 – **Professional Conduct and Accounts**
- Head 4 – **Principles of Common Law**

## Becoming a Solicitor of England and Wales (continued)

The requirements for different jurisdictions vary depending on an assessment of how closely the qualification requirements in those countries and the type of law studied mirror the English requirements. More detail can be found on the Solicitors Regulation Authority website.

[www.sra.org.uk](http://www.sra.org.uk)

### **Specification and Providers**

The SRA sets the Qualified Lawyer Transfer Test specification. The assessment is administered exclusively by SRA-authorised test providers. For details of test programmes and venues, you must contact test providers directly. Before you arrange to sit the appropriate head(s) with a test provider, you must apply to the SRA for a certificate of eligibility.

### **Character and Suitability**

Qualified lawyers are also required to show that they are suitable for admission as a solicitor in England and Wales by declaring all convictions and other relevant matters when they apply for a certificate of eligibility to transfer to the roll of solicitors of England and Wales under the Qualified Lawyers Transfer Regulations.

Before applying for admission as a solicitor in England and Wales, qualified lawyers are required to obtain a satisfactory standard disclosure from the Criminal Records Bureau, which includes details of any current and spent convictions, police cautions, reprimands and final warnings held on the Police National Computer. They also make use of overseas criminal records information services whenever appropriate. Failure to disclose convictions and other issues at the certificate of eligibility stage or subsequently is a serious matter and may result in refusal of your application for admission as a solicitor.

Further information, including details of test providers, is available on the Solicitors Regulation Authority website.

[www.sra.org.uk](http://www.sra.org.uk).

## Opening Offices of your Law Firm in the UK

The UK has an open, transparent and business-friendly system to encourage the formation of new businesses.

There are more than 2.6 million registered companies in the UK, with over 440,000 new registrations each year. No permission is required to establish a business presence in the UK, although there are regulations on the use of business names and certain business sectors which may require licences or authorisation (such as finance, defence and oil exploration).

Companies House is the key government organisation that co-ordinates the administration of businesses in the UK. Detailed guidance on the requirements for forming a company in the UK is available at:

**[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**

Independent professional advice on forming a company in the UK can also be obtained from accountants, solicitors and company formation agents.

### **Definition of UK registered company**

The majority of foreign investors will establish a UK registered company when setting up in the UK. There are four different types of UK registered company:

- **Private company limited by shares (“Ltd”)** – the members’ liability is limited to the amount unpaid on shares they hold.
- **Private company limited by guarantee** – the members’ liability is limited to the amount they have agreed to contribute to the company’s assets if it is wound up.
- **Private unlimited company** – there is no limit to the members’ liability.
- **Public company limited by shares (“plc”)** – the company’s shares are offered for sale to the general public through a stock exchange and the members’ liability is limited to the amount unpaid on shares held by them.

The vast majority of foreign businesses are established as a company limited by shares, either as a private limited company or as a public limited company. Most foreign companies set up a private limited company that is a subsidiary of the overseas company. For a formal definition of a subsidiary, please see: **[www.clickdocs.co.uk/glossary/subsidiary-company.htm](http://www.clickdocs.co.uk/glossary/subsidiary-company.htm)**

### **Setting up a UK registered company**

It is a straightforward process to establish a company in the UK and there are no separate rules for foreign nationals. To register a company, certain mandatory documents such as the “Memorandum of Association” and “Articles of Association” must be filed with Companies House (for England, Scotland and Wales) or with Companies Registry (for Northern Ireland).

The documentation can be prepared and the company registered in a day, provided that standard Memorandum of Association and Articles of Association are adopted (it can take considerably longer if tailor-made Memorandum of Association and Articles of Association are required). “Ready-made” companies are available from company formation agents throughout the UK.

### **Alternative business structures for foreign investors**

Instead of registering a UK company, foreign businesses can establish a presence in the UK through the following:

- a) A branch**
- b) A place of business**
- c) A partnership**
- d) A limited partnership**
- e) A limited liability partnership**
- f) A joint venture**
- g) A European public limited company (SE)**

#### **a) A branch**

A branch is part of an overseas limited company organised to conduct business through local representatives in the UK. After opening a branch, the following documents must be submitted to Companies House (or Companies Registry in Northern Ireland) within a month:

- a completed BR1 form,
- a certified copy of the company’s constitutional documents (for example, the charter, statute and operating agreement),
- a copy of the latest set of audited accounts required to be published in the overseas country, and
- the registration fee (currently £20 in England, Scotland and Wales, and £35 in Northern Ireland).

Constitutional documents and accounts must be in the home country language of the overseas company, with (if not in English) a certified translation made in the country where the company was incorporated.

### **b) Setting up a place of business**

A place of business gives a physical or visible indication that a company may be contacted there. An overseas company also has to register if it regularly conducts business from a particular location in the UK, even if there is no physical sign of the company's connection with it.

Within a month of establishing a place of business, the company must submit the following documents to Companies House (or Companies Registry in Northern Ireland):

- a completed 691 form (for England, Scotland and Wales) or 641 form (for Northern Ireland),
- a certified copy of the company's constitutional documents (for example, the charter, statute and operating agreement), and
- the registration fee (currently £20 in England, Scotland and Wales, and £35 in Northern Ireland).

Constitutional documents and accounts must be in the home country language of the overseas company, with (if not in English) a certified translation made in the country where the company was incorporated.

### **c) Partnerships**

Individuals, including overseas investors, can set up as a partnership in the UK. The partners have "joint and several liability" for all debts. This means that if a partner or a number of partners cannot pay, or be made to pay, their share of any debts, the other partners become liable (in addition to their own share of debt).

### **d) Limited partnerships**

A limited partnership consists of:

- one or more persons called "general partners" who are liable for all debts and obligations of the firm, and
- one or more persons called "limited partners" who contribute a sum or sums of money as capital, or property valued at a stated amount. Limited partners are not liable for the debts and obligations of the firm beyond the amount contributed.

## Opening Offices of your Law Firm in the UK (continued)

A limited partnership must be registered under the Limited Partnership Act of 1907. To register, all partners must sign and submit Form LP5 – including details of the business name, nature of the business, commencement date and the sum contributed by each limited partner – to Companies House (or Companies Registry in Northern Ireland). An overseas limited partnership cannot usually register in the UK because the main place of business of a limited partnership has to be in the UK.

### **e) Limited liability partnerships (LLP)**

An LLP is an alternative corporate business structure providing the benefits of limited liability but allowing its members the flexibility of organising their internal structure and tax arrangements as a traditional partnership.

Any new or existing firm of two or more “persons” (in law a “person” can be an individual or a company) can incorporate as an LLP. An LLP is incorporated by registration at Companies House or Companies Registry in Northern Ireland (following a similar process to that required for registering a company).

LLPs have similar disclosure requirements to a company, including the filing of accounts. They are also required to:

- file an annual return,
- notify any changes to the LLP’s membership,
- notify any changes to their members’ names and residential addresses, and
- notify any change to their registered office address.

For further detailed information on LLPs, please see:

**[www.companieshouse.gov.uk/infoAndGuide/llp.shtml](http://www.companieshouse.gov.uk/infoAndGuide/llp.shtml)**

### **f) Joint ventures**

An overseas company can form a base in the UK by joining with a UK company. Such joint ventures (JVs) are usually made with limited companies or established as a partnership. Information on possible JV partners is available from the relevant UK trade association. For further information, please contact the Trade Associations Forum at:

**[www.taforum.org](http://www.taforum.org)**

### **g) European public limited company**

European Union legislation allows overseas companies to establish a European public limited company (also known as a “Societas Europaea” or “SE”) in the UK. An SE can be registered in any country within the European Economic Area although the registered office and head office must be in the same country. There are several ways of forming an SE:

- By merger
- As a holding company
- As a subsidiary
- By a plc transforming into an SE

An SE must have share capital and shareholders whose liability is limited in a similar manner to that of a plc. As with a plc, an SE registered in the UK may denominate its share capital in any currency it chooses, provided that at least £50,000 is denominated in sterling.

The major benefit of an SE is that the registered office can be transferred to another European country without a loss of legal status (avoiding, for example, the requirement to deregister the company in one country and reregister in another). For further detailed information on the procedures to establish an SE, please see:

**[www.companieshouse.gov.uk/about/gbhtml/gb06.shtml](http://www.companieshouse.gov.uk/about/gbhtml/gb06.shtml)**

### **Choosing a company name**

Regulations restrict the choice of a company name. A company name cannot be chosen if it is the same as an existing registered company or uses certain words regarded as sensitive. For a list of sensitive words please see:

**[www.companieshouse.gov.uk/aboutgbhtml/gbf3.shtml#appa](http://www.companieshouse.gov.uk/aboutgbhtml/gbf3.shtml#appa)**

Before applying to set up a company, or doing anything to change its name, it is recommended that a search of the company name index is undertaken. Please see:

**[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**

The regulations on law firm name only apply to firms regulated by the Solicitors Regulation Authority

**[www.sra.org.uk](http://www.sra.org.uk)**

# Complying with UK Business Laws and Regulations

## Data protection in the UK

As a law firm setting up a business in the UK, you will need to consider carefully whether you will have any obligations under the Data Protection Act 1998 (“DPA”). The DPA requires that all organisations that handle personal information comply with a number of data protection principles regarding privacy and disclosure. Personal data means data that relates to a living individual, such as their name, address and salary details and personal sensitive data meaning data relating to racial or ethnic origin, sexual orientation, trade union membership or religious beliefs.

The DPA covers both UK registered companies and overseas companies who maintain an office, branch or agency in the UK and individuals who are ordinarily resident in the UK. A law firm with a branch office in the UK will therefore need to comply with the DPA.

## Exporting data from the UK outside of the EEA

The DPA prohibits the transfer of personal data outside the EEA to any country that does not ensure an “adequate level of protection” for the rights and freedoms of data subjects in relation to the processing of personal data. Cross-border transfers of personal data are becoming more common due to the flow of information over the internet, the spread of multi-national corporations and the increased trend in outsourcing back office and HR functions of organisations.

Your company may need to transfer data from its branch or UK subsidiary to a company elsewhere. The UK data protection regime prohibits the transfer of personal data outside the EEA unless adequate safeguards are in place to protect the exported data. If you do not have the consent of the data subjects to transfer the data outside the EEA then, unless transfer of the data is deemed necessary to fulfil a contract, the simplest way to ensure adequate data protection will be to use the European Commission model contract clauses or binding corporate rules in the case of intra-group transfers.

## **Money Laundering**

There is a strict anti-money laundering regime in the UK which forms part of an initiative to tackle criminal activity worldwide. Money laundering is the exchange of money (or other assets) obtained criminally for “clean” money (or other assets), that is, money with no obvious link to its criminal origins. It includes money used to fund terrorism.

The relevant UK requirements and penalties are found in the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Terrorism Act 2000.

## **Identification documents**

In the course of setting up and carrying out business in the UK, you are likely to need the services of professionals who will be subject to the anti-money laundering regime, for example, banks, solicitors, accountants, tax advisers and insurance brokers. Under ‘KYC’ (know your customer) obligations, they will need to carry out identification and verification checks in respect of you and your business, monitor your business activities, and report any suspicious activities to the Serious Organised Crime Agency (SOCA). The documents that they will require from you as proof of identification and verification will vary according to whether you are an individual or a company.

## **Individuals**

Documents you will typically need to provide include:

- Proof of identity (certified copy of a passport).
- Proof of address (certified copy of an official document which shows your address such as a utility bill or bank statement no more than three months old).

Banks or other regulated professionals may carry out their own additional identification checks.

## Companies

If you are part of a group, you will need typically to provide the following documents (or certified copies) in respect of the parent company in your home country:

- Constitutional documents.
- Proof of solvency.
- Proof of identification/address (in the form described above) of the principal director/shareholder.
- Copies of annual reports and accounts.

You can expect to be asked for detailed information about how you plan to carry out business in the UK and will need to show that you are authorised to represent the company (for example, in the form of an original or certified copy of a letter of authority on the company's letterhead). You should also be aware that banks are obliged to verify the chain of ownership of companies to the underlying beneficial owners to understand the full structure of the company and to identify and check all sources of funding.

## Protect Intellectual Property Rights in the UK

Intellectual property rights (IPR) provide competitive advantage and can be one of the most important assets that a company owns. They can be owned, transferred and exploited like any other form of personal property.

The UK has established laws in place protecting a range of intellectual property rights including:

- **Copyright** – protects original literary, dramatical, musical and artistic works, including software codes.
- **Patents** – protects technical inventions (products and processes), including computer implemented solutions and technical problems.
- **Designs** – protects the appearance of a product.
- **Database rights** – protects the investment in either obtaining, verification or presentation of the contents of a database.
- **Confidentiality** – protects information.
- **Trade marks** – protects brands.

**Copyright and database rights** arise automatically on creation of work. There is no system of registration for these rights in the UK. For copyright works however claim should be laid to the rights that already exist. This can be done by ensuring that all “works” are labelled with an appropriate copyright notice identifying the owner and year of creation. Accurate records of by who and when the works were created should also be kept.

**Inventions** can be protected by obtaining a patent. It is essential that the invention and any know-how relating to the invention is kept confidential (throughout the world) prior to the filing of the patent application. Any unprotected disclosure of the invention (or any part of it) will destroy the patentability of the invention.

**Trade marks and designs** can both be protected through registration. Rights in trade marks however can also arise through use and can be protected through a tortious claim of passing-off. Similarly, rights in designs will arise automatically on creation of the work. However, the registration system offers a quicker, easier and often a more cost-effective way of seeing off infringers (in the case of trade marks) and longer term protection (in the case of designs).

**Confidential information** in the UK is protected by law even in the absence of a confidentiality agreement. It is best practice however to use a confidentiality agreement wherever possible. The confidentiality agreement should accurately identify the information that you intend to disclose and the purpose for which you intend to disclose it. Even where the intended recipients have signed a confidentiality agreement, it is best practice to label all documents and materials containing confidential information “Strictly Private & Confidential”.

## Employment in the UK

Employee rights in the UK are derived from both contractual provisions and legislation, which is now derived predominantly from European law. UK employment laws are varied and legal advice should be taken before acting as the penalties for non-compliance can be severe and damaging for the reputation of your business.

Employment rights are diverse and include the following:

- Rights during employment including rights to a minimum level of wage prescribed by Government, statutory sick pay during periods of sickness, maximum weekly hours of work and prescribed rest breaks, rest periods and annual holiday entitlement, protection and (where applicable) payment during periods of maternity, adoption, paternity and parental leave.

- Rights on termination of employment including rights to a minimum period of notice (according to length of employment), a statutory redundancy payment (where applicable) and the right not to be unfairly dismissed.
- Additional rights including the right for male and female employees to receive equal pay and the right for all employees not to be discriminated against (whether when recruited, during employment or on termination of employment) on grounds of sex, marital status, race, disability, sexual orientation, religion, belief or age.

### Unfair dismissal

In addition, legislation preserves employees' continuity of employment and existing terms and conditions where such employees are employed in an undertaking which transfers from one entity to another (eg in the context of the sale of a business) You cannot dismiss an employee who has worked for you for more than one year without a fair reason. There are six potentially fair reasons for dismissal including conduct, capability, illegality, redundancy, retirement and "some other substantial reason".

### **Employment Contract**

A contract of employment may be written or oral and terms may be express or implied.

Legislation requires you as an employer to give all employees a written statement of their main terms and conditions of employment within two months of commencing employment. You must notify employees in writing of any change to the statement within one month of the changes. In practice, many employers in the UK have standard terms and conditions of employment for their employees which extend beyond the statement required by legislation.

### **Redundancy payment**

An employee is entitled to receive redundancy payment if he/she has provided at least two years of service and has been dismissed on redundancy grounds. The redundancy payment is linked to the employee's age, length of continuous service with you as the employer and their weekly pay.

As the employer you must provide a written statement showing how the payment has been calculated, and you must also strictly follow certain prescribed procedures.

### **Financial obligations**

As an employer in the UK you have a number of financial obligations in relation to your employees including the deduction of income tax and employee national insurance contributions from their salary at source. You are also obliged to make additional employer national insurance contributions. The level of tax and national insurance contributions depends on the level of an employee's earnings. These deductions together with the employer national insurance contribution must be paid over to HM Revenue & Customs on a monthly basis.

## Employment in the UK (continued)

### Foreign workers

Foreign nationals<sup>3</sup> will need to apply for permission under the UK's Points Based System to be eligible to work in the UK. The UK Border Agency issues leave which can be valid for up to a maximum of three years, after which a foreign worker may apply for an extension if needed. The proposed salary of the foreign worker should not be below the prevailing minimum wage in the UK. In many cases, there should also be clear evidence that a European Economic Area (EEA)<sup>4</sup> resident is not available to fill this position. Please refer to the UK Border Agency for further information.

### Employee secondment packages

A foreign company may wish to second employees to work in the UK either with a group company or a third party, such as a customer for example. Employees are normally seconded on their existing terms and conditions of employment, although additional terms (or a variation of existing terms) may be agreed for the duration of the secondment and it is possible for seconded employees to acquire UK employment rights whilst seconded to the UK.

In the absence of any specific tax planning employees seconded to work in the UK are subject to UK income tax on their salary at a rate of up to 40 per cent or 50 per cent for those earning over £150,000. However, if a secondment package is structured correctly, UK income tax and national insurance contributions can be drastically reduced or in some cases eliminated entirely.

Below is a brief description of the main planning opportunities that may exist for secondees from abroad to the UK:

If the UK has a Double Tax Treaty with your home jurisdiction it is possible to make a claim that results in employees being able to work in the UK for up to six months in each UK tax year (6 April to 5 April) without being liable to UK income tax on income derived from carrying out employment duties in the UK.

<sup>3</sup>The Points Based System applies to anyone who is not a national of the European Union, Switzerland, Iceland, Liechtenstein or Norway.

<sup>4</sup>See footnote 2 on page 15

Where an employee is being seconded to the UK for less than 24 months it is possible to agree with HM Revenue and Customs (the UK tax authority) that the proportion of their salary that is spent on accommodation, food and sustenance, council tax and utility bills and travel to work from home can be paid to them free of tax.

Depending on the level of salary being paid to the employee these tax free amounts, together with the tax free allowance of £6,475 (2010-11) that all individuals working in the UK are entitled to, that earn under £100,000.

**Claim that salary in respect of days working outside of the UK is only taxable if received in the UK**

Where an employee is seconded to the UK but spends some time working outside of the UK (eg in mainland Europe) then the proportion of the employee's salary attributable to days worked outside of the UK is not subject to tax in the UK provided it is not received into a UK bank account (or remitted to the UK in some other way). Therefore, if an employee spends three months a year working in Europe then 25 per cent of their salary

could be treated as being exempt from UK taxes if it is paid into a bank account outside of the UK and other necessary steps are taken. However the personal allowance of £6,475 (for 2008-09) is lost if this exemption is claimed.

**Exemption from UK National Insurance (Social Security)**

Employees seconded from abroad to the UK are exempt from UK national insurance for a period of 52 weeks. The employer is also exempt from paying national insurance contributions during this period. These contributions could be as high as 12.8 per cent of the employee's salary.

### Domicile

The concept of domicile is almost unique to the UK and being designated non-domiciled can affect your tax liability. A person is domiciled in the place where they consider home. Normally this is defined in terms of a person's "domicile of origin" which is taken from their father but if strong ties are formed with a new jurisdiction and old ties are severed with the old jurisdiction, a "domicile of origin" will be replaced with a "domicile of choice." HM Revenue & Customs generally accept that if a person has come to the UK solely for the purposes of working with a view to returning to their home country in the future, the "domicile of origin" is retained so employees seconded temporarily from abroad to the UK will be considered foreign domiciled for UK tax purposes.

Normally an individual who is tax resident in the UK is subject to UK income and capital gains tax on their worldwide income and gains. However, where that person is domiciled outside of the UK, it is possible to submit a claim so that the income and gains arising outside

of the UK (eg rents from non-UK property, interest on a non-UK bank account, dividends from a non-UK company, etc.) are taxable only if remitted to the UK. Therefore, UK tax can be avoided on non-UK income and gains simply by keeping these funds outside of the UK.

If the non-UK income or gains total is less than £2,000 in a tax year then the "remittance basis" can be relied upon by non-domiciled individuals. However if the unremitted foreign income or gains exceeds £2,000 in a tax year then there is a cost to submitting the claim on the "remittance basis". For individuals who have been resident in the UK for seven or more years (out of the last ten years) there may be a tax liability. For individuals with a significant non-UK income an annual charge of £30,000 can be paid to discharge that liability. This is separate to any tax due on funds remitted to the UK. This is a complex area and advice should be sought before seeking to rely on or claiming on the "remittance basis".

## **Health and Safety Liability insurance**

Under UK law, all businesses, the self-employed and employees are required to comply with the statutory health and safety regime. This is governed by the Health and Safety at Work etc. Act 1974, and includes a raft of associated regulations, as well as guidance and Approved Codes of Practice.

The legislation aims to protect the health and safety of employees, contractors and members of the public. Some of the key features of the legislation that apply to most businesses include the requirements to:

- Register with either the Health and Safety Executive (HSE) or local authority (depending on the type of business).
- Appoint someone competent to monitor your health and safety duties (this may or may not be an external consultant).
- Provide health and safety training for all workers.
- Ensure your workers have safe equipment to use at work, including appropriate visual display equipment and report certain work-related accidents, diseases and dangerous occurrences.

As an employer or business owner, you will be legally responsible for any damage or injury caused by negligence or breach of duty to employees, customers and the public. It is important therefore that you take out liability insurance to cover any compensation and legal costs that may arise if you are found to be at fault. The main types of liability insurance are listed below:

- Employers' liability compulsory insurance.
- Public liability insurance.
- Product liability insurance.
- Pollution risk insurance.
- Property owners' liability insurance.
- Professional indemnity insurance.
- Directors' and officers' liability.

Failure to have adequate cover can have serious consequences, especially for small businesses. You should therefore seek specialist advice as to the appropriate type and level of insurance that is adequate for your business.

# Immigration to the UK

Any foreign national seeking to set up a business or work in the UK, will need to obtain permission to do so before travelling to the UK.

The UK immigration rules recently underwent fundamental changes as the UK moved to a Points Based System (“PBS”).

In addition to the points requirement for each tier, you are likely to have to demonstrate that you have a specified amount of money to support yourself and any dependants, and that you are able to speak English.

The PBS consists of five tiers. Those that will be relevant to an individual intending to set up business or work in the UK, or a foreign law firm wanting to transfer employees to the UK, are as follows:

## Tier 1

This tier covers:

- **Highly skilled workers** who can come to the UK to look for work or self-employment opportunities. They do not need a job offer and they will be awarded points for qualifications, previous earnings, experience and age.
- **Entrepreneurs** who want to invest in the UK by setting up or taking over and being actively involved in the running of one or more businesses in the UK. An entrepreneur will not be able to take up employment in the UK.
- **Investors** who want to make a substantial financial investment in the UK. An investor does not need a job offer in the UK but will be permitted to work if he wishes.
- **Post-study workers** who are graduates who have studied in the UK. They do not need a job offer and are free to look for work. This category acts as a bridge to other Tier 1 and Tier 2 categories.

## Tier 2

This tier includes:

- **Intra-company transfers** – for example, where an overseas company wants to transfer an existing employee to a related business in the UK.
- **A job offer that passes the “Resident Labour Market Test”** – the UK employer will have to show that the job has been advertised in the UK/EEA and that there is no suitably qualified worker from the UK/EEA to fill the post.
- **Shortage occupations** – a list of recognised shortage occupations is published by the UK Border Agency – this does not include lawyers.

All applicants in Tier 2 must have a certificate of sponsorship from their proposed UK employer, which must be registered as a sponsor with the UK Border Agency. The job must be skilled and the worker must be paid the appropriate UK salary rate.

Please check the UK Border Agency website for further information on the PBS.

[www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk)

You may wish to come to the UK on a short-term basis to do business. An individual can come to the UK as a business visitor for up to six months provided they are only transacting business directly linked to their employment outside the UK and that they continue to be paid a salary from abroad. The individual must not, however, undertake productive work in the UK (ie a hands-on management or administrative role or having any direct executive responsibilities).

As a non-EEA or Swiss national, you should check visa requirements when planning to come to the UK as a business visitor.

UK Trade & Investment have investment specialists who are happy to give advice or referrals on immigration issues for companies wishing to set up in the UK.

Prepared by the Law Society of England and Wales in conjunction with the Ministry of Justice and UK Trade & Investment.

## Useful Contacts

### National

**UK Trade & Investment**  
Kingsgate House  
66-74 Victoria Street  
London  
SW1E 6SW  
Tel: **+44 (0)20 7215 4904**  
[www.ukti.gov.uk](http://www.ukti.gov.uk)

### Law Society

**International Division  
The Law Society**  
113 Chancery Lane  
London  
WC2A 1PL  
Tel: **+44 (0)20 7242 1222**  
Email: [internationaldivision@  
lawsociety.org.uk](mailto:internationaldivision@lawsociety.org.uk)  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### Solicitors Regulation Authority

Ipsley Court  
Berrington Close  
Redditch  
B98 0TD  
Tel: **+44 (0)15 2750 4450**  
[www.sra.org.uk](http://www.sra.org.uk)

### Ministry of Justice

102 Petty France  
London  
SW1H 9AJ  
Tel: **+44 (0)20 3334 3555**  
[www.justice.gov.uk](http://www.justice.gov.uk)

### Bar Council

289-293 High Holborn  
London  
WC1 7HZ  
Tel: **+44 (0)20 7242 0082**  
[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

### Bar Standards Board

289-293 High Holborn  
London  
WC1 7HZ  
Tel: **+44 (0)20 7611 1444**  
[www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

### UK Regions

#### Scottish Development International

Atlantic Quay  
150 Broomielaw  
Glasgow  
G2 8LU  
Tel: **+44 (0)14 1228 2828**  
[www.sdi.co.uk](http://www.sdi.co.uk)

**Invest Northern Ireland**

Bedford Square

Bedford Street

Belfast

BT2 7ES

Tel: +44 (0)28 9023 9090

[www.investni.com](http://www.investni.com)

**International Business Wales**

Welsh Assembly Government

Trafalgar House

5 Fitzalan Place

Cardiff

CF24 0ED

Tel: +44 (0)14 4304 5500

[www.ibwales.com](http://www.ibwales.com)

**One NorthEast**

Stella House

Goldcrest Way

Newburn Riverside

Newcastle upon Tyne

NE15 8NY

Tel: +44 (0)19 1229 6200

[www.onenortheast.co.uk](http://www.onenortheast.co.uk)

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