

LEGALINK

INVESTMENT AND BUSINESS START UP IN UK

1. Legal System

Scotland, England and Wales and Northern Ireland are separate and distinct jurisdictions: Scotland has a mixed common law and civil law system whereas England and Wales and Northern Ireland have a common law system.

2. Foreign Investment

Generally there are no restrictions on foreign investment or ownership, but authorisation is needed for investment in banking, media, financial services and defence.

The only exchange control and currency regulations relate to the Money Laundering Regulations, which apply to the following types of business.

- (a) UK financial and credit businesses;
- (b) independent legal professionals;
- (c) accountants, tax advisors, auditors and insolvency practitioners;
- (d) estate agents;
- (e) casinos;
- (f) businesses that accept cash payments or goods with a value of €15,000 or more (this includes payments made in instalments);
- (g) trust or company service providers.

There are many grants available to support private sector investment by foreign and domestic investors.

3. Business Vehicles

3.1 The most common business vehicles used are

- (a) private and public companies limited by shares. A company is a separate legal entity and shareholders' liability is limited to the subscription amount of their shares. A company must have one shareholder which may be a corporate entity. Public companies are subject to more regulation but can offer shares to the public, the minimum share capital for a public company is £50,000.
- (b) a limited liability partnership (an "LLP"). An LLP has a separate legal personality and members generally have limited liability. There must be at least two members of an LLP. There are similar reporting and registration requirements as for a company.
- (c) a general partnership, in England and Wales a general partnership does not have separate legal personality, but it does in Scotland. These must have at least two partners, who each have authority to act as agent for the partnership. There are no reporting or registration requirements.

3.2 The most common business vehicle used is a private limited company. A private company can be incorporated within eight to ten days by paper application, costing £40 or £100 if same day incorporation is required. Alternatively the company can be incorporated online for £15. The following documents must be sent to Companies House to incorporate a company:

- articles of association, unless the model articles are adopted without modification; and
- form IN01, which sets out the company details.

Once incorporated a certificate of incorporation will be issued. A company name must end with either "Limited" or "Ltd".

3.3 A private company is required to file an annual return and accounts each year. The company also has to notify Companies House of certain changes which include a change to the registered office, amendment of the articles of association and share capital.

- 3.4 A private company must have at least one director, who must be a natural person. There are no restrictions on foreign directors. Directors have a duty to act with reasonable skill and care and can be personally liable if they do not do so or fraudulently or wrongfully trade when a company is insolvent.

4. Employment

- 4.1 EEA and Swiss nationals can enter and live in the UK and work without a permit. Non-EEA nationals must usually obtain permission to work or train in the UK. The permission is granted for a limited period and there are five tiers available to seek permission under:

- (a) entrepreneurs, investors, graduate entrepreneurs and individuals who demonstrate exceptional talent in the fields of art and science;
- (b) sponsored skilled workers with a job offer;
- (c) unskilled workers (this is yet to be used);
- (d) students; and
- (e) temporary workers.

The cost of the application is dependant on the type of application made and whether the applicant is inside the UK when applying. Applicants under tiers 2 and 5 must be sponsored by a licensed sponsor, employers must apply to register as licensed sponsors (which requires its own application process and fee).

4.2 Employees must be given a written statement of certain employment terms within two months of commencing employment.

4.3 Any employee, dismissed without good reason and having two years service can claim unfair dismissal. There are five potential grounds for fair dismissal, being:

- (a) capability;
- (b) conduct;
- (c) redundancy;
- (d) breach of statute; and
- (e) some other substantial reason.

An unfairly dismissed employee may be entitled to reinstatement, re-engagement or compensation. An employee dismissed for an automatically unfair reason (i.e. pregnancy or a membership of a trade union) can claim unfair dismissal, even without the two years continuous employment.

4.4 An employee employed for two years and dismissed due to redundancy is entitled to a statutory redundancy payment. To ensure that redundancies are fair advice should be sought regarding necessary consultation, selection criteria, reasonable notice periods, redundancy payments and potential notification to the secretary of state where collective redundancies are proposed.

4.5 Discrimination should also be a consideration and includes dismissal for gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

4.6 There is legislation in place to deal with minimum wages and working times. New legislation is currently being rolled out that will eventually require all employers to automatically enrol eligible workers into a pension scheme and make mandatory minimum contributions.

5. Tax

5.1 Individuals are resident in the UK for tax purposes if any of the following apply:

- (a) they are physically present in the UK for 183 days or more in a tax year;
- (b) they visit the UK regularly and their visits average 91 days or more per tax year over a period of four years;
- (c) they arrive in the UK for the purpose of employment, which means they will be in the UK for at least two years.

A new statutory residency test is expected to be published in the Spring/Summer of 2013.

5.2 The tax free personal allowance for 2012/2013 is £8,105. Employees must pay income tax on income over the personal allowance amount. The tax rates are as follows:

- (a) basic rate – paid on the first £34,370 of earning at a rate of 20%;
- (b) higher rate – paid on earning between £34,371 and £150,000 at a rate of 40%;
- (c) additional rate – paid on all earnings over £150,000 at a rate of 45%.

Employees must also pay national insurance contributions and employers must make contributions of 13.8% of an employee's gross salary.

5.3 Subject to double tax treaties non-tax resident employees are liable to UK income tax on:

- (a) earnings from employment where their duties are carried out in the UK;
- (b) UK source investment income; and
- (c) income arising from property located in the UK.

5.4 A company is a UK tax resident if incorporated in the UK or managed and controlled from the UK. UK tax resident companies must pay corporation tax on their worldwide profits. The tax rate for the year beginning 1 April 2012 to 31 March 2013 is 24%, reducing to 23% from 1 April 2013 and to 21% from 1 April 2014.

5.5 The following payments to shareholders are treated as follows

Dividends paid	No withholding on dividends paid to foreign corporate shareholders
Dividends received	Most foreign dividends are exempt
Interest paid	20% withholding tax on certain interest payments, subject to any tax treaty
IP royalties paid	20% withholding tax subject to any tax treaty

5.6 Thin capitalisation rules apply equally to loans to or from foreign affiliates, and loans between UK affiliates. If a UK company is thinly capitalised, the deductibility of interest payments may be restricted.

5.7 Controlled foreign company rules provide that profits can be imputed to a UK parent company if the foreign subsidiary is subject to a level that is less than 75% of the tax it would be subject to if UK tax resident.

5.8 Under the transfer pricing rules, transactions between UK companies and UK or foreign affiliates must be taxed on the arms length value of the transaction.

6. Competition

6.1 There are two competition authorities:

- (a) the Office of Fair Trading (the “OFT”) which investigates restrictive agreements and practices and abuses of dominance; and
- (b) the Competition Commission.

During 2013 these authorities will be merged with and replace by the Competition and Markets Authority.

6.2 The Competition Act 1998 introduced two prohibitions in relation to competition:

- (a) agreements which prevent, restrict or distort competition or which affect trade;
- (b) conduct by undertakings amounting to abuse of a dominant position.

6.3 The Enterprise Act 2002 makes it a criminal offence for individuals to engage dishonestly in certain types of cartel agreements. This is to be amended in 2013 and the dishonesty test will be removed making convictions easier.

6.4 A merger may be investigated by the OFT if:

- (a) the transaction creates or enhances a 25% share of supply or purchases in the UK; or
- (b) the business being acquired has a turnover in excess of £70 million in the previous year.

6.5 Various treaties have been entered into to create a single market with free movement of goods and services throughout the EU. The treaties prohibit agreements between businesses, decisions by associations of businesses or concerted practices which may affect trade between EU member states and which have as their object or effect the prevention, restriction or distortion of competition within the EU. There are exemptions if certain criteria are satisfied.

The abuse by one or more businesses of a dominant market position within the EU (or a substantial part of it) in a way which may affect trade between EU member states is also prohibited.

The consequences of infringing the EU competition rules can be significant and the rules are enforced by the European Commission. Enforcement actions include on the spot investigations, interim measures, substantial fines and orders to cease activities.

7. Intellectual Property (“IP”)

The following are some of the IP rights which are capable of protection in the UK:

IP Right	Nature of Right	Registered or Unregistered	Length of Protection	Enforcement and Remedies
Patent	Patents must: <ul style="list-style-type: none"> • be new; 	UK patents are registered rights.	Generally, patents last for 20 years, subject to payment of renewal fees.	UK patents are generally enforced through the UK courts. The

	<ul style="list-style-type: none"> • involve an inventive step; • be capable of industrial application; and • not be specifically excluded from protection as patent. <p>Patents provide inventors with a monopoly right over their inventions and protect new and inventive technical features of products and processes.</p>	<p>Applications for UK patents are filed at the UK Intellectual Property Office, (the “IPO”).</p> <p>International protection can also be applied for by filing applications under the Patent Cooperation Treaty, (the “PCT”) at the UK IPO, or by filing applications under the European Patent Convention, (the “EPC”) at the European Patent Office, (the “EPO”).</p>		<p>principal remedies for patent infringement include:</p> <ul style="list-style-type: none"> • permanent or interim injunctions; • delivery up; • damages; and/or • an account of profits
Registered Trade Marks	<p>Trade marks are signs or symbols used by traders to distinguish products/services from those of other traders.</p> <p>There are two relevant types of registered trade marks: UK trade marks and Community Trade Marks.</p> <p>Registered trade marks must be:</p> <ul style="list-style-type: none"> • capable of graphical representation; • distinctive; • capable of distinguishing the 	<p>Trade mark owners can apply for UK trade marks or Community Trade Marks.</p> <p>Applications for UK trade marks are filed at the UK IPO.</p> <p>Applications for Community Trade Marks are filed at the Office for Harmonisation in the Internal Market, (“OHIM”).</p>	Both UK trade marks and Community Trade Marks last for 10 years, but are renewable for further 10 year periods, potentially indefinitely.	UK trade marks and Community Trade Marks can be enforced in the UK courts. Civil remedies and certain criminal sanctions are available.



	<p>goods or services of the trade mark owner; and</p> <ul style="list-style-type: none">• not excluded by statute. <p>Registered trade mark owners have the exclusive right to use UK registered trade marks in the UK and Community Trade Mark Registrations throughout the EU. Registered trade mark owners may prevent others from using the course of trade a sign which is:</p> <ul style="list-style-type: none">• is identical to the registered mark and used for identical goods/services;• is the same or similar to the registered mark and used for the same/similar goods/services where use has caused/is likely to cause confusion; and• where the registered mark has a reputation in the UK, is identical/similar to the registered mark and such use takes unfair advantage of/is detrimental to the distinctive character and repute of the registered mark.			
--	---	--	--	--

<p>Unregistered Trade Marks</p>	<p>Unregistered trade mark rights arise where a party has acquired goodwill in the UK in goods or services which are supplied under an unregistered trade mark.</p>	<p>Unregistered.</p>	<p>Unregistered trade mark rights can last indefinitely and last as long as the relevant goodwill does.</p>	<p>The goodwill in an unregistered trade mark can be protected in a passing off action. To bring a passing off action, the unregistered trade mark owner would have to prove reputation in the mark, a misrepresentation that could mislead the public and proof that damage has been suffered.</p>
<p>Registered Design Rights</p>	<p>Design rights protect the appearance of the whole or part of a product.</p> <p>There are two relevant types of registered design rights: UK registered design rights and Community Registered Designs.</p> <p>Registered design rights give the rights holder a legal monopoly.</p> <p>Registered designs must:</p> <ul style="list-style-type: none"> • be new; • be of individual character; and 	<p>Design owners can apply for UK registered designs, (which are applicable only in the UK). Applications can be filed at the UK IPO.</p> <p>Design owners can apply for Community Registered Designs (which are applicable throughout the European Union). Applications can be filed at OHIM.</p>	<p>Registered design rights last for a maximum of 25 years, subject to renewal of registrations every 5 years.</p>	<p>UK registered designs and Community Registered Designs can be enforced in the UK courts. Various civil remedies and criminal sanctions are set out in the Registered Designs Act 1949 (as amended) and the Community Designs Regulations 2005.</p>

	<ul style="list-style-type: none"> not be excluded by statute. <p>Holders of UK registered design rights have the exclusive right in the UK to use the design and any design which does not produce on the informed user a different overall impression and can make, offer, put on the market, import or export, use or stock any product in which the design has been applied/incorporated.</p> <p>Community Design Right holders have similar rights.</p>			
<p>Unregistered Design Rights</p>	<p>Design rights protect the appearance of the whole or part of a product.</p> <p>Unregistered design rights give the right holder a right against copying.</p> <p>There are two main types of unregistered designs: UK unregistered designs and Community Unregistered Design Right.</p> <p>Community Unregistered</p>	<p>Unregistered.</p>	<p>UK unregistered design rights last for:</p> <ul style="list-style-type: none"> 15 years from the end of the calendar year when first recorded in a design document or, if earlier, when an article was first made from the design; or 10 years from the end of the calendar year 	<p>UK unregistered design rights and Community Unregistered Design Rights can be enforced through the UK courts. Various civil remedies and criminal sanctions are set out in the Copyright, Designs and Patents Act 1988 and the Community Design Regulations 2005.</p>

	<p>Design Right protects the appearance of the whole/part of a product resulting from various physical features of the product or its ornamentation, including both 2D and 3D features.</p> <p>UK unregistered designs protect the design of any aspect of shape/configuration of the whole or part of an article and only protects 3D features.</p> <p>For UK unregistered design protection the design must be:</p> <ul style="list-style-type: none"> • original and not commonplace; • recorded in a design document or be the subject of an article made to the design; and • created by a qualifying person. <p>Legal requirements for a Community Unregistered Design Right are similar to those for UK registered designs.</p> <p>Holders of UK unregistered</p>		<p>when the article was made available for sale or hire.</p> <p>Community Unregistered Design Right lasts for 3 years from the date on which the design was first made available to the public.</p>	
--	---	--	---	--

	<p>design rights have an exclusive right to reproduce the design for commercial purposes by making articles to that design or by making design documents recording the design for the purpose of enabling articles to be made and can also prevent others from infringing their rights by copying the design or the design document.</p>			
<p>Copyright</p>	<p>Copyright protects original artistic, musical, dramatic and literary works, sound recordings, films, broadcasts and the typographical arrangements of published editions.</p> <p>Copyright arises in databases however, there is also a separate database right.</p> <p>There are also certain moral rights which arise in relation to the authors of copyright works.</p> <p>Owners of copyright works have the right to prevent others from performing certain acts in respect of such works including:</p>	<p>Copyright is an unregistered. It arises automatically when the copyright work is created.</p>	<p>The length of protection for a copyright work depends on the work in question. For example, copyright lasts for the life of the author of the copyright work plus 70 years in respect of literary, musical, artistic and dramatic works whereas sound recordings and broadcasts are protected for 50 years from the date of publication/broadcast.</p>	<p>Various civil remedies and criminal sanctions are included in the Copyright, Designs and Patents Act 1988.</p>

	<ul style="list-style-type: none"> • copying the work; • issuing, renting or lending works to the public; • performing, showing or playing the work in public; • communicating the work to the public; • making adaptations of the work; or • doing any of the above in relation to an adaptation. 			
Rights in Confidential Information	<p>It can be possible to protect rights in confidential information, (these are not strictly IP rights).</p> <p>The information must satisfy the following criteria:</p> <ul style="list-style-type: none"> • it must be confidential in nature; • it must have been imparted in circumstances giving rise to an obligation of confidence; and • its unauthorised use would be of detriment to the person imparting it. 	Unregistered.	Rights in confidential information last for as long as the confidential information remains confidential.	<p>If a party to whom confidential information has been made available pursuant to a contract discloses the relevant confidential information in breach of contract, then the other party to the contract will potentially have a cause of action against that party for breach of contract.</p> <p>If confidential information is made available to a party other than pursuant to a contract and that party makes an unauthorised disclosure of such</p>

				information, the owner of such confidential information may be able to bring an action against that party for breach of confidence.
--	--	--	--	---

8. Marketing Agreements

- 8.1 The Commercial Agents Regulations 1993 protect an agent who is paid to negotiate the sale or purchase of goods.
- 8.2 There are no specific laws on distribution or franchises in the UK.

9. E-Commerce

- 9.1 The Consumer Protection Regulations 2000 obliges suppliers to provide a cooling off period to cancel contracts and to provide certain information.
- 9.2 Electronic signatures are permitted through the Electronic Communications Act 2000.
- 9.3 The use of cookies on websites is governed by the Privacy and Electronic Communications Regulations 2011.

10. Data Protection

The Data Protection Act 1998 regulates the processing of personal data. Fines of up to £500,000 can be imposed by the Information Commissioner for breaches of the Data Protection Act 1998.

11. Product Liability

Product liability and safety are regulated through various statutes, including the General Product Safety Regulations 2005, and the Sale and Supply of Goods Act 1994 and the Sale of Goods Act 1974.

Common law and contracts also play a part in product liability regulation

12. Our Office

Our firm can give legal advice to foreign clients seeking start a business in the UK. For advice on business in the UK please contact Gary Jones (gary.jones@weightmans.com).

Weightmans LLP

Second Floor

6 New Street Square

New Fetter Lane

London

EC4A 3BF

Tel: 0207 822 1900

Fax: 0207 822 1901

100 Old Hall Street

Liverpool

L3 3QJ

Tel: 0845 073 9900

Fax: 0845 073 9950

Email: gary.jones@weightmans.com, william.sharpe@weightmans.com

Website: www.weightmans.com

This note does not attempt to provide a full analysis of those matters with which it deals and is provided for general information purposes only and is not intended to constitute legal advice and should not be treated as a substitute for legal advice. Weightmans LLP accepts no responsibility for any loss that may arise from reliance on the information in this update. The copyright in this update is owned by Weightmans LLP.

May 2013