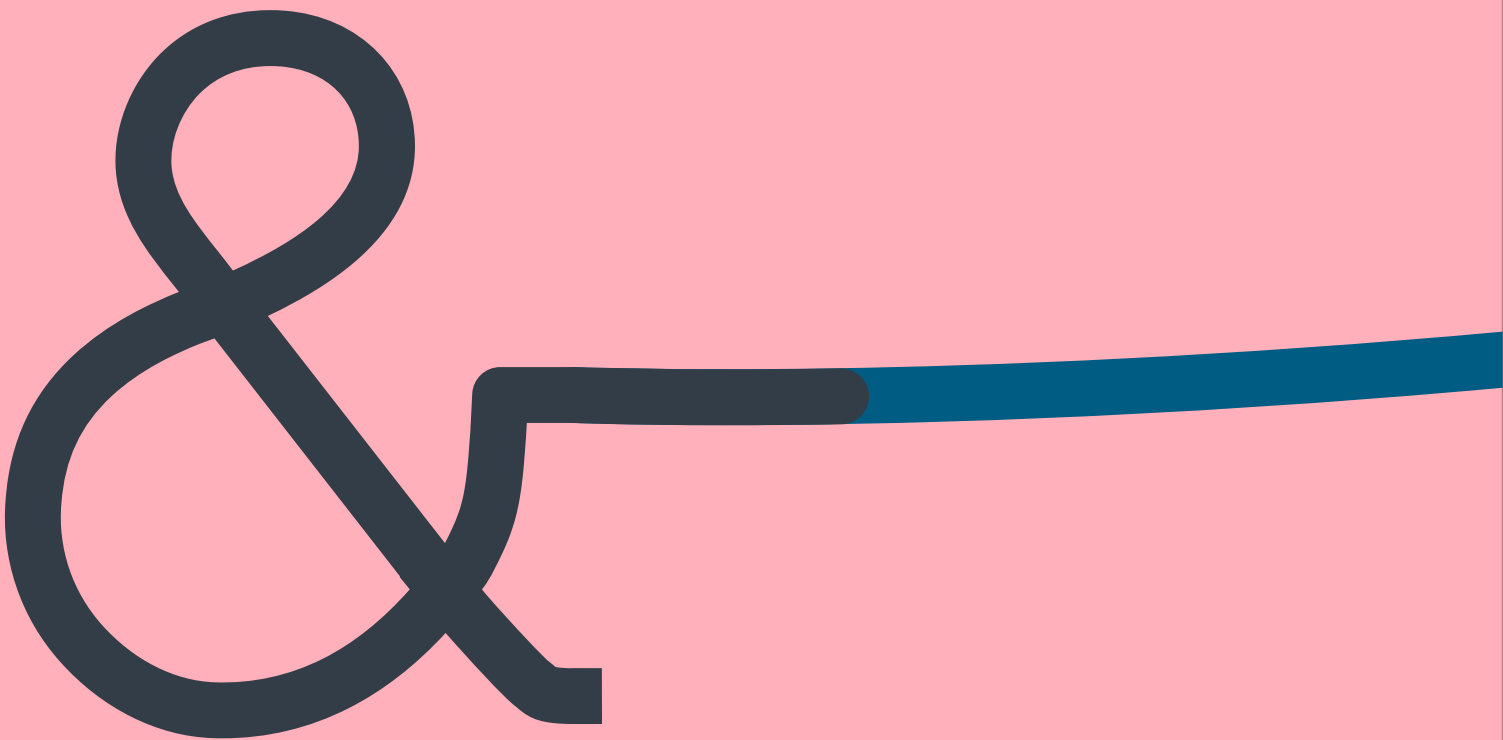


Bird & Bird

# Setting up a business in the UK

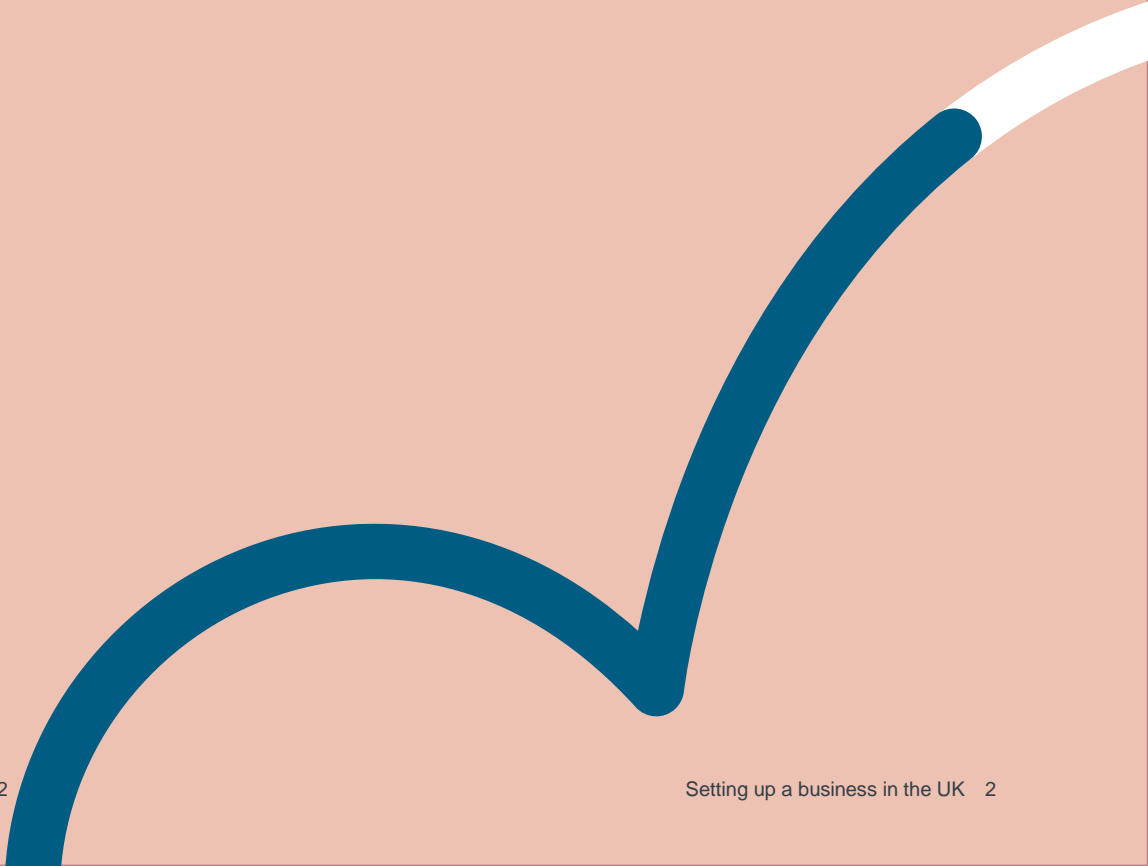
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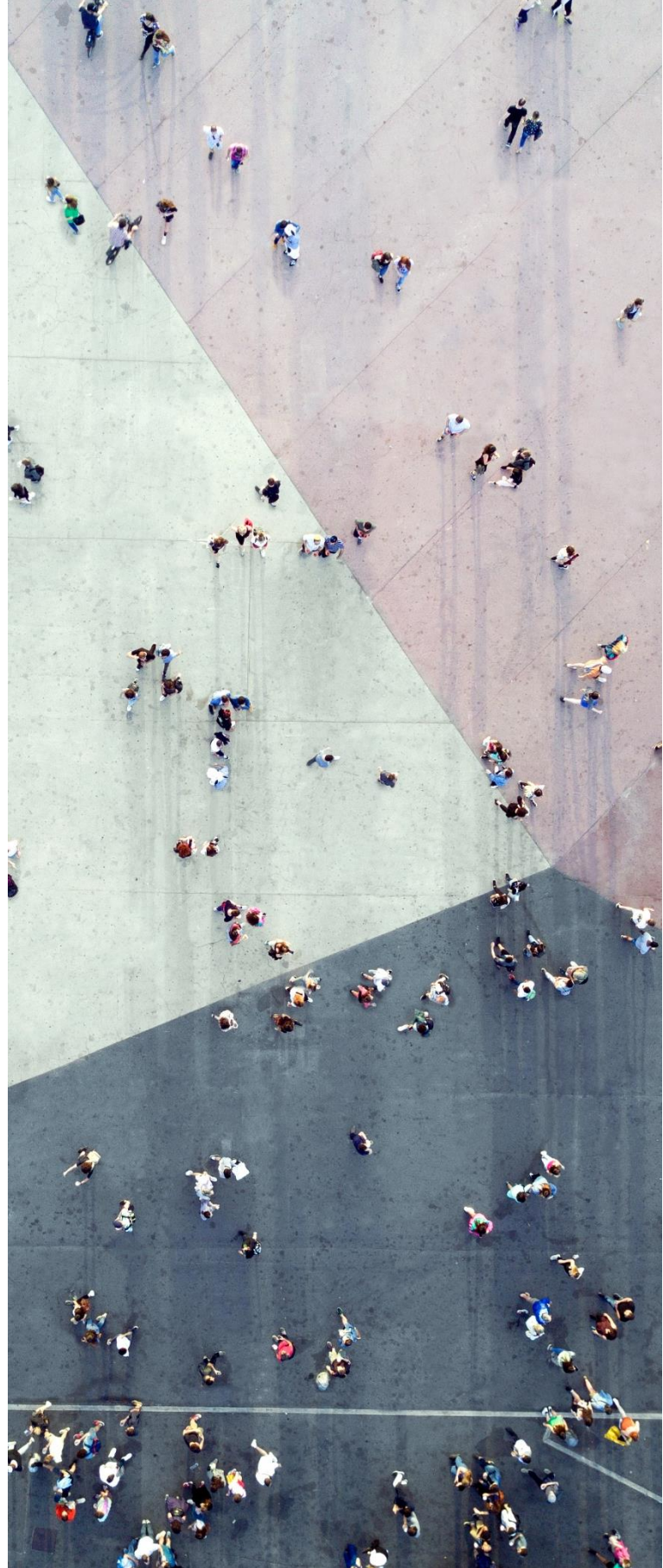
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*Chambers Global, 2022, UK*



# Setting up a business in the UK

The UK is a welcoming environment to foreign investors. The UK's relatively low corporate tax rates and flexible employment law makes it a highly competitive market for business.





Excellent attention to detail, project management and relationship management, in addition to great depth of experience and expertise

*Legal 500 UK, 2022*

## Choice of legal entity

An overseas company can carry on business in the UK either by incorporating a UK registered subsidiary company or by registering a UK establishment (e.g., a branch), which is considered an extension of the overseas company.

Subsidiary	Branch
Limited liability at subsidiary level.	Parent company retains direct liability.
Separate legal entity to contract.	Parent accounts show UK revenue.
Same day incorporation.	Slower registration process but can operate for a month before registering.
Approximate cost to incorporate £1,500.	Approximate cost to register a branch (establishment) of an overseas company is £3,000. (Note 1)
Directors do not need to be UK nationals.	No need for UK directors.
Meetings do not need to be held in the UK (Note 2)	No need for meetings.
UK company accounts to be prepared and may need to be audited.	Parent company accounts may need to be filed.
Higher annual filing and accounting costs.	Lower operational costs.
Corporation tax on worldwide profits and gains (at 19%). (Note 3)	Corporation tax on UK branch's profits and gains (at 19%). (Note 3)
Intra-group transactions generally require arm's length terms.	An arm's length profit allocation is required.
Supplies from a UK subsidiary to an EU parent will be subject to VAT in that Member State. No UK VAT on supplies to non-EU parent.	Supplies between the UK branch and the "parent" should not be subject to UK VAT. (Note 4)

*(Note 1) Documents in languages other than English will need to be translated into English which is a service we do not provide.*

*(Note 2) If meetings are held outside the UK, there is a risk that the company may be treated by the tax authorities in that place as resident for tax purposes.*

*(Note 3) The corporation tax rate will be increased to 25% with effect from 1 April 2023. However, the 19% rate will continue to apply to companies with profits of not more than £50,000, with marginal relief for profits up to £250,000.*

*(Note 4) Subject to certain exceptions and anti-avoidance rules.*

# Setting up a business in the UK

## *Method of doing business*

As well as the form of entity, the method of doing business in the UK will be a critical consideration. Tax will be relevant in this respect, in particular:

- 1 The way a UK entity acts for its foreign parent can have a significant impact on the tax analysis, for example:
  - an agency arrangement may give rise to a permanent establishment (PE) of the parent in the UK for tax purposes.
  - where a PE is deliberately avoided, the UK may tax a deemed PE under the “diverted profits tax” at a rate of 25%.
  - the more functions, risk, and assets in the UK, the higher the amounts the tax authorities will expect to see as a residual profit in the UK under transfer pricing rules; and
  - transfer pricing rules can in the long term effectively determine who is deemed to be the owner of assets, in particular intangible assets, based upon where key functions are performed.
- 2 Businesses which do not fully recover VAT may consider setting up their activities in the UK as a branch in order to avoid irrecoverable VAT on intra-group charges.
- 3 Our tax and transfer pricing specialists, in cooperation with transfer pricing specialists from our co-operation firm, Questro International, can provide you with complete advice in analysing and helping design your business and transfer pricing model.

## *Employment and immigration*

UK employees have minimum statutory rights, including notice periods and hourly rates of pay. Employees with over 2 years’ “continuous employment” have statutory protection against being unfairly dismissed and all employees are protected against unlawful discrimination on the grounds of their age, race, sex, disability, religion, belief, sexual orientation, marriage and civil partnership, pregnancy and maternity or gender re-assignment. Awards for unfair dismissal are subject to a statutory cap but awards in respect of prohibited forms of discrimination are uncapped

and can also include a sum in respect of injury of feelings.

Non-compete undertakings and other restrictions such as non-solicitation of customers and non-poaching of employees can be enforced in the UK after an employee has left provided that such restrictions are reasonable in scope and duration and protect clearly identified, legitimate business interests.

Non-UK nationals coming to the UK will generally require a working visa issued under the UK’s Points-Based Immigration System. They will also require a UK sponsor which will usually be their employer.

The employer must deduct payroll tax and employee national insurance. Different rates apply depending on employees’ earnings. Employer national insurance must also be paid on top of earnings (including on bonuses and, generally at a rate of 15.05%). Many employers elect to use payroll companies when they start up in the UK.

UK medium and large businesses are responsible for assessing the employment status of “off-payroll” contractors they engage.

Where it is determined that, but for an intermediary (such as a personal service company) the individual would be an employee, the employer will need to deduct payroll tax and national insurance (both employee and employer) on any fees it pays to the intermediary.



# Setting up a business in the UK

## *Commercial Contracts*

The UK has a common law system similar to the US. There is considerable freedom in the UK for all types of collaboration, licensing, and distribution agreements.

UK legislation applies and regulates consumer protection, sales agents, distance selling, government procurement, direct marketing, and the privacy of personal data.

UK law restricts certain consumer contract terms, including limits on liability. UK competition law prohibits anti-competitive behaviour (e.g., price fixing).

Overseas companies should be aware of any industry specific laws that apply to their businesses, e.g., the Financial Services and Markets Act (financial products).

## *Real Estate*

Most companies setting up in the UK will rent serviced offices or lease their premises rather than buy them.

Serviced offices offer a more flexible arrangement and are managed by an external company. They are already fitted-out, operational on day one and can be rented for very short periods as may be required as the business grows. There is no capital outlay, and they offer the benefit of a fixed cost on outgoings.

Leases are usually for 5-10 years, often with break clauses and upwards-only rent reviews to market rent every 5 years. Leased premises usually require fitting-out by the tenant at its own cost, although typically the landlord will contribute by allowing a negotiated rent-free period.

The tenant will be responsible for reinstating the premises at the end of the lease.

If the entity taking the lease is a company with little or no trading history, the landlord will usually require collateral security, including a cash deposit of 6-12 months' rent and/or a bank or parent company guarantee.

Stamp Duty Land Tax is paid if you buy or lease a property or land over a certain price or value in England and Northern Ireland. The tax is slightly different if the property or land which is being acquired is located in Scotland or Wales.

## *Data Protection/Privacy*

UK organisations processing personal data (which includes employee data and business contact data) will need to comply with the UK GDPR and the Data Protection Act 2018. The EU GDPR will continue to apply to UK organisations which trade in the EU to the extent that any of their processing activities are caught by the extra territorial provisions.

Organisations no longer have to register their processing with the Information Commissioner's Office (the "ICO") but do need to check whether they are required to pay the 'data protection fee' (i.e., how the ICO funds itself); the amount of which depends on the number of staff which the organisation employs, and the organisation's annual turnover for the preceding financial year.

Organisations must also ensure their use of personal data complies with data protection principles. The UK GDPR includes an accountability principle which requires organisations to demonstrate their compliance with their data protection obligations. This principle predominantly manifests itself in prescribed 'accountability documentation', which includes drafting / implementing records of processing activities ("RPAs"), data protection policies, staff training, data protection impact assessments ("DPIAs") and supplier management tools (i.e., pre-engagement due diligence, prescribed processor terms and post-engagement auditing).

Organisations must also determine whether they are required to appoint a data protection officer ("DPO").

The EU GDPR currently restricts transfers outside of the EEA unless such transfers are to a country which is deemed to offer adequate protection for the data or prescribed compliance measures (such as EU standard contractual clauses) are put in place. The EU Commission granted an adequacy

decision in respect of the UK in June 2021 (which is due to last for 4 years).

The UK GDPR and the Data Protection Act 2018 also restrict the transfer of data out of the UK unless to a country covered by UK adequacy regulations or other prescribed safeguards (such as the UK's International Data Transfer Addendum to the European Commission's standard contractual clauses or the UK's International Data Transfer Agreement) are put in place. The EEA is currently considered to offer adequate protection for data flows from the UK and organisations can also continue to rely on the other existing adequacy decisions adopted by the EU Commission which were valid as of 31 December 2020. These arrangements are intended to be temporary measures and in time, the UK is expected to conduct its own adequacy assessments. Countries which are thought to be priority countries on this list include: Australia, Brazil, Colombia, Dubai International Financial Centre, India, Indonesia, Kenya, Republic of Korea, Singapore, and the US.

UK organisations which are not established in the EEA, but which monitor the behaviour of individuals in the EEA, or which offer goods and services to individuals in the EEA, will need to appoint an EU representative under Article 27 EU GDPR. Likewise, organisations which are not established in the UK, but which monitor the behaviour of individuals in the UK, or which offer goods and services to individuals in the UK, will need to appoint a UK representative under the UK GDPR. Bird & Bird Privacy Solutions can offer these representative services.

## *Franchising*

Franchising is an attractive alternative to corporate growth, offering a potentially more efficient and cost-effective means of expansion into the UK market. Franchising involves the grant of a licence by the franchisor to a franchisee, enabling the franchisee to run its own business using the franchisor's brand, know-how and business format in exchange for royalties.

The principal benefit of the franchise model is that franchisees use their own capital to establish their franchise business, and thereafter to operate it on a day-to-day basis. Reduced capital requirements mean that a franchisor can typically grow its brand and footprint faster than if it were to adopt a corporate expansion strategy.

Franchisees have a financial incentive to achieve high performance, as their remuneration will be linked to the success of their franchise. This

“ownership incentive” propels the growth and profitability of the brand's network.

## *Intellectual Property*

Business names need more than the protection afforded by registering at UK Companies House. Company and brand names should be registered as trademarks. This can be done just for the UK, or a single ‘international’ application route can also be used to obtain trademark protection in multiple jurisdictions worldwide, with the cost of the application calculated based on the specific jurisdictions selected and the scope of goods and services included in the application.

Designs and artistic creations can be protected through design registration in the UK and an ‘international’ filing route is also available. Copyright works obtain automatic protection upon creation, but commercial contracts should be drafted to ensure they allow the business to obtain the benefit of copyright works created for them by others.

Patents covering the UK can be issued by the UK Intellectual Property Office and the European Patent Office. Protection can also be sought by applying for an international patent under the Patent Co-operation Treaty.





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*Chambers Global, 2022*

# Setting up a business in the UK

## *Business Model Design*

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer this question and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

## *Brexit*

The UK left the European Union in 2020. A key consideration in deciding to set up a UK entity when compared to doing business in another jurisdiction may be the impact of Brexit on the ability to do business across borders. This will be the case particularly where goods are being sold or services are being supplied cross border to and from European Union member states or where the business is in a sector regulated by European legislation. We can provide further impartial advice in respect of the impact of Brexit on establishing in the UK against establishing in other European jurisdictions.

## *Contact us*

If you would like further information on setting up business in the UK, please e-mail our Set up Desk at [new.company@twobirds.com](mailto:new.company@twobirds.com) and we will contact you as soon as possible.

This summary gives general information only as of May 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



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