



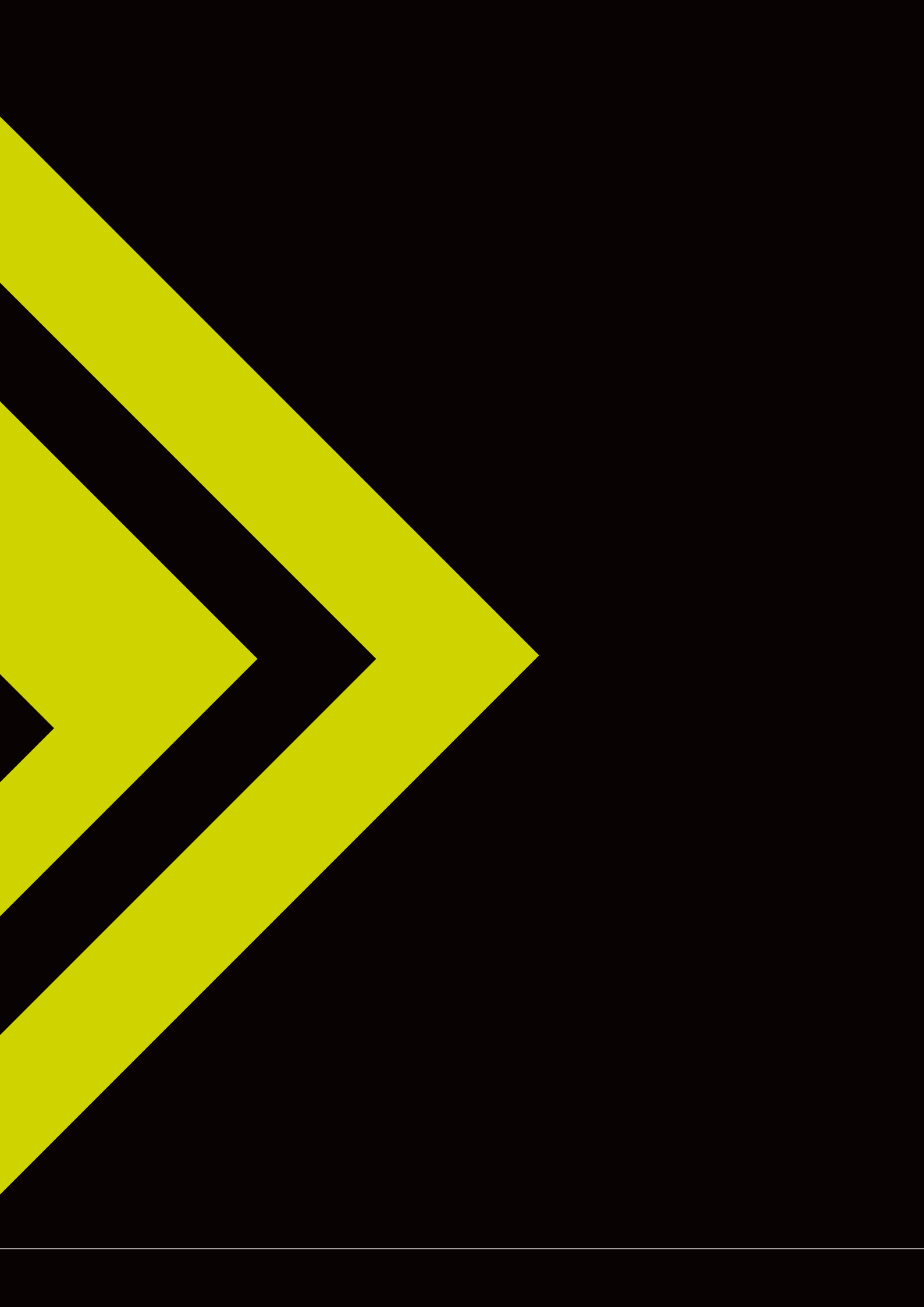
**PENNINGTONS  
MANCHES  
COOPER**

# **DOING BUSINESS IN THE UK**



**A GUIDE TO THE LEGAL  
AND COMMERCIAL CONSIDERATIONS  
FOR INDIAN COMPANIES**

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# DOING BUSINESS IN THE UK

**The UK has a long history of international trade and, for many Indian companies with international aspirations, remains the first stop on their journey of global expansion. With the advantages of its trade links, world-class universities and strengths in key sectors such as life sciences and technology, the UK continues to attract investment from all over the world. Its time zone, close proximity to Europe and the fact that English is still the common language of international trade are key factors in the UK's continuing success in attracting and retaining international investment and talent.**

The UK is going through a period of important constitutional change at present as it prepares to withdraw from the European Union. Although the shape of the UK's exit is yet to be defined, the UK scores highly in terms of ease of doing business with a flexible and open business environment, good public services and infrastructure, and a very well established and robust common law legal framework. It is highly unlikely that the UK's withdrawal from the EU will change this and the Government has made it very clear that the UK will remain very much 'open for business'.

According to the latest figures from the UK's Department for International Trade (DIT), there has been a steady rise in the level of inward investment over the past few years. By geography, while the US remains the largest source of investment, there are also significant levels of investment from Asia and Europe.


This guide provides a general overview of the eight areas of most relevance for Indian companies looking to establish a presence in the UK.

- Setting up a corporate structure
- UK tax regime
- Intellectual property rights in the UK
- Data protection
- Visas and immigration
- UK employment law
- Trading and regulation in the UK
- Property: setting up an office

*The information contained in this guide is general in nature and is not intended to constitute legal advice. It has been prepared to reflect the law as at 1 August 2018.*

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**A COMPANY GIVES LIMITED LIABILITY, WHICH SERVES TO PROTECT BOTH DIRECTORS AND SHAREHOLDERS.**

# SETTING UP A CORPORATE STRUCTURE

There are a number of different types of entities that can be set up in the UK, depending on the overseas company's goals. The three most common are a limited company/subsidiary, a branch, and a limited liability partnership (LLP).

## LIMITED COMPANY/SUBSIDIARY

- A limited company is a separate entity with its own independent legal identity. The company will be owned by its shareholder(s), have a board of director(s) and many international companies use this route to create a UK subsidiary. A company gives limited liability, which serves to protect both directors and shareholders. A limited company will be liable for UK corporation tax on its profits.
- There are two principal types of limited liability companies: public and private. Given the lighter regulatory regime that applies to private limited companies, most wholly-owned subsidiaries are incorporated in this way, unless there are special circumstances. An example would be if the subsidiary is a financing subsidiary and intends to issue bonds.
- There are a number of filing obligations on limited companies, which are maintained on public record at the UK's registrar of companies (Companies House). These include annual accounts, confirmation statements and maintaining up-to-date records for persons with significant control over the company.
- Formation of a company can be done quickly and typically takes one to two days.

## UK ESTABLISHMENT (BRANCH)

- If an overseas company is carrying on business in the UK from the establishment of a fixed or permanent base (which constitutes a taxable presence or 'permanent establishment') but does not wish to set up a separate legal entity, it will be required to register the UK establishment (branch) at Companies House.
  - In legal terms, a UK branch is considered the same entity as the parent company. There is therefore no independent legal personality and, as such, all profits and losses of the UK branch are incorporated with those of the overseas parent. All debts and liabilities of the UK establishment will also be attributed to the parent company.
  - A UK establishment will need to file annual accounts that will be publicly available.

- Establishing as a branch does include certain benefits. For example, the overseas entity may be able to directly offset costs or losses in its own jurisdiction. It can also be beneficial for certain visa options.
- A UK branch is generally more complicated to establish than a limited liability subsidiary.

## LIMITED LIABILITY PARTNERSHIP (LLP)

- An LLP is an incorporated partnership governed by the Limited Liability Partnership Act 2000. It also has a separate legal identity, like a limited company. Each partner's liability is, in general, limited to his or her agreed contribution to the partnership.
- Benefits include straightforward incorporation procedures, access to Tier 1 entrepreneur visas and Tier 2 sponsorship visas. LLPs can be efficient structures for repatriation of profits.
- An LLP is not as well recognised as a limited company and it requires at least two people to set one up. Furthermore, each member (partner) must file UK tax returns on the profits which the LLP derives from UK activities, which may become burdensome.

### LLPs can be effective structures for repatriation of profits.

- Other more informal forms of trading entity include sole trader or partnership.



# UK TAX REGIME

Regardless of the corporate structure chosen, the company, branch or LLP must register with Her Majesty's Revenue & Customs (HMRC) to pay all of the business's tax liabilities.

Below is a brief overview of the main taxes and incentives relevant to businesses establishing a presence in the UK.

## CORPORATE TAX

- UK resident companies are generally liable to corporation tax at 19% on their worldwide income and gains. Non-UK resident companies are liable to the same tax on profits or gains made in the course of carrying on a trade in the UK through a 'permanent establishment'. The rate of corporation tax is scheduled to reduce to 17% from 1 April 2020.

### UK resident companies are generally liable to corporation tax at 19% ...

- Both UK resident and non-resident companies are generally liable to tax at 28% on profits made on the sale of UK residential property (though there are several exemptions to this charge). Where an exemption applies, the profits are instead liable to tax at the corporation tax rate.
- From April 2019, non-UK resident companies will be liable to tax at the corporation tax rate on profits made on the sale of UK commercial property. Also, from that date, non-residents who make a profit on the sale of a substantial interest in a company (or other entity) which owns UK residential or commercial property will be liable to UK tax.

## VALUE ADDED TAX (VAT)


- VAT is a form of consumption or indirect tax (akin to GST in India). It is charged on the supply of most goods sold and services provided in the UK.
- A UK-based company, or branch of a non-UK resident company, must register with HMRC for VAT where the turnover exceeds £85,000 per annum, unless an exemption applies. The business will then generally need to charge VAT to customers, although supplies to non-UK customers may not be subject to VAT. A VAT-registered UK business must submit VAT returns to HMRC on a periodic basis, generally every quarter.
- There are three rates of VAT: a standard rate of 20% for most goods and services; a reduced rate of 5% for domestic fuel and power, children's car seats and certain UK property-related supplies; and a zero rate (0%).
- Zero rated goods and services (such as children's clothes and shoes and certain UK property-related supplies) are still subject to VAT, but the rate that a business must charge customers is 0%. This means that the company must still record these items on its VAT accounts and report them on the periodic returns.

## INCOME TAX (PAYE)

- Income tax is deducted from an employee's salary on a monthly basis through a system known as 'Pay as you Earn' (PAYE). An employer must automatically pay these taxes to HMRC.
- Most employees in the UK are eligible for a personal allowance of tax-free income. There are varying levels of income tax rates in the UK, with the highest (Additional rate) band attracting tax at 45%. For more information visit <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2018-to-2019>.


## NATIONAL INSURANCE

- National Insurance is the UK's version of social security. Employees and employers make contributions to qualify for certain benefits and a state pension. Both employers and employees must make a contribution to the National Insurance scheme. This is a percentage of the gross salary or wages paid to the employee.
- It is the employer's responsibility to calculate the amount due for each employee and to pay it to HMRC on a monthly basis, together with the PAYE income tax.
- The current rates for National Insurance contributions are up to 14% for employees and 13.8% for employers. For more information visit <https://www.gov.uk/national-insurance-rates-letters>.

 The UK has a number of appealing tax incentives ...

## TAX INCENTIVES

- The UK has a number of appealing tax incentives, which can be offset from a business's corporation tax liabilities. These include Research & Development expenditure credit (RDEC) and the Patent Box.

 **THE R&D CREDITS ARE MOST ATTRACTIVE FOR SMALL AND MEDIUM-SIZED COMPANIES.**

## RESEARCH & DEVELOPMENT EXPENDITURE

- Research and development (R&D) relief is available for companies that work on innovative projects in the science and technology fields. A company can claim R&D relief on work which matches the requirements set out by HMRC. These include: if the work is part of a specific project to make an advance in science or technology or if the project relates to the company's existing trade, or a trade that it intends to start up based on the results of any research and development.
- HMRC mandates that, in order to be eligible for R&D relief, a business must be able to explain how the particular project looked for an advance in science and technology; had experienced and tried to overcome uncertainty; and could not easily be worked out by a professional in the field.
- The R&D credits are most attractive for small and medium-sized companies, as the R&D tax credit is claimed as a deduction from the business's taxable income at a rate of 230% of the qualifying R&D expenditure. Where the company has a tax loss, it can claim a tax credit of up to 14.5% of the loss. Large companies can claim a tax credit for 12% of their qualifying R&D expenditure.

## UK PATENT BOX

- The Patent Box is a government scheme set up to enable companies to apply a lower rate of corporation tax (10%) to profits earned from patented inventions and certain other innovations. The lower corporation tax rate applies to patents commercialised after 29 November 2010 and on income generated from the patents from 2013 onwards. The scheme is very attractive to businesses in a range of sectors including life sciences, manufacturing and electronics.





...A REGISTERED  
TRADE MARK MAY  
BE OBTAINED RELATIVELY  
INEXPENSIVELY FOR AN  
INITIAL TERM OF 10 YEARS...






# INTELLECTUAL PROPERTY RIGHTS IN THE UK

The UK consistently ranks highly in global intellectual property indices for offering businesses a well-developed regime for the protection and monetisation of intellectual property rights (IPR). Many aspects of the UK IPR regime will be familiar to businesses operating internationally, particularly for those that are co-signatories to the relevant international conventions on IPR.

## TRADE MARKS AND PASSING OFF

- Trade mark registration offers monopoly protection for brand names, logos and other signs indicating trade origin. Provided that the mark sought is not identical or confusingly similar to an existing mark, then a registered trade mark may be obtained relatively inexpensively for an initial term of 10 years and the trade mark may subsequently be renewed indefinitely for further terms of 10 years each.
- In addition to UK registered trade marks granted by the UK Intellectual Property Office (UKIPO), it is possible to obtain EU-wide trade mark protection through a single EU Trade Mark granted by the European Union Intellectual Property Office (EUIPO). The validity of a European Union Trade Mark will continue in the remaining 27 member states following the UK's departure from the EU.
- The law of passing off prevents others from benefitting from an established trader's goodwill and causing damage by misrepresenting their goods/services as those of the established trader.

 **The law of passing off prevents others from benefitting from an established trader's goodwill.**

- Key brands and logos should be protected as registered trade marks since these can be enforced without needing to prove goodwill and misrepresentation, as is necessary in relation to the law of passing off.

## COPYRIGHT

- Copyright protects an author's original intellectual creation from being copied by others. Literary works, graphical designs, photographs, artistic and musical works, films and computer programs are all within the scope of copyright protection.
- The term of copyright protection is generally 70 years from the end of the last year of the author's life. Certain sorts of copyright may have more limited durations: for instance, copyright in computer-generated works is limited to 50 years.

## PATENTS

- Patents protect new inventions that are capable of industrial application. Patents give a monopoly right to work the invention, ie to use a patented process or to make a patented product, and are generally available for a period of up to 20 years from the original filing date. Patent rights must currently be secured in individual territories, although progress towards a European unitary patent is ongoing notwithstanding the UK's departure from the EU.
- Where a patent has originally been filed in a country that is part of the Patent Cooperation Treaty, as India is, provided that the application is made within 12 months of the date of the domestic filing, then it is possible to apply in the UK (and elsewhere) for a patent for the same invention. The filing date of the Indian patent will be treated as the 'priority date' for the UK application. If the application is not made within 12 months, then patent protection will become unavailable for lack of novelty.

## DESIGN RIGHTS

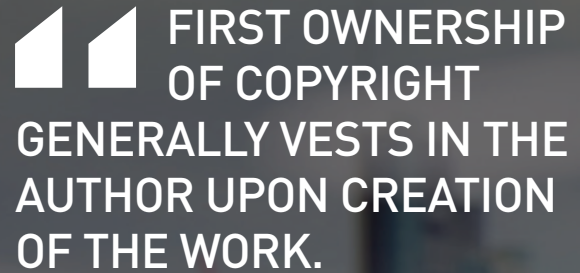
- Four design right regimes currently apply in the UK to protect product designs that are new, have individual character, and are not commonplace. These are UK unregistered design rights, UK Registered Designs, EU unregistered design rights, and Registered Community Designs. The latter rights are valid throughout the EU and will remain valid in the remaining 27 member states notwithstanding the UK's departure from the EU.
- Registration means that others are prohibited from making products to the registered designs. Unregistered design right protection is available without formality but offers lesser protection, prohibiting actual copying of the designs. All four regimes protect the overall impression created by the product – the product's 'look and feel'. The period of protection will vary depending on the category of design right.

## DATABASE RIGHTS

- Database rights protect certain qualifying databases, subject to a number of conditions as to the extent and nature of investment into the creation of those databases. It is, in practice, a fairly narrow right. It protects against extraction or re-utilisation of the protected database or a substantial part of it. This right can be useful in certain circumstances but generally does not apply in cases in which the investment of time and resources was directed into the creation and verification of the data itself rather than the database.
- Protection lasts for a period of 15 years from the end of the year in which the arrangement of the database was completed.

## CONFIDENTIAL INFORMATION AND TRADE SECRETS

- Trade secrets and other confidential information are protected without further formality by an enforceable equitable duty of confidence but are more commonly protected on a contractual basis through non-disclosure agreements (NDAs). The European Trade Secrets Directive is scheduled for implementation in June 2018.



**FIRST OWNERSHIP  
OF COPYRIGHT  
GENERALLY VESTS IN THE  
AUTHOR UPON CREATION  
OF THE WORK.**









**...COMPANIES WILL  
NOW NEED TO  
ENSURE THAT CONSENT  
IS CLEAR, PROVIDED IN AN  
INTELLIGIBLE AND EASILY  
ACCESSIBLE FORM, USING  
PLAIN LANGUAGE...**





# DATA PROTECTION

In the UK, the collection and use of personal data has been governed by the Data Protection Act 1998. Data subjects have a number of rights under the legislation including a right of access to their personal information; the right to require that processing cease where it is likely to cause substantial unwarranted damage or distress; and the right to call for information to be removed if it is inaccurate.

- Personal data shall be accurate and, where necessary, kept up to date.

## GENERAL DATA PROTECTION REGULATION

The General Data Protection Regulation (GDPR) (effective 25 May 2018) replaces the Data Protection Act. The new regulation brings a number of key procedural changes and changes in relation to individuals' rights. Some of these key changes include:

- An expanded territorial reach – a business will be subject to the new regulation no matter where it is based if the company is providing goods or services to EU citizens or processing personal data of EU citizens
- A direct obligation to maintain written records of all data handling activities
- Mandatory notification of data breaches without undue delay
- The conditions for consent from data subjects have been strengthened, meaning that companies will now need to ensure that consent is clear, provided in an intelligible and easily accessible form, using plain language. Data subjects will acquire the right to be forgotten, and the right to object to their personal data being used for marketing purposes
- Increased levels of fines may be imposed. The maximum level of fine for a serious data breach is up to 4% of annual worldwide turnover or 20,000,000 Euro, whichever is the higher.
- In addition to GDPR obligations, telephone and electronic marketing communications are subject to the Privacy and Electronic Communications Regulations that prohibit the making of marketing calls or sending of e-marketing communications to consumers who have opted out of receiving such communications.

# VISAS AND IMMIGRATION

**Pending the UK's withdrawal from the EU, most citizens of EEA countries and Switzerland and their spouses/partners and dependant family members may currently live and work in the UK. All other overseas nationals must obtain some form of permission to work or visa.**

- The type of visa(s) that a company will need to acquire for its individuals will depend upon the type of business and what the company wants to achieve. Before embarking on the visa obtaining process, a business should first consider whether an employee (or prospective employee) is eligible for a UK passport, eligible as a citizen of the EEA, or has other family or ancestral rights. If so, these options should be utilised to save significant time and cost.
- Similarly, an entrepreneur or High net worth individual will also need to consider immigration options early to ensure that they can set up their business and are on the right track to settlement.
- It is important to consider immigration options early to avoid any surprises or issues later on.

Below is some key information about the most commonly used immigration routes for those intending to do business in the UK.

## TYPES OF VISAS

### BUSINESS VISITOR

- For a short-term, temporary business visit, a business visitor visa may be obtained. Individuals will be allowed to enter the UK for business purposes (which includes attending meetings, negotiating or entering into contracts), but they are not allowed to undertake paid or unpaid work.
- Individuals may be allowed to remain in the UK for a period not exceeding six months, although in principle it is not expected that individuals will remain in the UK for the full six months.
- Business visitors from India will be required to obtain entry clearance as a standard visitor in order to enter the UK as a business visitor.

### SOLE REPRESENTATIVE – REPRESENTATIVE OF AN OVERSEAS BUSINESS

- This route is often used by companies who wish to set up a UK branch, or a wholly-owned subsidiary of an overseas parent company and send to the UK a senior representative, who is not a majority shareholder. The company should not already have established a trading presence in the UK.
- This visa category will allow an applicant to work for their employer full time (but no one else), and bring their spouse/dependants to the UK with them.


### SPONSOR LICENSING

- Companies with plans to send or hire non-EEA nationals to the UK will need to consider obtaining a sponsor licence. The application is made directly to the Home Office and a licence is valid for four years.
- There are two types of Tier 2 licence: the Tier 2 General licence for UK companies that want to hire new migrant workers; and Tier 2 ICT (intercompany transfers) for UK subsidiaries to transfer workers from one of their overseas entities to the UK.
- In order to obtain a sponsor licence, the organisation will need to demonstrate that it:
  - has at least one employee who is permanently based in the UK
  - is a genuine organisation, operating lawfully in the UK
  - is run and managed by honest, dependable and reliable members
  - has systems in place enabling the organisation to carry out sponsorship duties, including (but not limited to) a responsible recruitment process, sensible human resources practices, recordkeeping and monitoring of employees
  - can offer genuine employment that meets the appropriate skill level and rate of pay.
- It should be noted that the representative of an overseas business can apply for a sponsor licence on behalf of a company.




## TIER 2 (GENERAL)

- Applicants can apply for this visa if they have been offered a skilled job in the UK, once the resident labour market test (RLMT) has been completed. A visa under this category can be obtained for up to five years.
- There is an annual cap of 20,700 Tier 2 (General) certificates of sponsorship available each year. These are divided into 12 monthly allocations. Certain roles are exempt from RLMT, including those where the applicant is paid the higher earner salary rate.
- Applicants will need to be sponsored by a licensed sponsor, who provides a certificate of sponsorship from the Home Office as part of the application.
- The visa will allow applicants to work in the job described on the certificate of sponsorship and, in limited circumstances, take a second job.
- Applicants cannot own more than 10% of the shares in the sponsor, unless they are paid under the high earner salary rate (£159,600).
- Applicants will need to meet the English language requirement, and show they are being paid an appropriate salary for their job. All applicants and their dependants will need to pay the NHS Health Surcharge.


 **IT IS IMPORTANT TO CONSIDER IMMIGRATION OPTIONS EARLY TO AVOID ANY SURPRISES OR ISSUES LATER ON.**

## TIER 2 (INTRA COMPANY)

- Applicants will be eligible for this visa if they are employed by an overseas employer (who is a UK licensed sponsor) for a role in the UK branch of the organisation. Under this visa, applicants can work for the company that provides sponsorship and, in limited circumstances, take a second job.
- There are two types of intra-company transfer visas:
  - Long-term staff – the applicant is transferring into a role where previous working experience at the company is required. The role offered will need to be paid at the appropriate salary rate
  - Graduate trainee – available for graduate trainee programmes for specialist roles.
- The maximum time applicants can remain in the UK on this visa is nine years for long-term staff earning more than £120,000 per year; five years for long-term staff earning less than £120,000 per year; and 12 months for graduate trainees.
- Applicants will need to meet the English language requirement. All applicants and their dependants will need to pay the NHS Health Surcharge.

 **Applicants will need to meet the English language requirement...**





## THE TECH NATION VISA ALLOWS THE BRIGHTEST AND BEST TALENT FROM AROUND THE WORLD TO COME AND WORK IN THE UK.

### DIGITAL TECH AND HIGH GROWTH COMPANIES

#### DIGITAL TECH

Within sponsor licensing, this route is for SMEs with between 20 and 250 employees which need to hire applicants with the appropriate experience in the following roles: product managers, data scientists, senior developers and cyber security specialists. Individuals who meet the criteria for these roles (which are on the shortage occupation list) can apply to register with the Home Office as a 'digital tech' company. These companies benefit from hiring applicants who meet the criteria without the need for a resident labour market test, and can therefore fill such roles more quickly

#### HIGH GROWTH COMPANIES

Tier 2 sponsors are also exempt from advertising a role where an applicant is posted from an overseas firm to the UK in connection with the relocation of a high value business to the UK or a significant new inward investment project provided that they meet the following conditions:

- a company is an existing business registered in the UK within the last three years
- the company is the registered branch or wholly-owned subsidiary of a business which has its headquarters and principal place of business outside the UK
- the relocation or inward investment involves new capital expenditure of £27 million or the creation of at least 21 new UK jobs.

#### TIER 1 (INVESTOR)

- This category is for high net worth individuals making a substantial financial investment in the UK. To be eligible, individuals will have to show that they have control of at least £2 million of their own funds, which must be held in a UK or overseas-regulated financial institution and be disposable in the UK. Under this visa, applicants may invest at least £2 million or more in UK government bonds, share capital or loan capital in active and trading UK registered companies.
- This visa category allows individuals to either work or study. However, applicants will not be allowed to invest in companies which are mainly engaged in property investment, property management or property development, nor can they work as a doctor or dentist in training or a professional sports person or coach.



- The route leads to settlement after 5 years, although applicants can apply for expedited settlement (after two years if they invest £10 million or after three years if they invest £5 million). All applicants and their dependants will need to pay the NHS Health Surcharge. The visa is typically granted within three weeks after filing the application.

#### **TIER 1 (ENTREPRENEUR)**

- This visa route is suitable for both business owners and founders and allows applicants to come into the UK to set up or take over the running of an existing UK business.
- Applicants must be able to show they have access to either £50,000 or £200,000 (depending on circumstances), which is held in a regulated financial institution and is disposable in the UK.
- Applicants will need to prepare a business plan to evidence how their background and skills relate to the proposed business. An applicant's qualifications, experience and previous dealings will be considered during the assessment of eligibility.
- Applicants will not be allowed to invest in companies mainly engaged in property investment, property management or property development, nor can they work as a doctor or dentist in training or a professional sports person or coach.
- The route leads to settlement after 5 years, although in certain circumstances, settlement can be applied for after three years.

#### **TIER 1 (EXCEPTIONAL TALENT)**

- This visa category is split between five designated endorsing bodies and allows the brightest and best talent from around the world to come and work in the UK. Applicants can apply for this visa if they have been endorsed as a recognised or emerging leader in their field in science, humanities, engineering, medicine, digital technology or arts.
- Within the digital technology category, Indians remain one of the highest number applying.
- Applicants will be allowed to work for an employer or be self-employed, change jobs, volunteer and travel abroad, returning to the UK to work as long as the work they are doing is within their field of expertise.

- The application has two stages: an application to the relevant endorsing body for an endorsement as a leader or emerging leader in a particular field followed by an application for the visa once the endorsement is obtained.
- After five years, applicants will be eligible to apply for settlement. Those who are endorsed as leaders in their field can be eligible for settlement after three years.

#### **DIGITAL TECH SPECIALISTS**

- Following an announcement in 2017 by the Prime Minister, the criteria for this category were amended to coincide with the launch of Tech Nation.
- The category allows founders, entrepreneurs and highly talented digital tech specialists to obtain an endorsement from Tech City UK. Of the 2,000 endorsements available each year at least 200 are available to Tech City.

#### **BREXIT**


The UK's membership of the EU has meant that nationals of the EEA and their dependants have been entitled to live and work in the UK freely under the principle of free movement. Companies have therefore been able to employ EEA nationals and their partners without the need for sponsorship. Following the UK's decision to leave the EU, 'free movement' will come to an end for the UK.

EEA nationals will still be allowed to come to the UK to live and work while the UK remains in negotiations about its withdrawal from the EU and during the transitional period. Once the UK has formally exited the EU, the UK Government will put in place a new immigration system for EU migrants.

# UK EMPLOYMENT LAW

Like the rest of the English legal framework, English employment law is derived from common law, domestic legislation and European law. European law, in particular, is the source of a number of employee protections within the UK, notably in the areas of discrimination, equal pay, “family-friendly” rights and working time.


- Individuals providing personal services to a business are, in basic terms, classified into three categories: employees, workers, and self-employed or independent contractors. These categories determine, among other things, their statutory rights.
- All UK employees will have a contract of employment, which need not be in writing and may be partly written and partly oral. A national minimum wage (NMW) applies for all workers over compulsory school leaving age. The NMW rates differ depending on the age of the worker and whether or not they are in training.
- Workers’ hours are regulated by the Working Time Regulations 1998 (WTR). Workers may not work, on average, for more than 48 hours a week, although workers can opt out of this limit. The WTR also provides workers with rights to daily, weekly and in-work rest periods, as well as a minimum of 5.6 weeks paid holiday a year (which can include public holidays).
- Employers are required to pay statutory sick pay (SSP) to employees who are off work due to illness or injury after the third day of absence (subject to certain qualifications).
- Broadly, employees are bound by an implied duty of fidelity and good faith which encompasses a duty not to disclose the employer’s confidential information. After termination of employment, this implied duty is limited to information which is sufficiently confidential to amount to a trade secret. Given this limited duty, employers should protect their business interests by adding an express contractual term restricting the employee’s right to use or disclose the employer’s confidential information after the employment relationship has terminated.

 ...employers should protect their business interests by adding an express contractual term restricting the employee’s right to use or disclose the employer’s confidential information ...

- Notwithstanding any obligations of confidentiality to their employer, employees are entitled to make a disclosure of confidential information to the extent that such disclosure amounts to a protected disclosure which qualifies for protection under the Public Interest Disclosure Act 1998. Employees who “blow the whistle” have significant protection under the law.
- An employee who has been continuously employed for two years has a statutory right not to be unfairly dismissed. However, there is no requirement for qualifying service where the dismissal is for certain grounds, including trade union membership or activities. An eligible employee who is dismissed will have a successful claim for unfair dismissal unless the employer can prove that the principal reason for the dismissal was one of the following five reasons:
  - The employee’s capability or qualifications for performing work of the kind which that employee was employed to do
  - The employee’s conduct
  - That the employee was redundant
  - That the employee could not continue to work in the position which they held without contravention of a duty or restriction imposed by or under an enactment or
  - There was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- Since the abolition of the default retirement age in April 2011, compulsory retirement of employees will be age discrimination unless it can be justified as a proportionate means of achieving a legitimate aim. Employees and applicants for employment have statutory protection against discrimination on a number of grounds: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.



- Equality clauses are implied into all contracts of employment by the Equality Act 2010. They operate when an employee is employed either on: like work (that is work which is the same or broadly similar); work which has been rated as being equivalent under a job evaluation scheme; or work which is of an equal value to that performed by a member of the opposite sex in the same employment.
- If any of these three situations exist, any term in a woman's contract (for example) which is less favourable than a man's contract shall be modified so as to be not less favourable, unless the employer can show that the reason for the difference in pay or conditions is a material factor other than sex.
- When control of a company is acquired by way of a share sale, there is no change of employer in these circumstances and all contractual and statutory rights of the employees are preserved. However, on the transfer of a business as a going concern the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies, which means all employees of the seller (the transferor) who are employed in the "organised grouping of resources or employees" immediately before the transfer automatically become the employees of the buyer (the transferee) on their existing terms of employment without breaking their continuity of service.
- Any dismissals will be automatically unfair if the sole or principal reason for the dismissal is the transfer itself. If, however, the reason is an economic, technical or organisational reason entailing changes in the workforce, then they will instead be potentially fair.
- In comparison with other European countries, the UK has less labour regulation and a more flexible labour market, which make the UK an ideal location for both business and talented individuals to thrive.



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# TRADING AND REGULATION IN THE UK

Some industries in the UK are heavily regulated including, notably, the financial services sector. When establishing a business in the UK, it is important to ensure that the company has obtained all the requisite licences to trade.

Below is an overview of the key issues and regulations relevant to trading in the UK. .

## FINANCIAL SERVICES


- The UK competent authority for regulating the financial services sector is the Financial Conduct Authority (FCA). All “regulated activity” carried out in the UK needs to be done by someone who is either authorised by the FCA or otherwise exempt.
- Regulated activities include: dealing in investments, arranging deals in investments, deposit taking, safekeeping and administration of assets (including acting as a custodian), managing investments, providing investment advice and fund management.
- Generally speaking, lending is not a regulated activity in the UK. However, if a business lends money or offers credit to individuals or small partnerships, this will likely constitute “consumer credit” and will fall within the remit of the Consumer Credit Act 1974.
- There are also restrictions and requirements around offering securities within the UK (including to employees), which are governed by, among other things, the Prospectus Directive 2003/71/EC, the Financial Services and Markets Act 2000 and the Companies Act 2006.

 ...it is important to ensure that the company has obtained all the requisite licences to trade...

## TRADING CONTRACTS

Any business that wishes to operate in the UK will need to enter into trading contracts with suppliers, customers and other third parties. Below are some key issues to consider:

- **Unfair contract terms:** In order to protect the consumer from the perceived imbalance of power in the contract bargaining process, UK legislation mandates that all contract terms must be clear, fair and not misleading.
- **Unfair commercial practices:** A commercial practice is considered to be unfair if it is contrary to the general principle of good faith in the trader’s field of activity, and/or the standard of skill and care that the trader could reasonably be expected to exercise. In the UK, there is a general ban on companies performing misleading acts, omissions and aggressive commercial practices on the grounds that they are unfair.
- **Jurisdiction:** The UK’s decision to leave the EU has caused some uncertainty as to the regime for enforcing contractual obligations in the EU. It will be important to keep an eye on how the negotiations unfold and the new system put in place of the existing enforcement regime.

 UK legislation mandates that all contract terms must be clear, fair and not misleading.

- **Product liability:** Producers, manufacturers and importers all have a statutory duty to ensure that products sold to consumers are safe. As failure to adhere to the duty can lead a business to be exposed to the risks of civil litigation or criminal fines and, in some severe cases, imprisonment of company officers, businesses should, as a minimum, undertake the following to satisfy this duty:
  - Warn consumers about any potential risks associated with the product
  - Provide information to consumers in clear language to help them understand the risks
  - Monitor the safety of the product
  - Take immediate action if a safety problem is discovered.
- **Limiting liability:** It is prohibited to draft clauses into a contract which attempt to exclude or limit liability for death or personal injury caused by negligence. Any clauses which are drafted in a way so as to appear to limit liability must be reasonable in order to be enforceable.



## UK COURTS AND ARBITRATION

The UK is the dominant jurisdiction for resolving disputes (by way of both arbitration and litigation), and London is a world-class commercial law and dispute resolution centre. The key reasons for this include:

- A justice system which is comparatively speedy and efficient.
- A judiciary, which has vast expertise in hearing complex international disputes (some of the largest disputes in the world are resolved here).
- Judges highly regarded for being impartial, fair and free from corruption, irrespective of whether the dispute concerns an English and a non-English party.
- English law is robust, settled and well-developed, which means that English law is often the governing law of choice, even where neither of the parties are based here.
- The UK courts encourage settlement and mediation, which facilitates quick(er) and more commercial resolutions without the need to go to a full trial.
- Where the parties have chosen arbitration to resolve their disputes rather than litigation, the English courts will not only respect that decision, but will uphold and support the arbitral process.
- We have a highly active third party litigation funding market. This is attractive to parties who either can't afford to bear the cost and risk involved in fighting litigation (or arbitration) or wish to share the risk.
- The UK is a highly popular jurisdiction to resolve disputes in as borne out by the fact that two thirds of the work that takes place in our courts has no connection with England but where the parties have deliberately chosen English law, the jurisdiction of the English courts or English / London arbitration in their contract. While the Brexit negotiations have caused some uncertainty as to choice of law, jurisdiction and enforcement, we consider that this will have a small impact on the UK Courts and increase the attractiveness of English law arbitration in London.

## THERE IS A GENERAL BAN ON COMPANIES PERFORMING MISLEADING ACTS, OMISSIONS AND AGGRESSIVE COMMERCIAL PRACTICES ON THE GROUNDS THAT THEY ARE UNFAIR.

### ANTI-BRIBERY

- Companies and individuals can be liable for offences under the Bribery Act 2010 and a conviction under the legislation can have serious ramifications. The Act defines bribery as an offer, promise or gift of a financial or other advantage, or requesting, agreeing to receive, or receiving the same, intending to induce or reward "improper performance" of a public or private function.
- The offences contained in the legislation apply to acts or omissions in the UK, as well as acts or omissions outside the UK by persons with a close connection to the UK. Breaching the legislation can result in imprisonment (for an individual) for up to 10 years or unlimited fines (for either an individual or company).
- UK companies will typically have an anti-bribery policy in place.

### MODERN SLAVERY ACT

- Under the Modern Slavery Act, businesses operating in the UK with a turnover in excess of £36 million are obliged to make an annual transparency statement setting out the steps that they have taken during that financial year to ensure that slavery and human trafficking are not taking place anywhere in their supply chains or in any part of their own business.





THE BENEFIT OF THESE SHORTER-TERM LEASES IS THAT IT ALLOWS NEWLY FORMED UK COMPANIES THE FLEXIBILITY TO RELOCATE AS THEY EXPAND.



# PROPERTY: SETTING UP AN OFFICE

When a company decides to set up operations in the UK, it will inevitably need a space in which to do business. The UK has a number of different options to offer companies, depending on the business's needs and its flexibility in location and costs.

## POPULAR MODELS OF OFFICE SPACE

The four main models of office space available for companies are:


- Long-term locations (freehold or long-term leasehold spaces)
- Serviced office locations (usually short-term leasehold spaces)
- Co-working spaces (usually licences to occupy)
- In-house at various accelerator and incubators (usually licences to occupy).

## PROPERTY RIGHTS IN THE UK

The right that a company acquires will depend on the model of office space adopted. The four main models are freehold, leasehold, short-term leasehold and licences.

### FREEHOLD SPACES

- The freehold owner of a property will own the premises outright and in perpetuity, including the land that it is built on and is responsible for maintaining all the property and the associated land. It will therefore be necessary to factor these costs into the business's budget.

 **Freehold property is routinely accepted as security by lending institutions.**

- The title of a freehold property may be subject to restrictions on use, or to rights which favour other land (ie easements). Acquiring a freehold title can be time-consuming and could take a number of months. It will be necessary to instruct a number of industry professionals such as property agents and lawyers to assist.
- Freehold property is routinely accepted as security by lending institutions, with the lending institution taking a legal charge (mortgage) over the freehold title.

### LEASEHOLD SPACES


- A long-term leasehold title in property is for a limited period of time, subject to the terms of the lease which is granted by the freehold title owner. In the UK, it is common for freehold owners to grant leasehold titles on property for 99 years or more. As with freehold title, the long-term leasehold title will be subject to any existing restrictions on use and rights which have been granted to other properties. A premium is usually payable for the acquisition of a long-term leasehold interest but usually with the benefit of having a much lower rental price, and the ability to transfer the lease without the need for the landlord's consent.
- It is advisable to seek assistance from specialists when entering into a long-term lease to assist in negotiations and the mandatory registration with the Land Registry. As with freehold land, long-term leasehold interests are commonly accepted as security by lending institutions.

### SHORT-TERM LEASEHOLD

- While most companies run their businesses from premises under a lease of between five and 25 years, there is no maximum or minimum length of lease and short-term leases are becoming increasingly common. The benefit of these shorter-term leases is that it allows newly formed UK companies the flexibility to relocate as they expand.
- Premiums are not usually payable for the acquisition of a short-term leasehold interest. However, the rent prices are usually more expensive than with long-term leases, and are commonly subject to review at the current open market rate every five years. Many landlords may seek a guarantee (or large security deposit) from the parent corporation when the company acquiring the lease is a newly formed UK entity. Under a short-term lease, rent is usually payable quarterly in advance, and the title can be transferred with the landlord's consent.

### LICENCES TO OCCUPY

- Licences are usually used for the co-working and in-house accelerator/incubator models of office space.
- Unlike a leasehold or freehold interest, a licence does not grant a proprietary right in property, but it does grant permission to occupy the property. Unlike a lease, the occupier of a property under a licence does not have exclusive possession of the property and it cannot transfer the licence to a third party. The period of occupation under a licence does not have to be fixed.



**A LICENCE DOES NOT GRANT A PROPRIETARY RIGHT IN PROPERTY, BUT IT DOES GRANT PERMISSION TO OCCUPY THE PROPERTY.**

## ASSOCIATED COSTS

When considering which model is suitable, the business will need to consider the costs involved. The typical costs associated with obtaining freehold and long-term leasehold title to real estate in the UK are legal costs, surveying costs, Land Registry fees, stamp duty land tax (SDLT), and local searches and enquiries.

- Subject to various reliefs and exemptions, stamp duty land tax (SDLT) is payable on 'land transactions' in England, Wales and Northern Ireland whether or not the person acquiring or taking an interest in the property is resident or non-resident. SDLT is payable on property or land over a certain price. The current threshold is £125,000 for residential properties and £150,000 for commercial properties.
- For commercial freehold property over £150,000, the SDLT is payable at 0% on the price up to £150,000, and increases incrementally to 2% on the amount between £150,001 to £250,000, and 5% on the remaining portion above £250,000.
- For commercial leasehold property, the SDLT is payable on the purchase price of the lease premium and the value of the annual rent payable (which represents the net present value of rent (NPV)). Where the NPV is less than £150,000, the tax rate is 0%. This increases incrementally to 1% on the portion between £150,001 to £5,000,000 and 2% for any portion above £5,000,000.
- Local searches and enquiries - prior to committing to the purchase of freehold title or acquisition of leasehold title, searches will be carried out with the local authority to confirm whether there are any issues (including use restrictions) which may affect the property.



# ABOUT PENNINGTONS MANCHES COOPER

**Penningtons Manches Cooper LLP is a leading UK and international law firm with a network of 13 offices, including a City of London headquarters, over 140 partners and some 850 people. We are acknowledged as a dynamic and forward-thinking practice which combines comprehensive legal services with a responsive and flexible approach.**

Our broad international focus is enhanced by well-established links with law firms throughout the world. As a member of Multilaw and the European Law Group, we work with lawyers in over 100 countries, and many of our experts play leading roles in various international bodies.


Our specialist, multidisciplinary teams concentrate on a range of industry sectors, including technology, life sciences, education, banking, finance and financial services regulation, real estate, retail, shipping, international trade and international wealth.

Through our active involvement with the Department for International Trade (DIT) and its UK Advisory Network (UKAN), we are well placed to advise on all aspects of inward investment, from technology start-ups to large international relocations. Over the past 25 years we have had a particularly strong track record of supporting Indian clients seeking to do business in the UK and Europe. Our India group provides expert advice on entry and exit strategies for the UK market and investments from India into the UK and Europe. Where problems occur, in any jurisdiction, our international litigation lawyers are able to recommend effective strategies at an early stage.


We represent a diverse list of international clients – ranging from private individuals, promoter-owned businesses and start-ups to multinational corporations, public companies, professional partnerships, banks and financial institutions.

## FIND OUT MORE

For further information, visit us at [www.penningtonslaw.com](http://www.penningtonslaw.com) where you will find comprehensive contact details for all our lawyers as well as our latest news, insights and publications. Alternatively, e-mail us at [info@penningtonslaw.com](mailto:info@penningtonslaw.com).

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 They are an extremely competent and accomplished set of people and are very good to work with; they are highly attuned to the customers' needs.

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Binder advises on a broad spectrum of contentious and non-contentious employment and collective labour law issues. He is acknowledged as an expert on trade union law with a UK and EU dimension and is a regular speaker and writer on this and other areas of employment. He is recognised as a leader in his field by a number of the legal directories including *Chambers UK*, *The Legal 500* and *Super Lawyers*.

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James advises on a range of domestic and international private client matters. He acts for high net worth individuals, family offices, trustees and

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Teja specialises in UK, EU and international financial services law and regulation; cross border investment, mergers and acquisitions;

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Pat has over 20 years' immigration experience. Her clients include global multinationals, universities, other educational

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Vinay specialises in real estate investment, development and funding. He has previously acted for some of the largest institutional investors and real

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Joanne is a commercial lawyer specialising in technology transactions and data protection. She often assists Indian clients on negotiations

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Simon advises corporates and their owners on all company and business law requirements. Specialising in cross-border mergers and acquisitions, joint


ventures and reorganisations, he regularly advises on multi-jurisdictional transactions and projects for clients looking to enter the UK market through investment or acquisition. Recognised as a notable practitioner in the latest edition of *The Legal 500*, he has recently advised India's largest automotive components producer on a strategic UK investment.




## WHAT PEOPLE SAY ABOUT US

 Penningtons Manches Cooper takes a very real interest in us and our business and, most importantly, understands our culture. Their team has developed a reputation for providing immediate, up to date commercial advice on a variety of issues.


Minoo Dastur, Nihilent Technologies

 The Penningtons Manches Cooper team has supported us throughout this complex international deal, providing practical and commercial legal advice at all stages.


Wadhawan Global Capital

 They are very well organised, easy to work with and look after their clients well.

Chambers UK

 Penningtons Manches Cooper LLP is a very capable firm that provides consistent and comprehensive advice.

The Legal 500

 Strong private client team handling cross-border and domestic matters for high net worth individuals, families and family offices.

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