



Setting up A BUSINESS IN THE UK

With tech investment in the UK continuing to increase and the establishment of London's Tech City, the world's third-largest tech start-up community, the UK capital now offers more opportunities than ever for technology firms.

Nick Thomas, a Labour and Employment partner in the London office of global law firm Morgan Lewis, provides practical guidance for companies and investors looking to do business in the UK.

A recent World Bank *Doing Business Survey* rated the UK as top country in Europe for ease of doing business, and fourth in the world. However, there are a number of key issues that prudent investors should have in mind to ensure that the process of setting up their new UK business runs smoothly, and that the structure they put in place is fit for purpose.

The workforce

An investor has a range of options when considering how to staff its new UK tech business. A traditional employment relationship is still the most common approach, and is generally the most appropriate for senior individuals and/or employees whom you wish to remain with the business over the longer term.

Employment in the UK brings with it certain core rights, including those relating to working hours, paid holiday, notice, maternity and paternity leave, and unlawful discrimination. Many of these apply from the outset of the employment relationship. However, one of the most significant protections, the right not to be unfairly dismissed, now only applies to employees who have at least two years' continuous employment.

Variations on the standard employment model, such as fixed-term contracts or zero-hours contracts, are not uncommon, particularly in the context of small and/or relatively new businesses.

A business will also need to consider the benefits package it will offer. In the UK, this will often include pension contributions, medical insurance, life assurance and permanent health insurance. Many start-ups also elect to award share options to key employees. As the value of the business grows, so does the value of the employee's options, thereby aligning his or her interests with those of the business.

Following recent changes, it is now possible to make such options subject to an employee's agreeing to take 'employee shareholder' status, pursuant to which they waive a number of rights, including protection against unfair dismissal.

Some start-ups prefer to keep some of their workforce at arm's length by using third-party consultants. In the tech sector, these consultants are often self-employed individuals running their own consultancy businesses. Such consultants do not enjoy the same level of protection as employees, and the arrangement can typically be terminated by either party on relatively short notice.

However, the UK courts will look at substance rather than form when deciding an individual's true employment status, and so an individual who is, in practice, treated in the same way as an employee is likely to enjoy employment law protection even if they have been labelled a contractor.

For many companies, the workforce represents both their most important asset and their greatest risk. Accordingly, it is important to put in place appropriate safeguards, including provisions relating to confidential information and intellectual property.

A business should also consider using post-termination covenants that restrict employees' ability to compete after they leave. In the UK, such restrictions will be unenforceable unless the court is convinced that they are reasonable and absolutely necessary to protect a business, so they will need to be drafted carefully if they are to be effective.

Immigration

It is important to consider the UK's immigration rules, both in relation to individuals who are visiting the UK to explore a new business opportunity or set up a business, and in the context of recruiting once a business exists.

Individuals from a country which is not a member of the European Economic Area (EEA) do not have an

automatic right to work in the UK, and, depending on their nationality, may require a visa before travelling to the UK. Such individuals may be permitted to travel to the UK as a business visitor for up to six months. During this time, they can undertake fact-finding, conduct site visits and attend business meetings. However, they do not have the right to perform any substantive work.

Often, even where a business uses local workers, there remains a need to transfer individuals to the UK from outside the EEA.

Once the business is established, it can apply for a Tier 2 sponsor licence, which, if granted, allows it to obtain a work permit for a non-EEA national, on the basis either that they are an intra-company transferee (they have been employed by a related overseas entity for at least 12 months) or that the UK business has completed the resident labour-market test (it has advertised the role in the UK and there is no suitable local worker available).

Other options potentially include a graduate entrepreneur visa, or, for leading individuals within the tech industry, an exceptional talent visa. An entrepreneur's visa or an investor visa may also be available for those with significant assets who are looking to establish themselves in the UK.

The business

There are many ways of setting up a business in the UK. Options include establishing a new legal entity, setting up a branch of an existing overseas entity, and acquiring or investing in a new company.

Forming a private company limited by shares (a limited company) is the most common approach. It is possible to acquire such companies 'off the shelf', effectively buying an existing shell company which already has in place the necessary corporate documentation and has been registered with Companies House. This process allows an investor to set up a company quickly (generally within three to five days) and relatively cheaply.

Tax

The UK tax regime can be complex and is generally very fact-specific. Accordingly, it will always be necessary to seek advice to ensure that the most appropriate and efficient tax structure is adopted.

Generally speaking, a UK subsidiary of an overseas company (like any other UK-resident company) will pay corporation tax on its UK-sourced profits, and, if it elects to do so, on certain foreign profits, subject to double tax relief for foreign taxes.

The basic rule is that all companies that are incorporated in the UK and all companies whose central management and control is exercised in the UK are resident in the UK for tax purposes. However, even setting up a UK branch of an overseas company is likely to create a taxable presence in the UK. ●