Setting up in The City
A brief guide to establishing a financial services business in the UK

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Think global, think UK

The past few decades have seen the UK, and in particular London, emerge as the destination of choice for global financial institutions looking to expand their business internationally. It is Europe's largest international banking centre and the European headquarters of over a third of all Fortune 500 companies. All major global banks and financial institutions have a presence in London.

The UK provides investors with an encouraging and rewarding business environment in which to start and develop their businesses. It has a rich business heritage, underpinned by an inherently innovative environment, and remains Europe's main flagship financial centre. It is a major centre for private banking and wealth management and a global centre for fund management.

The UK also benefits from access to highly skilled and talented, English-speaking business professionals. It is a favoured destination for highly-trained, multilingual, high-calibre professionals, creating a platform for creativity and innovation.

Occupying a central position between the Asian and American time zones, the UK works virtually around the clock. Its infrastructure is efficient enough to deal with the scale and scope of the financial industry, and is robust enough to enable its evolution and expansion.

The UK has a regulatory framework that is effective, fair and supportive. The regulatory system is risk based, transparent and dynamic, responding to the ever changing needs of global business. This regulatory system is complemented by a well-established judicial and legal framework.

The UK also boasts a favourable tax regime. From 2011, the corporation tax rate is set at 27%, falling to 24% over the next 3 years. In the recently-announced UK national budget, the Chancellor of the Exchequer (Minister of Finance) stated,"we also made an incredibly important cut too, and that is a cut in the rate of corporation tax – not just this year, but next year and the year after – so that we end up with a 24% corporation tax, which will be amongst the lowest in the developed world. Because I think, in the modern world, the corporation tax rate that you set is like an advertisement for your country. It is saying, 'Come and invest here, and we will tax you less than other countries'".

The UK has a regulatory framework that is effective, fair and supportive.

Setting up a financial services business in the UK

This guide focuses on setting up regulated business within the UK.

All regulated financial services businesses within the UK are governed by statute as set out in the Financial Services & Markets Act 2000, and are regulated by the Financial Services Authority (FSA). This guide focuses on setting up a regulated business within the UK. Firms looking to set up a financial services business in the UK will need to consider, inter alia, the following topics, which are further elaborated upon in this guide.

- the current regulatory environment;
- regulatory requirements;
- structuring options;
- tax implications;
- personnel and immigration matters;
- expatriate employee tax and social security compliance;
- real estate matters; and
- recent regulatory changes.

Entering into a new market brings with it a range of challenges and there are significant lessons to be learned.

A high-level summary of the possible road map to establishing a financial services business in the UK is shown below:

Establish your strategic objectives

- What products? What customers? What channels?
- How will you compete for and attract customers?
- What is your appetite for risk?
- What will be the basis of differentiation for your business and what are the implications of this for the brand, operating model, and locations?
- How will you drive out value?

Consider your entry approach carefully

- Organic or acquisition-led?
- For acquisition targets, what is the asset quality, valuation?
- Are there any legacy IT or operations platforms to consider?
- Do you need a licence from the FSA? What liquidity and capital restrictions will apply?
- What return for investors are you seeking?
- What are the tax implications of an organic/inorganic growth structure?

Understand your funding model

- Funding is imperative and challenging.
- Establish a clear source of funding and recognise the costs.
- Understand the tax risks and opportunities of different funding models.
- How are you are going to measure and deliver stakeholder value and what implications will this have for the business?
- What are your investors' and stakeholders' aspirations?

Manage the regulatory challenge

- Are you managing your relationship with the FSA early enough?
- Develop a clear view on liquidity, capital and governance structures and a robust business plan from the start.
- Recognise that the FSA are fundamentally risk-averse.
- Dedicate time and resources to achieving the required permissions.
- The process can be challenging and time consuming, and the rules are not transparent.
- Timing is imperative and affects other key processes (e.g. Visa / SWIFT memberships).
- Relationships with other regulatory bodies including HMRC must be managed.

Don't underestimate implementation complexities

Technology.

- There is no"out of the box" solution.
- Legacy systems can be a major constraint.
- "Future-proof" systems – ensure requirements gathering is robust.
- Testing is critical to achieving FSA permissions (and can be complex, in particular when linking to third parties).

People

- The skills to build a financial services business are very different from those required to run one – you need to attract the right people at the right time.
- Recognise the criticality of people and culture to your proposition, and the challenges caused by having to recruit at volume.

Operations

- Consider any established arrangements if acquiring a business – existing third party arrangements are challenging to unravel.
- Does your operating model effectively align to your proposition and strategy?
- Is the operating model efficiently structured for tax purposes?

Overview of the current UK regulatory environment

The primary legislation governing the incorporation and registration of companies in the UK is the Companies Act 2006 (CA2006). Companies are required to comply with the requirements of the Companies Act 2006, which include filing annual accounts and annual returns with Companies House, upkeep of registers, and notification of changes to Companies House.

The FSA is the regulator of the financial services industry in the UK. The FSA is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000 (FSMA), set up in order to ensure financial stability, market confidence, public awareness, consumer protection and the reduction of financial crime.

To achieve these objectives, the FSA sets out rules and guidance for the conduct of regulated business and is the responsible authority for granting requisite permissions (licences) to companies for the conduct of regulated business in UK.

All business must be conducted within those permissions and any evasion or breaches may result in fines, penalties and/or withdrawal of the licence.

In the UK, companies can choose whether to adopt International Financial Reporting Standards (IFRS) or United Kingdom Generally Accepted Accounting Principles (UK GAAP) for the preparation and presentation of financial statements (unless the company's shares are listed in a recognised exchange, in which case IFRS is mandatory). Depending on which reporting standards they choose, companies will be subject to rules and regulations issued by either the International Accounting Standards Board or the UK Financial Reporting Council.

HM Revenue & Customs (HMRC) is the authority for collecting and administering taxation matters. HMRC is the central authority for governing both direct and indirect taxes within the UK.

Lending is not a regulated activity, except for the following: the FSA has been introducing some regulations relating to regulated mortgages. The Consumer Credit Act 1974 (CCA) requires most businesses that offer goods or services on credit, or which lend money to consumers, to be licensed by the Office of Fair Trading (OFT). Trading without a licensing arrangement is a criminal offence and can result in a fine and/or imprisonment. The CCA also requires certain credit arrangements to be set out in a particular way and to contain certain information.

The reporting requirements for each company are dependent on various factors including the nature of the entity, type of licence held and the size of the business.

UK regulatory requirements

The FSA regulates most of the financial services market, exchanges and financial services firms in the UK. For the conduct of regulated business, prior authorisation is required. Entities setting up in the UK must consider questions such as:

- Do I need to be authorised by the FSA?
- How do I get authorised?
- What are the implications of being regulated?

The need to obtain authorisation from the FSA will depend on the type of activity and services rendered. Seeking direct authorisation by the FSA is called applying for Part IV permission. The sort of permission needed will further depend on the type of investment undertaken by the entity. The FSA has a defined list of specified regulated activities and investments, the conduct of which would constitute regulated business.

Some examples of regulated activities are:

- accepting deposits;
- issuing e-money;
- dealing in investments;
- arranging deals in investments;
- arranging home finance activities;
- managing investment; and
- insurance.

Examples of specified investment types are:

- deposits;
- electronic money;
- rights under a contract of insurance;
- shares;
- instruments creating or acknowledging indebtedness; and
- futures and options.

Based on the regulated activity and investment type, the firms may be classified under one of the following categories.

- retail intermediaries;
- wholesale investment firms;
- insurance firms;
- deposit takers;
- credit unions; and
- other firms.

There are separate application requirements for each of these categories.

The FSA requires a variety of documents, together with the application document specific to the authorisation sought. Examples of these documents are: a regulatory business plan (including financial forecasts); reporting accountant's sign-off on the Systems questionnaire; policies and procedures; governance arrangements; a list of approved persons; an assessment of the risks; and capital requirements of the business.

A brief overview of the application process is set out below:

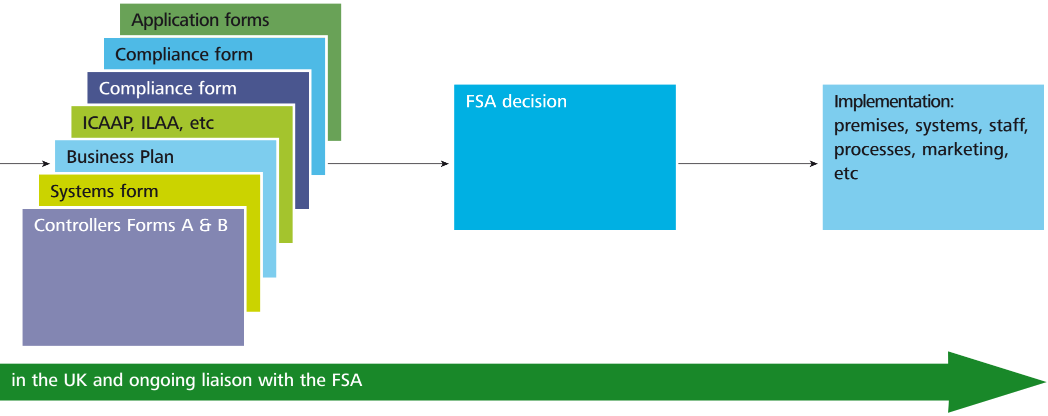
Determination of scope of Part IV permission and legal entity status

Determination of ability to meet threshold conditions

Familiarisation with regulatory rules and requirements

The formal application is made to the Authorisations Department of the FSA, and must be accompanied by the appropriate application fee (non-refundable). The amount will depend on whether the application is straightforward (£1,500), moderately complex (£5,000) or complex (£25,000). Before a firm can carry out a regulated activity the FSA must be satisfied that the firm can meet, and continue to meet, the minimum standards, called Threshold Conditions, and that the persons running the firm are fit and proper.

All the FSA application forms ask for some core information, as well as information relevant to certain types of firms and the business the applicant wants to do. It is vital that the applicant supply all relevant information.
The applicant should be open and honest with the FSA as the success of the application could be affected if the FSA finds that they have deliberately withheld information or provided false or incomplete facts. If the information they provide is inaccurate or incomplete, this is likely to delay the application.



On receipt of an application, a case officer will be allocated who will review the application and may request further information or clarification. Occasionally, firms are unable to put in place everything the FSA needs to grant the application – for example, a firm may not wish to inject the necessary capital in place until it is clear authorisation will be granted. In these circumstances the FSA will consider whether they can advise the applicant that they are 'minded to grant' the application, provided certain conditions are fulfilled. If the application is successful, the FSA will write to confirm the authorisation, enclosing a Scope of Permission Notice. This is the formal Part IV permission and will set out when the permission starts, which regulated activities the firm has permission to carry out and any requirements or limitations requested. If the application is refused, the FSA will issue a final notice confirming the decision and publish a summary of that notice on its website.

Most applications are processed within the statutory timeframe standards set out in the FSMA. The FSA will try to meet any relevant deadlines specified by the applicant, but the firm should make their application in plenty of time. The FSA will make a decision within the earlier of six months of receiving a complete application, or within 12 months of receiving an incomplete application.

A brief overview of the FSA decision making process is set out below:

FSA receives draft regulatory business plan and provides feedback to the applicant → FSA receives completed application pack → FSA requests any additional information →

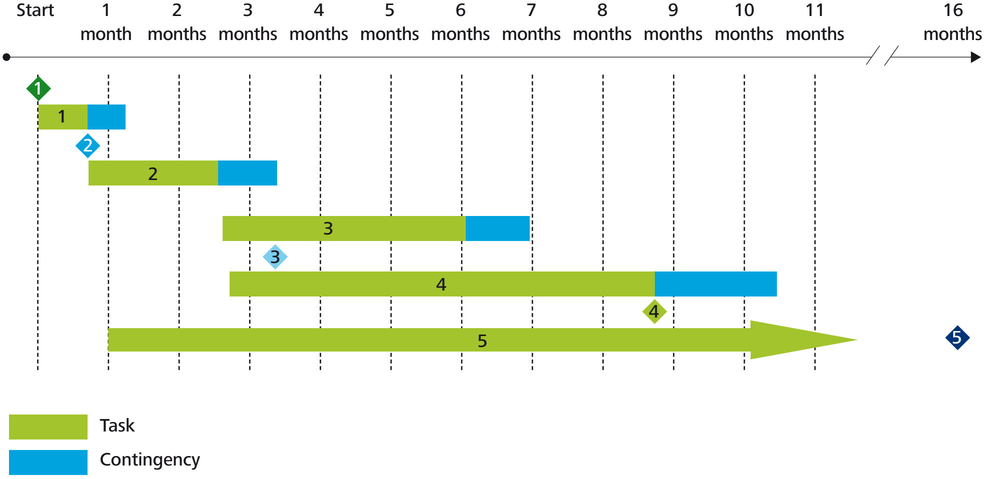
Some of the implications of being regulated by the FSA are:

- supervision by the FSA, where it monitors and regulates the business to ensure that the business is in compliance with the regulatory requirements;
- compliance with regulations relating to capital and liquidity;
- need for approval by FSA of individuals carrying out controlled functions;
- online regulatory reporting to the FSA;
- notification of any changes in the business or persons carrying out controlled functions; and
- obligation to follow rules governing Treating Customers Fairly.

FSA assesses application, (including possible on-site visit) → Decision made within 6-12 months of receipt of completed application pack

Decision made within 6-12 months of receipt of completed application pack →
- Yes → FSA may make supervisory visit/s166 post decision
- 'Yes but subject to …' → FSA may make supervisory visit/s166 post decision
- Decline

Set out below is a typical timeline for getting regulatory approval.



Milestones

1 Project start date
2 Pre-application meeting with FSA
3 Submission of draft RBP to FSA
4 Submission of final application to FSA
5 Expected receipt of authorisation

Steps

1 Fact-finding and evaluation, including meetings with executive management and FSA

2 Prepare and approve project plan; preparation of draft regulatory business plan (RBP)

3 Submit draft RBP to FSA and obtain FSA comments

4 Address FSA comments on draft RBP; finalise required documentation, policies, Procedures and manuals; submit application pack to FSA (including reporting accountant sign off)

5 Ongoing support prior to and immediately after application; liaison with FSA

Structuring options for financial service companies

The primary legislation governing the incorporation and registration of companies in the UK is the Companies Act 2006 (CA06).

There are several ways in which an overseas company can set up a business in the UK. The option that is ultimately chosen will depend on a number of factors including, for example:

- the expected nature and scale of business activities;
- the levels of risk anticipated in the start-up stage;
- the intended duration of the business activities;
- accounting and taxation implications;
- statutory compliance and reporting obligations; and
- other commercial considerations

Prior permission is not needed to register, although there are some restrictions on the use of certain words and expressions in corporate and business names. Organisations operating in regulated fields (including financial services) may require licenses or prior authorisation to carry on business.

There are several types of business entity recognised in the corporate laws of the UK. This chapter concentrates on the two most commonly encountered forms:

- a UK Establishment of a company incorporated outside the UK (e.g. a branch); and
- a UK incorporated company.

Whilst both are permissible for undertaking regulated activities, the FSA prefers the latter.

UK Establishment of a company incorporated outside the UK

Overseas companies looking to expand their business activities into the UK often consider registering a UK Establishment instead of incorporating a new company.

Overseas limited liability companies (incorporated outside the UK), having established a business presence in the UK, are required to register that presence with Companies House within one month. There are no provisions that allow registration of a UK Establishment in advance of the business presence being established.

Registering a UK Establishment

In order to register a UK Establishment, the overseas company must supply corporate information, on a statutory form, detailing the company's activities and corporate structure. The following is an illustrative, but not exhaustive, list of the sort of information that must be supplied with the UK Establishment registration form (form OS IN01).

- Details of directors and secretaries (names, residential addresses, service address – if applicable – and other personal details).
- Details about the company (including corporate name, business trading name – if different from its corporate name – official or registered number, jurisdiction, governing law, legal form, capital structure, accounting details and obligations).
- The address of the UK Establishment, a brief explanation of its activities and details of any UK resident representative authorised to accept service of legal notices and official correspondence on behalf of the company.
- Copies of constitutional documents (evidence of registration, articles of incorporation and charter or other equivalent management rules).

Copy documents must be certified as true copies by an officer or branch manager and, if such documents are in a language other than English, they must be accompanied by similarly certified translations.

There is a registration fee payable, which is currently UK£20 (or UK£50, if a same-day registration is being sought).

Once the legal requirements have been fulfilled, the Registrar then registers the UK Establishment and issues a certificate evidencing the registration.

Ongoing filing requirements

Overseas companies with a UK Establishment are subject to annual accounts filing obligations. Detailed advice should be sought on the applicable requirements and the relevant deadlines for submission.

The accounts required to be delivered for filing are those of the overseas company itself and not those relating only to the activities of the UK Establishment. Special rules apply if the company is a parent company and is proposing not to submit consolidated accounts.

The accounts must be approved and signed on the balance sheet on behalf of the board of directors. Accounts in a language other than English must be accompanied by a certified translation.

Notification of any changes

Any changes to the information disclosed in the initial registration papers must be notified to the Registrar of Companies on the prescribed forms. Such changes generally include change of officers, address changes, corporate name changes and constitutional and statutory changes.

It is important to ensure that UK filing obligations are considered and dealt with in a timely manner whenever there is a statutory change affecting an overseas company with a branch or place of business in the UK.

A UK incorporated company

The incorporation of companies in England, Wales and Scotland is governed by CA06. The following are the main categories of company that can be registered under CA06:

- company limited by shares;
- unlimited company having a share capital; and
- company limited by guarantee (without share capital).

This guide concentrates on the most common form of registered company, namely a company limited by shares. A company limited by shares will take one of two forms: a private company or a public company.

The principal differences between public and private companies are:

- Only public companies are permitted to offer their shares to the public and to be traded on recognised exchanges, whereas private companies are prohibited from offering their shares for sale to the public.
- The ongoing statutory compliance requirements imposed on public companies are more burdensome than those for private companies. Recent legislation has tended to place additional compliance burdens and corporate governance obligations on public companies, while endeavouring to reduce the regulatory burden on private companies.
- There is a minimum capital requirement of £50,000 for a public company.
- Other differences mainly relate to the scope and nature of disclosures and the protection afforded to creditors and those having dealings with the company.

Registration of limited companies

The registration requirements are similar for both public and private companies. The registration documents need to be submitted to Companies House in either printed (hard copy) form or in electronic form, together with the statutory fee for review and approval, prior to incorporation being effected.

The documents that must be filed (together with a statutory fee) are:

- the proposed memorandum and the articles of association (the constitution of the company outlining, among other things, the manner in which it is to be administered); and

- statutory Form IN01 detailing the first named officers (secretary and director(s)), the location of the registered office and the initial share capital.

Electronic incorporation is available and eliminates the need to obtain signatures on various forms but also requires some additional information for security purposes.

Continuing obligations

Once registered the company is subject to the CA06 regulations and various ongoing obligations relating to, for example:

- registered office;

- directors;

- audit and submission of accounts to the Registrar; and

- update to statutory records and notification of changes.

Other business structures

Other less common forms of registered business structures, which are not considered in detail in this guide, include Limited Partnerships and Limited Liability Partnerships.

It is recommended that specialist advice be taken on the applicable rules and regulations and registration requirements for each of these corporate forms.

Corporate and business names

There are a number of restrictions on the use of corporate and business names, which apply equally to UK Establishments and limited companies.

Advice should be taken on whether a particular proposed corporate name is likely to be accepted for registration by the Registrar, before any formal application is submitted to Companies House.

Tax implications

The main rate of UK corporation tax, currently 28%, is set to fall by 1% a year, starting 1 April 2011, until it reaches 24% in 2014-15. This rate reduction is part of the UK Government's overall reform of corporation tax, which is aimed at making the UK corporation tax regime the most competitive in the G20. Lower rates may apply to smaller companies.

The Value Added Tax (VAT) rate is currently 20%. A wide range of transactions are exempt from VAT.

On 1 January 2011, the UK, in line with several other European countries, introduced a bank levy. The levy is based on the balance sheet of the bank and is set at a rate of 0.075%, with a lower rate available on certain categories of liabilities. Banks are only liable for the levy where their relevant aggregate liabilities amount to at least £20 billion.

Corporation tax

Taxable profits are based on the accounting profit, subject to various statutory adjustments. The profits liable to corporation tax in the UK will depend on the nature of the UK presence.

UK company/subsidiary

Corporation tax arises on the worldwide tax-adjusted profits attributable to the UK company. However, there is a broad exemption for UK and overseas dividends, and a exemption for branch profits is expected to be introduced in 2011.

Permanent Establishment

For a permanent establishment (PE), corporation tax will only be due on UK-attributable profits. Very broadly, a taxable PE can be created in the UK if there is a fixed place of business in the UK through which a trade is carried on, or where contracts are habitually concluded in the UK. It may be necessary to make a branch capital adjustment in order to arrive at the UK taxable profits of the entity.

Representative Office

If the UK presence is purely a representative office and, as such, the overseas company does not have a business in the UK, it should not be subject to UK corporation tax. However, it may still be liable to income tax on certain income derived from the UK such as interest or rent.

Trading losses

Where a trading loss arises for tax purposes this may be set against other taxable profits of the company arising in the same year, carried forward against future profits arising in the same trade, or carried back one year to be offset against profits of the same trade arising in the previous year. Restrictions to a loss carry forward may apply where there is a change in ownership and within three years a major change in the nature and conduct of the trade. Losses may also be surrendered in the year that they arise via group relief to any company within a UK group (companies are considered to be in a UK group where there is 75% common ownership).

Filing requirements

A subsidiary or branch setting up in the UK must provide HMRC with certain information within three months of starting its first accounting period; or, for an overseas company (UK branch), within three months of the commencement of trading in the UK.

The corporation tax return for a UK entity must be filed with HMRC within 12 months of the Year-End.

As of 1 April 2011, all UK corporation tax returns must be filed electronically with a set of in-line Extensible Business Reporting Language (iXBRL) accounts, or in the case of a permanent establishment, with an iXBRL Profit and Loss account and Balance Sheet.

The tax liability of the UK company or permanent establishment must be paid at the latest within 9 months and one day of the Year-End. In certain circumstances the corporation tax liability will be payable by instalments with payments commencing prior to the end of the accounting period. Penalties and interest may arise on late payment. The exact dates of the payments will depend on the accounting period start date and length.

Capital Gains Tax

Capital gains arising to UK companies are taxed at the same rate as other income. Some relief for inflation will be available on the gain based on the date of acquisition and disposal. Certain capital gains, such as those meeting the substantial shareholding conditions, are exempt.

Transfer pricing

UK transfer pricing legislation requires that trading and financial transactions between affiliated entities be conducted on an arm's length basis. This means that, in the course of conducting business between affiliated entities, the terms and pricing of transactions undertaken should be the same as if the transactions had been undertaken between completely independent parties. Where this is not the case, an adjustment may be required for tax purposes.

Value Added Tax (VAT)

Any person or business whose taxable supplies exceed the registration threshold (currently £ 67,000) in any 12 month period must register for VAT. If at any time a business expects its taxable supplies to exceed £ 67,000 in the next 30 days alone, it must register for VAT. A business that has not exceeded the registration threshold may voluntarily register for VAT. Also, where it is known that taxable supplies will be made at some point in the future, it is possible to be registered as an 'intending trader' enabling the recovery of VAT on purchases made wholly for business use.

Stamp Duty/Transfer taxes

Certain asset transfers are subject to Stamp Duty, though various exemptions apply.

Branch capital

Banks operating in the UK are strictly regulated and, as such, are required to hold a certain amount of capital. The amount depends on factors such as the size of the bank and the nature of its activities. Overseas banks operating in the UK through a branch are not subject to these same requirements and, therefore, the capital held by a UK branch may be substantially different from that of a UK bank performing the same or similar activities.

In order to compensate for this, UK legislation on capital attribution requires that the bank branches undergo an adjustment to their UK tax computation inorder to align their taxable profits with those of a UK bank carrying out similar banking activities under similar circumstances. The legislation does not require the actual allotment of capital to the UK entity. The amount of (notional) capital that must be attributed to the UK branch for tax purposes will largely depend on the capital held by the parent company and the nature, and the associated risk, of the assets held by the branch bank.

The corporation tax return for a UK entity must be filed with HMRC within 12 months of Year-End.

Personnel and immigration matters

Non-European nationals seeking to set up a business or work in the UK will need to obtain formal immigration permission to do so before travelling to the UK. As UK immigration rules and policy are changing frequently at present, it is recommended that specialist advice is sought for the best chance of success. Seeking specialist advice is now more important than ever as the UK Government is limiting the numbers of migrants able to come to the UK to work. The limits are affecting some of the immigration categories below.

Since the end of 2008, the UK has largely managed immigration using a 'Points Based System' (PBS).

In addition to the applicable point requirements for each tier, applicants may have to demonstrate that they have a specified amount of money to support themselves and any dependants, and that they are able to speak English.

The PBS consists of five tiers. Two of these tiers (Tier 1 and Tier 2) may be relevant to an individual intending to set up business or work in the UK, or a company wanting to transfer employees to the UK, although other options may be relevant to a particular case.

Tier 1

Tier 1 enables certain applicants to gain a personal visa to come to the UK. If the application is successful, the visa is not 'tied' to any employer.

This tier covers:

- General: Highly skilled individuals were previously able to come to the UK to look for work or self-employment opportunities, but this category closed on the 23 December 2010 for applicants applying from outside the UK. The category is still available for applications to be made inside the UK, including extensions of leave for those applicants currently in the UK under this category.

- Entrepreneurs: who want to invest in the UK by setting up one or more businesses in the UK, or taking over and being actively involved in the running of them.

- Investors: who want to make a substantial financial investment in the UK. An investor does not need a job offer in the UK but will be permitted to work if s/he wishes.

Tier 2

Tier 2 is for those applicants who have already been offered a skilled job by a UK company. This company must have registered with the UK Border Agency as a Tier 2 sponsor in the UK. This corporate registration is a prerequisite of being able to apply for a Tier 2 visa. This Tier includes:

- Intra-company transfers: for example, where a company wants to transfer an existing employee to a related business in the UK. The applicant must have gained at least 12 months' experience within the same group company as the UK sponsor before the application is made.

- A job offer that passes the 'Resident Labour Market Test': the UK sponsor will have to show that the job has been appropriately advertised in the UK/EEA according to the UK Border Agency's requirements and that there is no suitably qualified worker from the UK/EEA to fill the post.

- Shortage occupations: a list of recognised occupations in short supply in the UK is published by the UK Border Agency periodically. The list is limited in nature but is updated according to national shortages.

At the current time, there is a limit on the number of Tier 2 visas available under the 'Resident Labour Market Test' option above.

Other stringent qualifying criteria also apply to intra-company moves in terms of the minimum salary applicants can earn and how long they can spend in the UK. Professional advice must always be sought well in advance of travel (we would recommend at least 4 months) so that a full assessment of the case can be carried out and the appropriate visa obtained.

Business visitors

Firms may wish to bring in overseas employees on a short-term basis to do business from time to time.

An individual can come to the UK as a business visitor for up to six months in any 12-month period provided certain strict qualifying criteria are met. Among other qualifying criteria, the visitor must not be employed or paid in the UK, and, most importantly, must not be carrying out any productive work in the UK. Current policy allows for the individual to attend meetings and fact-find, but other duties may breach the current provisions. As the UK authorities are focussing on business visitor non-compliance for both tax and immigration, it is wise to check that the proposed duties do fall within the current regulations.

Some nationalities must always obtain a visa to come to the UK as a business visitor, so it is important to check up-to-date information in this regard before the migrant travels to the UK.

Other Options

There may be alternative immigration options relevant to a particular case which will depend on the personal circumstances of the applicant and/or his or her partner.

Another main visa category which falls outside the Points Based System is that of the Sole Representative. This category allows a sole representative of an overseas firm to obtain a visa to establish a wholly owned subsidiary or register a branch in the United Kingdom for an overseas parent company. For this visa to be available, the company must not have a branch, subsidiary or other representative in the UK and other qualifying criteria will apply. Only the first overseas national coming to the UK will be able to use this route. Subsequent employees must qualify using other immigration categories.

Expatriate employee tax and social security compliance

The UK income tax regime is underpinned by a concept of 'tax residence'. Broadly speaking, individuals who come to the UK for a 'temporary purpose', rather than permanent residence, may enjoy certain income tax and social security advantages, subject to careful structuring of the arrangements and agreement with the UK tax authorities.

The following tax and social security reliefs may be possible:

- Relief for accommodation costs.
- Deductable expenses for subsistence and travel in the UK.
- Relief for employment income from non-UK workdays.
- Relief for flight costs to and from the home country for the employee (and limited trips for accompanying family members).

The UK operates a system of monthly (or quarterly) income tax withholding known as Pay As You Earn (PAYE). It is the employer's or UK host employer's responsibility to deduct PAYE from the employee and remit the funds to the UK tax authorities, within the monthly or quarterly deadline. At Year-End, the employer or host employer must submit a summary of the PAYE payments made during the year (a Form P35).

Unless under specific exemption provided by the UK tax authorities, an individual who is on assignment in the UK for a temporary purpose is required to complete an annual self assessment tax return, disclosing the full extent of his/her income to the UK tax authorities.

For employee benefits and taxable expenses, an annual statement must be prepared by the employer (form P11D) and submitted to the UK tax authorities, with a copy provided to the employee.

In terms of social security, subject to careful structuring, individuals who are assigned to the UK for a temporary purpose may be exempted from UK social security payments for the first 52 weeks of their work in the UK.

Consideration should be given to some of the challenges faced by the new entrants, such as:

- efficient structuring of assignments between the UK and India in line with the UK/ India Tax Treaty;
- securing cost efficient accommodation, expenses and pay arrangements for employees;
- short-term business visitor issues; dealing with tracking responsibilities;
- the requirement for an employer to support self assessment tax returns, applying exemptions where possible;
- UK PAYE compliance; and
- UK social security compliance.

Consideration should be given to some of the challenges faced by the new entrants …

Real estate matters

Entering a new territory will mean opening an office. The UK real estate market is highly sophisticated and occupiers are usually advised by real estate professionals known as chartered surveyors. Prices and contract terms for office accommodation are highly negotiable. Typical lease lengths are 5 to 15 years and it is common for tenants to have a right to renew their lease, although landlords sometimes ask for this right to be given up. It is common for lease contracts to include periodic price adjustments, known as Rent Reviews, but again these can be negotiated.

It is usual for occupiers to rent premises as an empty floor or part-floor and undertake their own work to provide offices, meeting rooms, reception, data and communications systems etc, known as ‘fitting-out’. It is usual for occupiers to be required to maintain office premises themselves. The landlord may maintain the parts used in common with other occupiers and levy a ‘service charge’ for this.

Some companies provide smaller offices fitted-out with other services (such as receptionist) as a package, known as serviced offices, but these can be more expensive.

A chartered surveyor will be able to advise on the process involved in opening an office and how to negotiate sensible commercial terms.

Criteria to be considered are:

- Size, location and specification (new or second-hand) of the premises.

- Basis of ownership – most businesses in the UK rent premises from a landlord, but an outright purchase is possible.

- Budget for acquisition, fit-out and operating costs.

- Procurement – instructing the right professionals (chartered surveyors, solicitors and building contractors).

- Tax – tax is payable on property acquisition (known as Stamp Duty) and a tax on occupation, (known as business rates). It is possible to limit the cost of both. VAT may be payable but this is not automatic.

- Statutory requirements – occupiers must comply with certain legislation in the UK covering health and safety at work.

Recent regulatory changes

One of the lessons learned from the recent global financial crisis was the need for changes in the UK's regulation and supervisory approach to create a more robust banking system for the future. In line with this above objective, the FSA has established various regulations (many of which implement relevant EU legislation) which impact, for example governance, capital adequacy and liquidity. Other legislation has also been introduced during this period which affects financial services firms.

Some of the key regulatory changes are summarised below:

Internal Capital Adequacy Assessment Process (ICAAP)

Adequate financial resources and adequate systems and controls are necessary for the effective management of prudential risks. The objective of the ICAAP process is to ensure that firms maintain adequate financial resources to be able to meet their liabilities as they fall due. The FSA has set out rules and detailed guidance as to how the firms should carry out this assessment. They will review and respond to the assessment in the Supervisory Review and Evaluation Process (SREP). Following which, the FSA will issue Individual Capital Guidance (ICG) to firms on the amount and quality of capital resources it believes that the firm should maintain.

Individual Liquidity Adequacy Assessment (ILAA)

FSA's policy statement *PS09/16 Strengthening Liquidity Standards* has introduced a new liquidity regime applicable to UK banks, building societies, investment firms and branches of foreign banks.

The objective of the ILAA is for firms to express their liquidity resources, systems and controls, in order to enable the firm and FSA to assess the adequacy of its liquidity resources under both 'normal' and 'stressed' conditions. Reporting requirements to the FSA vary, depending on the size and type of firm.

Permissions may be sought from the FSA for modifying the applicable rules provided the relevant criteria are met. These permissions can be sought by applying to the FSA for either a Whole Firm Liquidity Modification (generally applicable for branches) or an Intra-group Modification.

Revised Remuneration Code

The revised code came into effect on 1 January 2011 for remuneration of 2010 performance. The Code applies to senior management, risk-takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk-takers, or whose professional activities have a material impact on the firm's risk profile.

The FSA *Consultation Paper 10/19 – Revising the Remuneration Code* gives more detailed guidance on the applicability and requirements of the code.

Anti-bribery and corruption legislation

The UK Bribery Act 2010 requires companies to demonstrate that they have 'adequate procedures' in place to prevent bribery being undertaken by their employees or agents. Therefore, entities need to have systems and procedures in place to adhere to these rules.

SEPA and the Payment Service Directives

The new Single Euro Payments Area (SEPA) and the Payment Services Directive (PSD) present banks with new compliance requirements.

The PSD aims to generate more competition in the payment processing market by establishing a harmonised set of rules for processing payments across the European Union. It will be implemented by governments and regulators through their local legal mechanisms.

The approved person regime – Significant Influence Function review

The FSA has extended the scope and application of controlled functions CF1 (director) and CF2 (non-executive director). These now include individuals such as directors, non-executive directors or senior managers employed by a parent undertaking or a holding company whose decisions, opinions or actions are regularly taken into account by the governing body of the authorised firm – and are therefore likely to have a significant influence on the conduct of the authorised firm's affairs. Detailed guidance has been issued by the FSA.

Changing shape of financial regulations in the UK

The existing tri-partite regulatory model made up of HM Treasury, Bank of England and the Financial Services Authority is currently being reformed. In July 2010, the Government published its consultation proposals for reforming regulatory structures in the UK.
This consultation builds on the previous announcement made by the Chancellor of the Exchequer that the UK Government had decided to give the Bank of England control of macro-prudential regulation and oversight of micro-prudential regulation.

He announced the Government's plans to:

- create a new prudential regulator (the Prudential Regulatory Authority), which will operate as a subsidiary of the Bank of England. It will carry out the prudential regulation of financial firms, including banks, building societies and insurance companies, including granting permission for their activities and approving their senior management;

- establish a new Consumer Protection and Markets Authority, which will regulate the conduct of every authorised firm providing services to consumers and will be responsible for ensuring the good conduct of business in the UK's retail and wholesale financial services. It would also approve consumer-related management positions and supervise investment managers and other non-systemic financial groups; and

- create an independent Financial Policy Committee (FPC) at the Bank of England to identify and regulate systemic risk. The FPC will have the tools and the responsibility to look across the economy at the macro issues that may threaten economic and financial stability and take effective action in response.

The Chancellor said that the process will be completed in 2012. Despite these changes in the structure, the basic rules and regulations concerning the monitoring and supervision of financial services firms is unlikely to change.

As a result of this change, the FSA will cease to exist in its current shape and form, and there will be further legislation introduced to enable the above changes to take effect.

The high-level framework for new firms to obtain authorisation to establish financial services businesses in the UK is unlikely to change significantly, save that new applications will need to be considered by different regulatory bodies that will come into force in 2012.

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