

Doing business in the UK (England and Wales): overview

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A Q&A guide to doing business in the UK (England and Wales).

This Q&A gives an overview of key recent developments affecting doing business in UK (England and Wales) as well as an introduction to the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

To compare answers across multiple jurisdictions, visit the [Doing business in... Country Q&A Tool](#).

This article is part of the global guide to doing business worldwide. For a full list of contents, please visit www.practicallaw.com/dbi-guide.

Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

Brexit

The UK is currently subject to a degree of transition because of its planned withdrawal from the EU (Brexit). At the time of writing, the position is that Brexit has been deferred until 31 October 2019. The default position is that the UK will leave the EU on this date without any withdrawal or relationship agreements in place with the EU, unless there is an agreement for a further extension.

As a matter of UK law, as and when the UK leaves the EU, the European Union (Withdrawal) Act 2018 (EU Withdrawal Act) will take effect. This will repeal the European Communities Act 1972, the statute which gives effect to the EU treaties in UK law. To ensure a functioning statute book and to avoid the many gaps that would otherwise emerge in UK domestic law as a result of directly applicable EU law measures no longer applying, the EU Withdrawal Act also retains directly applicable EU law, in particular EU regulations, in domestic law, subject to a power of amendment or repeal by statutory instrument within a period of two years commencing on *exit day*.

After Brexit, the UK will no longer be required to harmonise its law with EU directives, allowing for possible legislative divergence from EU law. In relation to statutory instruments adopted under the European Communities Act to implement EU directives, the EU Withdrawal Act also retains these statutory instruments in UK law, as they would otherwise fall away upon the repeal of the European Communities Act.

General Data Protection Regulation and Data Protection Act

Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation (GDPR)) came into force in May 2018 across the EU and introduced substantive changes to data privacy law. The Data Protection Act 2018 (DPA) was enacted in the UK to address those areas which the GDPR left open to be dealt with under national law.

Business and tax

The latest developments are as follows:

- **Credit card surcharges.** From January 2018, the Payment Services Regulations 2017 banned companies from charging consumers an additional fee simply for using a credit or debit card or any linked payment method (such as through PayPal or Google Pay).
- **VAT digitisation rules.** VAT registered businesses which have a high enough taxable turnover to meet the VAT registration threshold must keep their VAT records in digital form, to enable them to file their VAT returns using software, to meet the requirements of the Value Added Tax (Amendment) Regulations 2018.

Employment

The latest developments are as follows:

- **Wage increases.** The National Living Wage and National Minimum Wage were increased in 2018 and in April 2019. While this is good news for workers, many small companies will need to make plans to meet these new minimum wages.
- **Gender pay gap.** From April 2018, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 required organisations with over 250 employees to publish information about the pay gap between men and women in their organisation on an annual basis.
- **Pension contributions.** The minimum requirements for employee and employer contributions toward auto-enrolment pension schemes will increase to 3% for the employer and 5% for employees, thereby increasing business costs.

Legal system

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

The UK is comprised of four countries and three separate legal jurisdictions: England and Wales, Scotland, and Northern Ireland. Each of the three jurisdictions has its own legal system, although there is significant overlap between them. The legal systems of England and Wales and Northern Ireland are based on common law, while Scottish law is based on a mixture of uncodified civil law and common law.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are no specific restrictions placed on foreign investment into the UK. No distinction is made in the UK between domestic and foreign investment and, apart from than certain government owned or controlled agencies, a foreign controlled business can engage in the same activities as those of a UK controlled one.

Both domestic and foreign investors must comply with the same UK merger control regime contained in the Enterprise Act 2002. The UK's Competition and Markets Authority (CMA), exercises control over mergers of enterprises which meet certain turnover or market share thresholds. The UK Government also has the power to intervene in transactions in certain sectors which raise issues of a "public interest" or "legitimate interest" such as the media and national security.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

The UK has sanctions and embargoes in place against numerous countries, or certain individuals, groups or organisations based in or connected to those countries. These are broadly in line with those imposed by the EU and the UN.

Sanctions can take a variety of different forms, but the most frequently applied measures comprise:

- Embargoes on exporting or supplying arms and associated technical assistance, training and financing.
- A ban on exporting equipment that might be used for internal repression.

- Financial sanctions on individuals in government, government bodies and associated companies, or terrorist groups and individuals associated with those groups.
- Travel bans on named individuals.
- Bans on imports of raw materials or goods from the sanctions target.

Businesses who wish to export strategic or controlled goods (such as weapons and military goods) that are subject to sanctions or embargoes, must obtain a specific licence to do so from the UK's Department for International Trade.

It is a criminal offence to breach a financial sanction without an appropriate licence or authorisation and the penalties may constitute a criminal offence and significant fines.

5. Are there any exchange control or currency regulations?

There are no exchange or capital controls in the UK, following their abolition in the 1970s. However, anyone taking EUR10,000 or more in cash (or the equivalent in another currency) between the UK and any non-EU country must declare it to Her Majesty's Revenue and Customs (HMRC).

6. What grants or incentives are available to investors?

There are a large number of grants and incentives available to international companies looking to invest in the UK, depending on the size of the business, the level of support it requires, its geographical location in the UK and number of employment opportunities it will create and/or safeguard.

The two main sources of funding and assistance for businesses seeking to set up or expand in the UK are those provided by the UK Government and the EU. Future participation in EU projects is currently uncertain, in light of the UK's proposed withdrawal from the European Union.

The various incentives are available at a local, regional and national level. In addition to direct grants or loans to finance capital investments, certain tax reliefs are also available to companies for qualifying research and development (R&D) activities.

Some of the largest funding resources at present include:

- **Innovate UK Scheme.** This is a scheme set up by the UK Government. It provides a funding mechanism (through competitive calls) for R&D activities for amounts of anywhere between GBP25,000 and GBP10 million.
- **Regional programmes.** These programmes are designed to support and encourage businesses to invest in different regions of the UK, such as the Grant for Business Investment (GBI) which is offered by the Regional Development Agency. GBIs are typically awarded to high-budget and long-term projects.
- **Horizon 2020.** This flagship project is the largest ever European funding programme for research and innovation designed to put Europe at the heart of world-class science and innovation, making it more competitive, creating economic growth and new jobs. It has a budget of EUR79 billion and currently runs until 2020, although a new programme called "Horizon Europe" is expected to replace this for projects between 2021 and 2027. The UK Government has confirmed its commitment to provide funding of existing project and successful bids under Horizon 2020 and the UK's participation in the proposed future Horizon programme is currently subject to the outcome of negotiations regarding the UK's proposed withdrawal from the EU.

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

Limited company

A limited company has its own legal identity separate from its members/shareholders. Limited companies can enter into contracts, own and deal with their own property, be taxed and can sue and be sued in their own name. With a few exceptions, the liability of the company's shareholders is limited to the amount that the shareholders have agreed to subscribe.

There are two principal types of limited companies:

- **Private companies.** These are more common and are subject to lighter regulation than public companies. Private companies can also have unlimited liability of its shareholders or be limited by guarantee. See also [Question 8](#) and [Question 9](#).
- **Public companies.** Public companies will generally be used where an issue of shares to the public is being contemplated or where the company's shares or other securities are to be admitted to trading on a stock exchange.

Branch/UK establishment

Foreign companies can establish a presence in the UK without the need to form a separate company/subsidiary. While a permanent establishment/branch must be registered in the UK, it is not a separate legal entity in its own right, but rather forms part of the overseas company.

General partnership

A general partnership is a relationship that exists between two or more persons carrying on a business in common, with a view to a profit. A partnership does not have a separate corporate existence and, therefore, each partner has unlimited liability and is personally responsible for any and all debts and liabilities that the business incurs.

Limited liability partnership (LLP)

An LLP is a partnership that is incorporated as a separate legal entity and shares some of the features of both a general partnership and a limited company. With separate legal personality, an LLP can enter into contracts, own and deal with property, and can sue and be sued in its own name. The liability of the partners of an LLP is limited to the amount they have agreed to contribute to the partnership.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

The private company is the most common form of corporate business vehicle used by foreign companies in the UK.

Registration and formation

To register and incorporate a private company, certain prescribed documents must be filed at the UK corporate registry, Companies House together, with payment of a fee.

A company can either be registered as a "tailor made" company and incorporated from scratch, tailored to specific requirements. Alternatively, a company can be purchased as an "off-the-shelf" company from an agent who has already incorporated the company in its own name and on standard constitutional documents and which has yet to trade.

The company is incorporated once the Registrar of Companies issues a certificate of incorporation.

Reporting requirements

In return for the limited liability protection that a private limited company provides for its shareholders, there are several public filing requirements that must be complied with. A private company must notify Companies House of certain changes to the details that it presently holds at Companies House. These include:

- Changes to any of the directors.
- Changes to any of the directors' personal details.
- Changes to the company's registered address.

Companies House must also be provided with copies of certain shareholder resolutions that have been passed by the company.

The directors of a private company must prepare and file accounts at Companies House in respect of each financial year. Other than the first set of accounts prepared by the company, the accounts must be filed by no later than nine months after the end of the financial year in question.

In addition to filing financial information, a private limited company must also file an annual confirmation statement confirming that all information on Companies House is up to date.

Failure to file documents at Companies House within the prescribed time limits may constitute a criminal offence. Civil penalties may also be imposed.

Share capital

There are no minimum or maximum share capital requirements for private limited companies. There is also no requirement for private limited companies to have an authorised share capital. However, the position differs for public limited companies, where some of these requirements are relevant.

Non-cash consideration

A private limited company can issue shares for non-cash consideration. A valuation report for non-cash consideration is not required. However, the position for public limited companies is different.

Rights attaching to shares

Restrictions on rights attaching to shares. Subject to a company's articles of association (articles), the share capital of a private limited company can be made up of more than one class of shares created in order to establish different rights as between the shareholders. In this way, it is possible to place restrictions on particular rights attaching to a company's shares to the extent it is lawful.

Automatic rights attaching to shares. In the absence of any specific share classes and share rights being created, a private limited company will have one type of share (usually "ordinary shares"). These shares carry the right to one vote per share, an equal right to dividends and to participate in any distribution arising on the winding-up of the company.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

A private limited company has a single-tier board of directors responsible for managing the day-to-day operations of the company.

Private limited companies must have one director (being a natural person) appointed at all times.

Management restrictions

A corporate body (including one registered outside of the UK) may act as a director of a private limited company, provided that the requirement for a natural person to be appointed at all times to the board of the company is also met.

Directors' and officers' liability

As a separate legal entity from its shareholders and directors, a private limited company will normally be responsible for the debts and liabilities it incurs and the obligations it enters.

Personal liability can be imposed on directors in certain circumstances, such as the following:

- **Breach of director's duties.** A director may be liable for breach of his/her common law or statutory duties.
- **Personal guarantees.** A director may be personally liable for any personal guarantees they may have been given in respect of the company's business.
- **Contractual or tortious liability.** If a director enters into any contract in a personal capacity, rather than on behalf of the company, they may be held personally liable under the contract. A director may also be liable for any fraudulent or negligent misrepresentation in the course of negotiating and concluding a contract with a third party.
- **Wrongful or fraudulent trading.** Wrongful trading occurs where a company continues to trade in circumstances where a director knew, or ought to have known, that the company had no reasonable hope of avoiding an insolvent liquidation occurring, and the director took no reasonable steps to minimise the risk posed to creditors.

Fraudulent trading arises where a director allows a company to trade with the intention of defrauding creditors. A liquidator can make a director personally liable for company debts and require them to contribute to assets available to pay creditors.

- **Criminal offence by company.** Where a criminal offence is committed by a company as a consequence of the negligence, consent or connivance of a director, the director may be personally liable.

Parent company liability

Under English law, a parent company and its subsidiary are separate legal entities in their own right and a UK parent company cannot be held liable for the debts and other liabilities of its subsidiary (whether UK or foreign), often referred to as the "corporate veil".

However, recent case law is starting to lay down some exceptions to this general principle (for example, if a parent company is too closely involved in the affairs and operations of its subsidiary, then there is a potential risk that the parent company may owe a direct duty of care to the employees of the subsidiary and third parties affected by the subsidiary's operations).

Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The main laws regulating employment relationships in the UK are as follows:

- **Employment Rights Act 1996 (ERA).** This concerns the rights of employees, including:
 - the right to written particulars of employment and protection of wages;
 - the right not to suffer detrimental treatment during employment for specified reasons; and
 - rights in relation to dismissal.
- **Equality Act 2010 (EA).** This forms the basis of anti-discrimination law and covers discrimination in employment.
- **Health and Safety at Work Act 1974 (HSWA).** This is the principal legislation governing occupational health and safety, and is supplemented by a number of regulations on specific aspects of workplace health and safety.
- **Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).** This governs the role of trade unions and collective bargaining in the field of employment.
- **DPA.** The DPA and the GDPR together govern how organisations gather, store and use personal data.

There is a large body of secondary legislation governing other matters relating to employment rights, including, but not limited to, working time and paid annual leave, the rights of fixed-term and part-time workers and agency worker rights.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

There is no legal requirement for an employee to have a written contract of employment. However, under the ERA, employees are entitled to a written statement containing the main particulars of employment within two months of starting (known as the "principal statement"). From 6 April 2020, a principal statement will need to be provided to all workers on or before the first day of their employment (*Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (SI 2018/1378)*).

Terms of employment can be implied into contract (for example, through custom and practice, statute and at common law). The key implied term at common law being one of mutual trust and confidence between employee and employer.

Collective agreements may be formed between a trade union and an employer, under which the parties can engage in negotiations to agree terms and conditions of employment on behalf of employees.

12. Do foreign employees require work permits and/or residency permits?

The UK currently operates two separate immigration systems, depending on the individual's nationality:

- EEA nationals enjoy "freedom of movement" rights under EEA regulations, which allow them to work for any employer without obtaining permission from the Home Office.
- Non-EEA nationals must apply under an UK immigration regime known as the points-based system (PBS) and have an appropriate visa before engaging in work.

For EEA nationals, the immigration landscape will change drastically as a result of Brexit. EEA nationals and their family members who are living in the UK on *exit day* must register under the EU Settlement Scheme (Scheme) if they wish to continue living in the UK to work and access pensions and healthcare.

For non-EEA nationals, individuals will usually require sponsorship from their UK employer before they can be granted a work visa under the PBS. There are five "tiers" under the PBS, but only four of which are currently operational:

- **Tier 1.** This refers to a group of visas available for "high-value" migrants with exceptional talent. The Tier 1 (Entrepreneur) route is now closed. As a replacement, new Start-up and Innovator visa routes were introduced on 29 March 2019 and are categorised outside of the PBS.
- **Tier 2.** This is the main route for skilled workers with sponsorship from UK employers, including existing employees being transferred to the UK entity on international assignment.
- **Tier 3.** This was designed for unskilled workers. However, this category has never been used by the Home Office.
- **Tier 4.** This is the route for students.
- **Tier 5.** This is the route for various temporary workers, including the Youth Mobility Scheme.

Outside of the PBS, it is possible to send a senior executive of the overseas parent company to the UK in order to set up a UK branch or wholly-owned subsidiary. This route is only available if the overseas parent company has no presence in the UK.

Tier 2 and the sponsor licence

Under the Tier 2 route, UK employers will need a sponsor licence to sponsor non-EEA national migrants. In most cases, employers will need to advertise the role to confirm that there were no suitable settled workers and obtain further permission from the Home Office before a Certificate of Sponsorship (CoS) can be assigned due to the annual cap on available work visas. Provided that a valid CoS is assigned, the migrant can then apply for a Tier 2 visa from abroad.

Legal right to work

Employers must check that all of their employees have the right to work in the UK before they start their job. A civil penalty of up to GBP20,000 per worker can be imposed on an employer who knowingly or negligently hires an illegal worker. There are also criminal offences for hiring an illegal worker, which can result in an unlimited fine or up to five years of imprisonment.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees do not have a statutory right to management representation. However, the below matters give rise to information and/or consultation rights for employees:

- **Collective redundancies.** Information and consultation obligations are triggered when an employer proposes to dismiss 20 or more employees by reason of redundancy at one establishment within a period of 90 days or less.
- **Individual redundancies.** Employers must generally inform and consult with individual employees who are at risk of redundancy before terminating their employment.
- **Certain changes to an occupational or personal pension scheme.** Consultation may be required if an employer with at least 50 employees proposes certain "listed changes" to occupational or personal pension scheme arrangements.
- **Transfer of an undertaking.** The employer of any employee who may be affected by the transfer of an undertaking (or measures taken in connection with it) is required to inform and may also be required to consult with the affected employees or their appropriate representatives.
- **Health and safety.** Employers have a duty to consult with their employees, or their representatives, on health and safety matters.
- **Economic and employment-related matters.** The Information and Consultation of Employees (ICE) Regulations 2004 established a general framework for employers informing and consulting their employees. Where a formal request is made by at least 15 employees or 10% (or from 6 April 2020: 2%) of employees (whichever number is greater), the employer must negotiate with employee representatives with a view to agreeing arrangements for informing and consulting the workforce about economic and employment-related matters.

- **Trade unions.** An employer may be required to inform and/or consult with trade unions about certain issues relating to the workforce (such as pay and working conditions) if it has entered into collective bargaining arrangements that provide for this.

14. How is the termination of individual employment contracts regulated?

The employer or the employee can terminate a contract of employment by giving notice of termination and are normally entitled to a minimum period of notice:

- **Employers.** The statutory minimum notice that can be given by the employer is one week in the first two years of employment, increasing by one additional week's notice for each additional complete year of service up to a maximum of 12 weeks.
- **Employees.** The statutory minimum notice that can be given by an employee is one week. However, an employment contract can set out longer notice periods, or provide for termination to occur on a fixed date or the happening of a specific event (fixed-term contract).

An employer may be able to dismiss without prior notice where the employee is guilty of gross misconduct. There is also a statutory regime which protects employees with two or more years' service against unfair dismissal. Dismissals for certain reasons (such as those relating to pregnancy or whistleblowing) will be "automatically" unfair and the two-year service requirement is disapplied.

When making dismissals for reasons of poor performance or conduct, the employer should follow the ACAS Code of Practice on disciplinary and grievance procedures (ACAS Code). A Tribunal will consider whether an employer has followed the ACAS Code and can increase compensation awards by 25% for an employer's unreasonable failure to comply.

15. Are redundancies and mass layoffs regulated?

The ERA and TULRCA regulates redundancies and layoffs.

If an employer proposes to dismiss 20 or more employees by reason of redundancy at one establishment within a period of 90 days or less, TULRCA requires it to inform and consult the appropriate representatives of any affected employees. No dismissal can take effect within 30 or 45 days from the start of collective consultation. The employer must also notify the Secretary of State for Business, Energy and Industrial Strategy of the proposal at least 30 days before the first dismissal (or at least 45 days in cases where 100 or more employees are to be dismissed). Failure to do this is a criminal offence attracting an unlimited fine.

Individual consultation is required before any dismissal for redundancy and an employee with two or more years' service may be unfairly dismissed if the employer has not carried out a fair selection process and properly consulted with the employee about the redundancy situation. Employees with at least two years of continuous service are entitled to a statutory redundancy payment on dismissal by reason of redundancy.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

An employee or office holder who is resident in the UK is taxed on the full amount of his/her worldwide income for the tax year, unless his/her permanent home (domicile) is abroad. Non-UK residents are chargeable to income tax on general earnings in respect of their duties performed in the UK.

If the employee is resident in a non-UK country but employed in the UK and the other country has a double taxation treaty with the UK, employees may be able to claim relief in the UK to avoid double taxation.

Where the employee's duties are performed partly in the UK and partly overseas, a time apportionment is generally used to determine the employee's UK tax liability.

If an employee is not resident in the UK and he/she do not perform duties in the UK, there is no liability to pay UK tax.

The Statutory Residence Test (SRT) determines the tax residence status of individuals with connections to the UK. An individual is automatically a non-UK resident if he/she meets one of the conditions of the "automatic overseas test". If not, the person will qualify as a UK tax resident by satisfying one of the conditions for the "automatic UK test".

An individual is automatically UK tax resident if during the tax year (6 April to 5 April) he/she either:

- Spends 183 or more days in the UK during the tax year.
- His/her only home is in the UK (he/she must have owned, rented or lived in it for at least 91 days in total and spent at least 30 days there in the tax year).

Equally, an individual is automatically non-UK resident if he/she either:

- Spends fewer than 16 days in the UK (or 46 days if he/she haven't been classed as a UK resident for the three previous tax years).

- Works abroad full time (averaging at least 35 hours a week) and spends fewer than 91 days in the UK, of which no more than 30 were spent working.

If neither the automatic overseas test nor the automatic UK test is satisfied, an individual's UK tax residence status is determined by reference to the "sufficient ties test", which considers the extent of his/her ties to the UK.

HMRC have produced guidance on the statutory residence test (see www.gov.uk/government/uploads/system/uploads/attachment_data/file/381705/rdr3_1_.pdf).

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

UK tax resident employees receive a tax free "personal allowance", which for the 2019/20 tax year is GBP12,500. Tax payers with a net income above GBP100,000 have a gradually reduced personal allowance such that no personal allowance is available for incomes over GBP125,000.

Income tax is payable on income over the personal allowance amount. The rates of tax on taxable income for the tax year 6 April 2018 to 5 April 2019 are:

- **Basic rate.** This is paid on taxable earnings between GBP12,500 and GBP50,000 at a rate of 20%.
- **Higher rate.** This is paid on taxable earnings between GBP50,001 and GBP150,000 at a rate of 40%.
- **Additional rate.** This is paid on taxable earnings over GBP150,000 at a rate of 45%.

Taxpayers resident in Scotland pay income at the rates set by the Scottish Parliament. For the tax year 2019/2020, these are:

- **Starter rate.** This is paid on taxable earnings over GBP12,500 up to GBP14,549 at a rate of 19%.
- **Basic rate.** This is paid on taxable earnings over GBP14,549 up to GBP24,944 at a rate of 20%.
- **Intermediate rate.** This is paid on taxable earnings over GBP24,944 up to GBP43,430 at a rate of 21%.
- **Higher rate.** This is paid on taxable earnings over GBP43,430 up to GBP150,000 at a rate of 41%.
- **Top rate.** This is paid on taxable earnings over GBP150,000 at a rate of 46%.

Throughout the UK there is also a 0% starting tax rate for savings income, which applies to the first GBP5,000 of taxable income. The maximum saving rate is reduced by GBP1 for every GBP1 of income earned over the personal allowance, with the result that individuals earning more than GBP16,850 are not eligible for the 0% rate for savings.

There is also a personal savings allowance which eliminates tax on up to GBP1,000 of interest from certain savings income for basic rate taxpayers and up to GBP500 for higher rate tax payers. Additional rate taxpayers do not receive

an allowance. Savings already in tax-free accounts like ISAs and some National Savings and Investments Accounts do not count towards the allowance (see www.gov.uk/apply-tax-free-interest-on-savings).

Employees must pay national insurance contributions (NIC), which employers deduct from the employee's income. The rate at which NIC is payable varies according to weekly income. Information about applicable rates can be found on the HMRC website (see www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions).

Non-tax resident employees

Subject to any double taxation treaties, non-UK tax resident employees are liable to UK income tax on:

- Earnings from employment where their duties are carried on in the UK.
- UK-source investment income.
- Income arising from property located in the UK.

NIC is payable once an employee has worked in the UK for a continuous period of 52 weeks.

Since 6 April 2017, HMRC treats some individuals who are not UK domiciled as if they are domiciled (deemed domiciled) in the UK for income tax and capital gains tax purposes.

Employers

Employers must make NIC at 13.8% of an employee's gross salary. For employees who are not UK residents, this obligation only arises once the employee worked in the UK for a continuous period of 52 weeks.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

A company is resident in the UK if it either:

- Is incorporated in the UK.
- Has its central management and control in the UK.

UK resident companies are subject to corporation tax in the UK on their worldwide profits, regardless of the source, unless such profits arise from a permanent establishment outside the UK, in which case they may be exempt from tax under the branch exemption rules.

The main corporation tax rate for the 2018/19 tax year is 19%, falling to 17% from the tax year starting 1 April 2020.

Non-tax resident business

Companies which are not resident for tax purposes in the UK are subject to UK corporation tax if they carry on a trade through a permanent establishment in the UK. Corporation tax is payable on all profits arising from its trade through that establishment and on chargeable gains from assets situated in the UK and used for the trade or permanent establishment. From 1 January 2019, non-UK resident companies may not artificially organise their business so as to avoid falling under the definition of a UK permanent establishment.

From 6 April 2020 corporation tax will apply to the UK property income of non-resident companies, instead of income tax.

Corporation tax also applies to non-resident companies trading in UK property or developing UK property companies, even if such a company does not have a permanent establishment in the UK.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Corporation tax

UK tax resident companies must pay corporation tax on their worldwide profits, and on all profits arising from the trade carried on through those UK permanent establishments.

Value added tax (VAT)

VAT is charged on taxable supplies. VAT-registered businesses must charge and account for VAT on the whole value of the goods or services they provide. Most goods and services are taxed at the standard rate of 20%. There is a reduced rate of 5% and a zero rate of 0% for certain goods and services.

There is a narrow category of supplies which are exempt from VAT, such as the provision of insurance and financial services or the selling and letting of commercial land and buildings.

Stamp duty or Stamp Duty Reserve Tax

Tax is payable on the purchase of shares or interest in shares, usually at 0.5% of the consideration. Stamp duty is payable on shares purchased using a stock transfer forms on all purchases with a value above GBP1,000. Stamp Duty Reserve Tax is payable on all purchase of shares made electronically through the "CREST" system (a computerised register of shares). A higher rate of 1.5% applies in certain cases where shares are transferred to depositories or into a clearance system.

Stamp Duty Land Tax, Land Transaction Tax or Land and Buildings Transaction Tax

Stamp Duty land tax (SDLT) is a tax on land transactions in England, payable on all transactions in land above GBP125,000 for residential properties and GBP150,000 for non-residential land and properties. Rates of SDLT on

residential property rise from 2% to 12% in a slice system, where the part of the entire consideration falling within a particular band is taxed at the rate applicable to that band.

There is a 3% surcharge on the SDLT rates where individuals are purchasing an additional dwelling.

SDLT is charged at 15% on residential properties costing more than GBP500,000 bought by companies, partnerships or collective investment schemes.

For commercial property and land, the rates are 2% for properties or land over GBP150,000 and 5% for properties or land over GBP250,000.

SDLT is also payable on leasehold transactions, including both the:

- Purchase price of the lease (lease premium).
- Value of the annual rent (net present value (NPV)).

The lease premium is at the same rates as above, and rates of 1% on the NPV of non-residential land rent above GBP150,000 and 2% on the NPV above GBP5 million. The rate for residential land is 1% on the NPV above GBP125,000.

Transactions of land in Wales give rise to the Land Transaction Tax (LTT). The current LTT threshold is GBP180,000 for residential land and GBP150,000 for non-residential land and properties. Rates of LTT are 3.5% to 12% on residential property and 1% to 6% on commercial land and property, in the same slice system.

Transactions of land in Scotland give rise to the Land and Buildings Transaction Tax (LBTT). Rates of SDLT on residential property are 2% to 12% in the slice system, the bands being different to those in England. From 25 January 2019, the rates of LBTT for commercial land are the same as those under SDLT in England:

- 2% for properties or land over GBP150,000.
- 5% for properties or land over GBP250,000.

Business rates

Business rates are a tax on occupied non-residential property charged on the property's rateable value, which is based on the rental value as estimated by the Valuation Office Agency. The rates are 50.4% of the rateable value, or 49.1% for small businesses.

The rateable value of a property can be checked on the UK Government's website (www.tax.service.gov.uk/business-rates-find/search). Business rates are usually an allowable deduction when calculating profits for corporation tax purposes.

Diverted profits tax

Diverted profits tax is charged at 25% as an anti-avoidance measure. It is intended to apply to large multinational enterprises with business activities in the UK who enter into contrived arrangements to divert profits from the UK by:

- Avoiding a UK taxable permanent establishment.
- Other contrived arrangements with connected entities.

Digital services tax

The UK Government has proposed a new digital services tax (DST) to apply from April 2020. DST will be a 2% tax on the UK revenues of digital businesses that are considered to derive significant value from the participation of their users. Business activities within scope will be the provision of a social media platform, search engine or online marketplace. The tax will apply to the revenues generated by these taxable business activities, where those revenues are linked to the participation of a UK user base.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

The UK does not impose withholding tax on dividends paid to foreign corporate shareholders and foreign corporate shareholders are not subject to corporation tax on dividends received from UK companies.

Dividends received

Individual shareholders in the UK have an annual dividend allowance of GBP2,000. Dividends received above the allowance are taxed at:

- 7.5% for basic rate taxpayers.
- 32.5% for higher rate taxpayers.
- 38.1% for additional rate taxpayers.

Corporate shareholders receiving dividends from foreign companies (as well as UK companies) can generally rely on one of a number of exemptions to ensure they are not subject to corporation tax (such as the small company exemption, and certain exempt classes of dividends).

In addition to the specific anti-avoidance rules for certain exempt classes, a dividend will be taken out of all of the exempt classes if it is paid as part of one of a list of five defined schemes and, broadly, the main purpose or one of the main purposes of the scheme is to obtain a more than negligible tax advantage, or fall within an exempt class.

If no exemption is available, a corporate shareholder would be subject to corporation tax at the normal rates on those dividends.

Interest paid

Tax is withheld at 20% from payments of interest (unless a double taxation treaty or another domestic exemption is available). For example, interest paid to a recipient within the charge to UK corporation tax is not subject to withholding tax.

IP royalties paid

Tax is withheld at 20% from payments of royalties (unless a double taxation treaty or another domestic exemption is available). For example, a royalty paid to a recipient within the charge to UK corporation tax is not subject to withholding tax.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Rules apply to loans to or from foreign affiliates as well as loans between UK affiliates and are part of the UK's transfer pricing rules. These rules mean that:

- A company cannot borrow more from an affiliate than it would have been able to borrow from an arm's length party.
- The terms on which it borrows money from the affiliate must be the same as from an arm's length party.

HMRC considers that the thin capitalisation rules should involve looking at every aspect of lending and borrowing from a transfer pricing angle (see [Question 23](#)).

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Anti-avoidance controlled foreign company (CFC) rules exist to prevent diversion of UK profits to low tax territories. The rules are complex, but broadly, apply a corporation tax charge on the UK parent of an amount equal to the taxable income of its non-UK subsidiary. The CFC charge does not apply where the subsidiary is located in one of the excluded territories, jurisdictions in which the tax rate is more than 75% of the UK main corporation tax rate. There are also exemptions for companies with low profits or low profit margins.

23. Are there any transfer pricing rules?

The UK has transfer pricing rules which govern transactions between connected companies, both within the UK and cross-border. These rules are based on the "arm's length principle" which is calculated using the valuation methods set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017. Where the transfer pricing rules apply, a company's profits and losses must be calculated by substituting the connection company provision with an arm's length provision. The transfer pricing rules apply if all of the following are applicable:

- One company controls the other, or the two companies are connected.
- The terms of the transaction are not what would have been agreed between independent parties.
- The terms of the transaction give a tax advantage in the UK to one or both of the transacting companies.

If all of these conditions are met, HMRC may tax the transaction as it would have if it had been made at arm's length rather than on the actual value of the transaction.

Customs duties

24. How are imports and exports taxed?

As with all EU countries, imports to the UK from outside the EU are subject to VAT and the importer must pay the VAT on import at the same rate as if the goods were supplied within the UK. Customs duty and excise duty may also be payable on imports and exports and vary according to the type of good.

Exports to outside the EU are subject to VAT, but are generally zero rated.

The supply of goods between EU VAT-registered traders is generally zero-rated (to qualify, the customer state code and VAT registration number must be put on the invoice). Where VAT is payable, the customer receiving supplies must pay VAT at its country's rate. VAT is charged in the normal way on sales to non-VAT registered customers.

Following Brexit, the UK will be (subject to any withdrawal agreement) outside the EU for VAT purposes. The government has confirmed that, in the case of a no-deal Brexit, VAT payable on imported goods will be accounted for in the importer's VAT return rather than on import, to avoid cash flow issues for importers. Exports to the EU will follow the current rules for exports to non-EU countries and will be zero rated.

Double tax treaties

25. Is there a wide network of double tax treaties?

The UK has nearly 150 double tax treaties.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

CMA

The main national competition authority in the UK is the (CMA), which is the investigation and enforcement authority under the Competition Act 1998 and the competition provisions of the Enterprise Act 2002. The powers of the CMA under the Competition Act relate to areas of anti-trust law. The CMA's roles and powers under the Enterprise Act principally relate to merger control and market investigations.

The market investigations regime enables the CMA to launch a detailed examination of a particular market where it suspects that a feature or combinations of features of a market in the UK for goods or services prevents, restricts or distorts competition. Prior to deciding on whether to initiate a market investigation, the CMA may conduct a market study for a period of up to 12 months, in accordance with a formalised process set out in the Enterprise Act. The CMA can then either:

- Make recommendations to the business (for changes in business behaviour) or to the government (for legislative or regulatory changes).
- Launch a full-scale market investigation, or accept undertakings in lieu of such reference.

Restrictive agreements and practices

Chapter I of the Competition Act contains a prohibition of restrictive agreements within the UK in very similar terms to those of Article 101 of the Treaty on the Functioning of the EU (TFEU). Agreements between undertakings, decisions by associations of undertakings and concerted practices are prohibited where they may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK. Agreements are exempt under section 9 on equivalent criteria as those applying under Article 101(3) TFEU (that

is, where the agreement contributes to improving production or distribution or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit, and does not impose any restrictions which are not indispensable to those objectives nor eliminate substantially all competition in the relevant products). The Competition Act provides for block exemption Regulations by means of an order of the Secretary of State, but also currently provides for parallel exemptions for agreements which comply with the criteria under agreements which comply with the criteria under a relevant EU block exemption regulation.

In relation to Brexit, the relevant EU regulations applicable in relation to competition will be adapted and in some cases revoked, in order to produce a domestic set of Regulations equivalent to the current EU regulations, with all references to the EU, EU institutions and member states being removed. This will be achieved by means of the Competition (Amendment etc.) (EU Exit) Regulations 2019 (Competition SI). The Competition SI also replaces the concept of "parallel exemptions" regarding compliance with EU block exemption criteria, by the concept of "retained exemptions", so that agreements that currently benefit from parallel exemption will continue to benefit from a retained exemption.

Unilateral conduct

Chapter I of the Competition Act contains the prohibition of abuse of dominant position in equivalent terms to those of Article 102 TFEU. Section 18 prohibits any conduct by one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the UK. Conduct may constitute such an abuse if it involves any of the following:

- Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.
- Limiting production, markets or technical developments to the prejudice of consumers.
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of the contract.

27. Are mergers and acquisitions subject to merger control?

The CMA exercises merger control powers under the Enterprise Act. There is no requirement to pre-notify or obtain pre-clearance for mergers under the UK rules, but the CMA has the power to intervene and investigate a merger and, in the case of an adverse competition assessment, prohibit an anticipated merger or impose remedial measures (regarding a completed merger or acquisition) including divestment. (Note: where a merger has not been completed, there is no need for remedial measures because the merger can be prohibited (prevented.)

At present, large-scale mergers which fulfil the turnover criteria of Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation) on the control of concentrations, must be pre-notified and must be the subject of a prior clearance decision by the European Commission under EU law. Where a merger is subject to the Merger Regulation, national merger control rules are disapplied. However, with Brexit, the UK merger control rules will apply in parallel to the EU merger control system, even in the case of large-scale mergers which are

subject to the Merger Regulation. The Competition SI will revoke the Merger Regulation in UK domestic law under the EU Withdrawal Act, with effect from *exit day*.

The threshold in relation to the types of transactions that are subject to the UK merger control rules is relatively low, being the acquisition of the ability to exercise material influence. The acquisitions of de facto control or of outright legal control are also subject to the merger control rules. Transactions are covered by the rules where either:

- The UK turnover of the target company exceeds GBP70 million.
- As a result of the merger, the merged business will hold a share of 25% or more in the supply or purchase of goods or services of a particular description (in respect of overlapping products of the parties) in the whole or a substantial part of the UK.

There are lower jurisdictional vetting thresholds for mergers concerning products that may have national security implications (such as businesses involving military hardware, IP for computer processing chips and those involved in quantum technology).

The CMA has powers to impose interim measures preventing any pre-emptive action by the parties to a merger which may prejudice the outcome of any CMA investigation whilst the CMA is assessing whether to refer the merger for a second phase investigation. Where the merger has already been completed, the CMA can require the parties to take measures to restore the prior position. Where a merger is referred for a second phase investigation, the parties must suspend the transaction until the CMA has concluded its investigation.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. The owner of a patent has the right to exclude others from doing certain acts in relation to the invention claimed in the patent. This includes making, selling and importing products which use the invention or are made in accordance with it if it is a process. Patents are granted by a patent office. However, the validity of a patent may later be re-examined during court proceedings for infringement of the patent or where its validity is otherwise contested.

There are three essential requirements that an invention must satisfy in order for it to be protectable by a patent

- Novelty.
- Inventive step.
- Industrial application.

Registration. To obtain a patent, you must first file a patent application. The main document needed for filing a patent is a draft patent specification, which must contain:

- An abstract summarising the invention.
- A detailed description which must contain enough information to allow the skilled person to use the invention. Failure to do so can make the patent invalid.
- One or more claims which comprise the legal definition of the invention you are seeking to patent and specify each of those features which set the invention apart from the prior art.

Typically, it takes two to four years from filing for a patent to be granted.

For patents valid in the UK, the application is filed with the UK Intellectual Property Office (IPO). For patent protection in more countries, separate applications can be filed at each of the respective national patent offices. Alternatively, for protection in more than one European country, a single application can be filed in the European Patent Office (EPO), which if successful, grants a bundle of separate national patents in each of the European countries.

For non-European countries, you can file under the Patent Cooperation Treaty (PCT) at the World Intellectual Property Organisation (WIPO) which provides a single application process for applying for individual national patents. After a first application is made, counter-parts can be filed in other jurisdictions during a period of 12 months called the "priority period".

Enforcement and remedies. A patent is infringed by making, selling, using, importing or keeping something which is covered by the claims of a patent without the owner's permission. A patent can also be infringed indirectly by supplying another person with the means to infringe a patent (such as supplying a specialised component which another person assembles into a device that then causes the device to infringe).

The defendant to an infringement action will usually allege that the patent is invalid on the basis of lacking novelty or being obvious. If a court decides that a patent is valid and infringed, it may grant an injunction and monetary compensation. The court may also order destruction or delivery up of any remaining stocks of the infringing product.

Length of protection. Patents last for 20 years from the date the application is filed, provided annual renewal fees are paid. In Europe and some other countries, certain pharmaceutical patents can have their lifetime extended by a few years to make up for the lengthy approvals period before a drug can be put on the market.

Trade marks

Definition and legal requirements. Trade marks are signs that are used to identify the origin of goods and services. A trade mark can be protected by registering the mark. However, they can also be protected in the UK as unregistered rights through the law of passing-off.

A trade mark must satisfy certain requirements to be registered, including that it must be:

- A sign such as a word, logo, colour, shape and even a sound.
- Capable of being represented in a manner which enables precise determination of the subject matter protected.
- Capable of distinguishing goods and services.

- Not descriptive and not customary.

These requirements are in the public interest to ensure that descriptive and customary terms can be freely used without infringement.

The requirements that the mark has distinctive character and is not descriptive or customary may not be necessary in the event that a trade mark has acquired distinctiveness through use. This will generally be the case where a significant proportion of the public have been exposed to the mark such that they associate goods and or services bearing the mark with a particular undertaking.

Protection. UK only registered trade marks can be applied for at the UK IPO, but it is also possible to file for an EUTM (European Union trade mark), applied for at the European Intellectual Property Office (EUIPO), which covers all the member states of the EU. Following an application for a mark, the relevant registry may raise objections if the mark does not satisfy the above registrability requirements.

Passing-off is wider than trade mark infringement, as there are no requirements for registrability. However, there is a higher evidentiary burden on a claimant, which can make pursuing an action expensive. To bring an action, a claimant must establish:

- Goodwill attached to the goods or services within the UK.
- A misrepresentation by the defendant to the public that leads or is likely to lead the public to believe (for example, that the goods or services offered are those of the owner of the goodwill).
- Damage to the claimant as a result of the misrepresentation that the defendant's goods or services come from the same source as those offered by the claimant.

Enforcement and remedies. A registered trade mark is infringed when used, in the course of trade, without consent. There are four types of infringement, depending on the accused mark and on the goods or services on which it is used. For some types of infringement, it is necessary to show a likelihood of confusion, which means the use of the allegedly infringing mark is likely to cause the average consumer to be confused as to the origin of the goods or services. The requirement to prove infringement in each case is:

- Identical marks and identical goods: generally speaking, nothing further needed.
- Identical marks and similar but not identical goods: must show likelihood of confusion.
- Similar mark and identical or similar goods: must show likelihood of confusion.
- Identical or similar mark on non-identical or dissimilar goods: must prove mark has a reputation, use is without due cause, and that the use takes unfair advantage of or is detrimental to the character or reputation of the mark.

There are a number of defences to trade mark infringement. The most important defences being that:

- The defendant is honestly using his/her own name.
- The mark is only being used to describe the goods or services or the purpose for which they are intended.

The defendant can also challenge the validity of the mark on the basis of earlier rights.

If infringement of a valid mark is found, there will normally be an injunction against further use and delivery up or destruction of goods as well as monetary compensation.

A successful claimant in a passing-off action will generally get an injunction and financial compensation. However, damages can be hard to quantify, particularly when assessing damage to reputation over and above lost sales. There may be such damage if, for example, the defendant's products were of poor quality.

Length of protection and renewability. Provided that the registration is renewed every ten years, a trade mark can last indefinitely. However, registration may be revoked if any of the following applies:

- The mark has not been used for five years.
- The mark has become the common name for the goods or services it is registered for.
- The mark has become misleading.

Registered designs

Definition. Design rights protect the appearance of a design, rather than the underlying technology. The core requirements for a design to be protected as a UK registered, EU Community registered or EU Community unregistered right, which can all protect 2D (for example, surface decoration) or 3D designs, are the same, namely:

- **Novelty.** The design must not be identical to another design or differ only in immaterial details and must not have been publicly disclosed anywhere in the world for any type of product before the application date.
- **Individual character.** The design must give an overall impression which is different to that of previous designs to a person familiar with similar designs (the "informed user").
- **Features.** The design must be solely dictated by technical function and "must fit" features whose shape is dictated by the need to fit mechanically with another article are excluded.

Registration. There are two types of registered right available:

- UK registered designs (which offer protection in the UK only) and for which an application must be made to the UK IPO.
- EU Community registered designs (which offer protection throughout the EU) and for which an application must be made to EUIPO, or with the intellectual property office of any EU member state.

Enforcement and remedies. UK and EU Community registered designs (and EU Community unregistered designs) are infringed by the use of a design which creates the same "overall impression" on the "informed user" as the protected design without the owner's consent. Design freedom is an important factor in considering infringement. It is not necessary (as it is with the UK and EU Community unregistered rights) to show that copying has taken place.

The defendant to an infringement action will usually allege that a registered design is invalid on the basis of lack of novelty or individual character. If the design is found to be invalid, the court will not award any remedies for infringement. However, if a court decides that a registered design is valid and infringed, it may grant an injunction and monetary compensation. The court may also order destruction or delivery up of any remaining stocks of the infringing product.

Length of protection and renewability. Both UK and EU Community registered rights last for a maximum of 25 years from the date of filing.

Unregistered designs

Definition and legal requirements. There are two types of unregistered design rights:

- **UK unregistered design rights.** Design right arises automatically as soon as the design is recorded in a design document or article.
- **EU Community unregistered design rights.** Design protection arises automatically as soon as the design is made public in the EU.

For a design to be protected by a UK unregistered design right, the core requirements are:

- **Original and not commonplace.** The design must not be commonly used for the particular type of article in a qualifying country. Qualifying countries include EU states, UK dependencies and some Commonwealth countries but not the US.
- **The designer or their employer must be a qualifying person.** This requires a person residing in a qualifying country or a company with substantial business activity in a qualifying country.
- **3D designs only.** This includes a shape or configuration but not surface decorations, such as patterns or colours (which can be protected by copyright).

Also excluded are: methods or principles of construction, "must fit" features and features which are dependent on the appearance of another article of which the designed article is intended to form part (known as "must match" (for example, a panel of a car body).

The core requirements for a design to be protected as a EU Community unregistered right are the same as for UK and Community registered designs.

Enforcement and remedies. UK unregistered design rights are infringed by making exact or substantially similar articles to the protected design. For both UK and Community unregistered design rights, it is also necessary to show that copying has taken place.

After a successful design right infringement action, relief by way of damages, injunctions, accounts or otherwise is usually available.

Length of protection. UK unregistered design right lasts for the lesser of:

- Ten years from the first marketing of articles made to the design.
- 15 years from the creation of the design document.

EU Community unregistered designs last for a non-renewable period of three years from the date on which the design was first made publicly available anywhere in the EU.

Copyright

Definition and legal requirements. Copyright comes into existence as soon as a work is recorded in a tangible form (for example, drawing a design concept). No formalities, such as registration, are required for a work to attract copyright protection in the UK.

Under UK law, to have copyright protection, a work must fall into one of the categories of work that are protectable: literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or typographical arrangements.

Protection. Literary and artistic works must be "original" to qualify for copyright protection. This means that they must have been created through the author's own skill, rather than copied. A slavish copy will not have originality, but a derivative work or successive drafts of a work can each benefit from their own copyright protection independent of that in the underlying work provided the author's own skill has been exercised in their creation. However, such copyright will only exist in relation to the contribution made and its existence does not grant any rights to make use of the underlying work. Therefore, the process of making a derivative work may infringe the copyright in the underlying work.

Many countries, including the UK, are party to various international conventions affording copyright protection to works protected by copyright in other countries.

Enforcement and remedies. Copyright is not a monopoly right; it protects against copying. This means that two people who independently come up with the same work could each have their own copyright in their individual works and each not infringe the other's copyright.

After a successful copyright infringement action, relief by way of damages, injunctions, accounts or otherwise is usually available.

Length of protection and renewability. The length of copyright protection depends on the type of work. Literary and artistic works generally attract copyright protection from the date they were recorded until 70 years from the end of the calendar year in which the author dies (if more than one author, the death of the last to die). Copyright protection for computer generated works lasts 50 years from the end of the calendar year in which the work was made.

Trade secrets

Definition and legal requirements. Trade secret protection in the UK is governed by the law of confidentiality. This involves an obligation of confidence on a person receiving secret information not to disclose it to others and only to use it for the purpose for which it was provided.

Protection. There are three ways an obligation of confidence can be imposed under UK law:

- An express agreement by the recipient of the information, such as a non-disclosure agreement (NDA).
- An obligation upon the recipient of the information which is implied as a result of some other agreement (for example, the law implies an obligation of confidence on an employee who has entered into an employment contract).
- The information is of the type and imparted in such a way that any reasonable person would know that it should be kept confidential. This requires that the information concerned has been kept confidential and not been made freely available.

Enforcement and remedies. An action for breach of confidence to protect a trade secret can only be enforced against a person with an obligation of confidence in relation to the trade secret and nothing can be done against

someone who develops the same thing independently. Patents therefore offer better protection where there is concern that competitors may also be working to develop innovations in the same area. If this is not a concern, then maintaining a trade secret may be preferable to avoid alerting competitors who may be monitoring filed patent applications.

Length of protection. If the innovation is of a type that can be kept secret (such as a manufacturing process) or it is unlikely that reverse engineering will allow others to understand its operation, maintaining trade secrets may mean that the invention can potentially be prevented from being used by competitors for longer than is possible with a patent (whose lifetime is generally limited to 20 years).

Database rights

Definition and legal requirements. A database is defined for the purpose of database right as a collection of independent works, data or other materials arranged in a systematic or methodical way which are individually accessible by electronic or other means.

Protection. Database rights require a substantial investment in obtaining, verifying or presenting the contents of the database. This investment means expenditure on finding and collecting independently created materials, not expenditure on creating those materials in the first place. There is no registration or other formality: the right arises as soon as the database is completed.

Enforcement and remedies. Database rights are infringed by extracting or reusing all or a substantial part of the contents of a database without permission. Repeated and systematic extraction or re-utilisation of insubstantial parts of the database can be an infringement, the cumulative effect of taking small amounts being the taking of a substantial amount. Transferring a substantial part to a new medium, or making a manual copy of the data after looking at the database, is also extraction. An essential element of proving infringement of a database right is to demonstrate copying.

Length of protection. Database rights last for either:

- 15 years from the end of the calendar year in which the database compilation was completed.
- If the database was made available to the public before the end of this period, 15 years from the end of the calendar year in which the database was made available.

However, this period may be extended if a substantial change is made to the contents of the database, involving substantial new investment, when a new 15 year-term will apply.

Marketing agreements

29. Are marketing agreements regulated?

Agency

Agency agreements in the UK are subject to two areas of law:

- The common law of agency.
- Laws applicable to commercial agents (from the Commercial Agents (Council Directive) Regulations 1993 (SI 1993/3053) (UK Agents Regulations), which implement Directive 86/653/EEC on self-employed commercial agents (Self-employed Agents Directive).

Depending on their terms, agency agreements can be subject to neither, one of, or both of these areas of law.

Both areas of law set out certain rights and duties, but the UK Agents Regulations also impose mandatory provisions and restrictions applicable to commercial agency agreements, designed to protect the commercial agent.

Distribution

There are no laws in the UK specifically regulating distribution agreements. UK and EU competition law, which prohibits provisions in agreements which are anti-competitive however, impacts on all distribution agreements (*see Question 25*). Parties to a distribution agreement should take care to ensure that the intended agreement structure does not constitute a commercial agency agreement (otherwise, the UK Agents Regulations will apply, regardless of form).

Franchising

There are no laws in the UK specifically regulating franchise agreements, though they can be subject to certain laws applicable to trading schemes (such as the Trading Schemes Act 1996 and the Trading Schemes Regulations 1997 (SI 1997/30) (Trading Scheme Laws). The original intention of the Trading Schemes Laws was to prohibit pyramid selling, and legislate certain restrictions and obligations applicable to multi-level trading schemes to ensure they do not constitute illegal pyramid schemes. However, because of the nature of the drafting, the laws apply to most franchise agreements. However, there are two exceptions:

- Where all participants/franchisees in the franchise network operate at the same, single tier (that is, a direct franchisor-franchisee relationship, with no further sub-franchising).
- Where all participants/franchisees within the franchise network are registered with HMRC for VAT.

If a franchise agreement does not meet one of the above exceptions, the franchisor and the applicable franchise agreement will need to comply with the fairly onerous, mandatory provisions of the Trading Schemes Laws, which include:

- The requirement to give participants/franchisees a 14 day "cooling off" period post signature, during which the franchisee can terminate the agreement without penalty.
- Limitations on payments that can be made by the franchisee to the franchisor within the first seven days of signature (known as the "GBP200 rule").
- Prescribing warning notices that must be included in all advertising of the franchise and the franchise agreement itself.

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Law in the UK governing e-commerce is set out in several different regulations and Acts of Parliament. The main laws include the:

- **E-Commerce Regulations 2002 (E-Commerce Regulations).** The E-Commerce Regulations impose a range of obligations on the operators of commercial websites. This includes obligations to:
 - provide users with certain information about the operator and its services;
 - confirm the customer's order electronically without undue delay.
- **Consumer Rights Act 2015 (CRA).** The CRA consolidated a range of previous UK consumer rights legislation and updated certain areas, including:
 - terms implied into consumer contracts by statute;
 - the remedies for breach of contract which are available to the consumer; and
 - the rights of the consumer with regard to delivery of their purchase.
- **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (Consumer Contract Regulations).** The Consumer Contract Regulations place additional obligations on website operators who deal with consumers, such as requirements to provide certain information. The Consumer Contract Regulations also give consumers rights when they purchase goods or services online and restrict retailers' ability to impose surcharges on consumers when they use a particular payment method.
- **Consumer Protection from Unfair Trading Regulations 2008 (CPRs).** The CPRs prohibit various unfair practices by traders, such as misleading actions or omissions and aggressive sales tactics. They also include a "blacklist" of prohibited commercial practices. See also [Question 30](#).
- **Provision of Services Regulations 2009 (POS Regulations).** The POS Regulations provide that in the provision of services, traders must not discriminate between EEA residents on the grounds of nationality or place of residence unless justified by objective criteria.
- **GDPR and DPA.** The GDPR has direct effect across all EU member states and sets requirements for the use of personal data (including the personal data of website users). The DPA provides additional requirements for those areas left open by the GDPR or which do not fall within EU law, and these two laws must be read side-by-side.
- **Privacy and Electronic Communications (EC Directive) Regulations 2003 (PEC Regulations).** The PEC Regulations transpose Directive 2002/58/EC on the protection of privacy in the electronic communications sector (E-Privacy Directive) into UK national law. The PEC Regulations govern direct

marketing (both solicited and unsolicited) by means of electronic communication, as well as the use of cookies. A new ePrivacy Regulation is currently in proposal form but is unlikely to come into force until 2020.

- **Electronic Services Regulation 2014 (eIDAS).** This provides the legal framework for electronic identification and trust services (including electronic signatures) in the UK.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

In the UK, the CPRs implemented Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive) into national law. The CPRs include broad prohibitions on misleading advertising and other forms of unfair commercial practices directed at consumers.

The CPRs prohibit misleading actions, misleading omissions and unfair commercial practices. The CPRs also contain a schedule of blacklisted practices which are deemed to be automatically unfair, irrespective of whether they can be shown to have had an effect on the consumer. The CMA, the body responsible for enforcing the CPRs, has delegated primary enforcement responsibility to the self-regulatory system for advertising in the UK.

In the UK there are two self-regulatory codes, which are enforced by the Advertising Standards Authority (ASA):

- **UK Code of Broadcast Advertising (BCAP Code).** The BCAP Code is applicable to advertisements and programme sponsorship credits in broadcast media.
- **UK Code of Non-Broadcast Advertising (CAP Code).** The CAP Code is applicable to the marketing and advertising communications in non-broadcast media.

Both Codes reflect the requirements of the CPRs and contain a range of general and sector-specific rules regarding advertising. There are also more stringent industry-specific regulation which certain sectors will be subject to (for example, adverts for financial services, pharmaceuticals and tobacco products).

The Business Protection from Misleading Marketing Regulations 2008 implemented Directive 97/55/EC on misleading and comparative advertising (Misleading and Comparative Advertising Directive) in the UK. These regulate comparative advertising by businesses and prohibit making misleading comparisons with a competitor.

Data protection

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

The UK has specific data protection laws. Organisations that process personal data (which includes employee data and business contact data) must comply with the DPA, the UK's "version" of the GDPR, which implements GDPR into national law.

Organisations will need to check with the UK ICO whether they are required to pay a "data protection fee". The amount of the fee will depend on the:

- Number of staff the organisation employs.
- Organisation's annual turnover for the preceding financial year.

Organisations must also ensure their use of personal data complies with data protection principles. The GDPR/DPA has introduced a new "accountability principle", which requires organisations to demonstrate their compliance with their data protection obligations. This principle predominantly manifests itself in prescribed "accountability documentation", which includes drafting and implementing:

- Records of processing activities.
- Data protection policies.
- Staff training.
- Data protection impact assessments.
- Supplier management tools.

Organisations must also determine whether they are required to appoint a data protection officer. The DPA also restricts the transfer of personal data out of the EEA, unless prescribed compliance measures are taken.

Personal data regulation is unlikely to change in the UK post-Brexit, as the UK Government has confirmed that GDPR will simply be absorbed into national law at the point of exit from the EU. However, organisations which transfer data from the UK to the EEA and/or vice versa may be affected by Brexit. Currently, personal data is permitted to flow freely in both directions, due to adequacy of laws in all countries within the EEA (as all such countries have the GDPR as a common set of laws). The UK Government confirmed that it intends to continue to permit transfers of personal data from the UK to the EEA on this basis. However, it remains to be seen whether the EEA countries offer reciprocal terms to the UK.

Product liability

33. How is product liability and product safety regulated?

In England and Wales, product liability and product safety law derives from legislation, EU law and common law.

Two main steps must be taken to establish a product liability claim. First, the claim must be based on one (or a combination) of the following three legal grounds:

- **Under contract.** The claimant must prove that all of the following has occurred:

- the defendant breached a contractual term;
- loss has been suffered as a result; and
- the loss was caused by the breach.

The breach may be of an express term and/or a term implied by statute. Any damages would be intended to put the claimant in the position it would have been in had the contract been performed properly. The contract may also provide for specific rights or remedies that the claimant can rely on in certain circumstances, such as a requirement on the supplier to:

- repair the product;
- provide a replacement; or
- offer a refund.

- **In negligence.** The claimant must show all of the following:

- that the defendant owed a duty of care to that claimant;
- that the duty of care was breached by the defendant;
- that the breach made a material contribution to the loss; and
- that the loss was not too remote.

There is a well-established duty of care between manufacturers of products and those who may be affected by the product (including consumers). This duty can, in principle, extend to designers and repairers of products. Under negligence claims, the breach is usually based on the product:

- being defectively designed;
- being defectively manufactured;
- having inadequate warnings or instructions;
- being so inherently dangerous that it is unreasonable for it to be supplied at all.

Any damages must compensate the claimant for losses that were a direct and foreseeable consequence of the injury, although no claim can usually be made for pure economic loss.

- **Under a strict liability regime.** Under Part I of the Consumer Protection Act 1987 (CPA) (which implements Directive 85/374/EEC on liability for defective products (old Product Liability Directive)) claimants can bring a claim for loss suffered under a strict liability regime. This means that the claimant does not need to show fault on the part of the defendant, but can instead demonstrate the presence of a defect in a product (according to an objective standard of safety as reasonably expected by the public and a causal connection between that defect and the loss). Under the CPA, any person can bring a claim against three types of primary defendant:
 - the producer of a product (for example, the manufacturer);
 - the entity that held itself out to be the producer by applying its name, trade mark or other distinguishing feature to the product; and
 - the entity that imported the product into the EU to supply it to another in the course of its business.

Where a primary defendant cannot be identified, secondary liability can attach to a supplier of a product.

Only two types of damage are recoverable under the CPA: for personal injury/death and loss to non-commercial property (this does not extend to damage to the product itself).

Secondly, product safety for consumer products is regulated by the General Product Safety Regulations 2005 (GPSR) (which implements Directive 2001/95/EC on general product safety (General Product Safety Directive)). The GPSR applies to any product that is intended for consumers or is likely (under reasonably foreseeable conditions) to be used by consumers, and which is supplied in the course of a commercial activity. The GPSR places a primary obligation on both "producers" and "distributors" to ensure that only safe products are put on the market. Criminal sanctions can be imposed on those who fail to comply with their obligations.

Product safety for products intended for commercial use is based on the Health and Safety at Work Act 1974. Furthermore, there are various sector-specific regulations which cover particular categories or types of products (including vehicles, machinery, electrical products, toys and food), which usually implement corresponding EU directives.

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Professional associations/memberships. Chair of the Law Society's Competition Section.

Publications

- *Postal Services: Surveys of Competition Law Developments, published annually in the Journal of European Competition Law and Practice, 2014 – 2018 (lead/ co-author), Oxford University Press.*
- *Parallel Trade in Pharmaceuticals, Practical Law practice note, January 2017, updated in September 2018 (lead/co-author), Thomson Reuters.*
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Publications

- *Co-author, Practical Intellectual Property Precedents, Thomson Reuters.*
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Areas of practice. Dispute resolution; product compliance and liability.

Non-professional qualifications. LLB (Bachelor of Laws), University of Warwick, LLB 2006; LPC, Oxford Institute of Legal Practice, 2007

Recent transactions/activities

- Acting for an international supplier and technology licensor in a USD34 million breach of contract and negligence claim concerning dehydrogenation technology used at a petrochemical plant in Saudi Arabia.
- Acting for a global investment bank in a USD850 million claim arising out of a loan for a major Portuguese bank that was rescued by the Portuguese central bank.

- Advising a leading technology company in relation to two business-critical worldwide recalls of defective batteries and power cords, as supplied with computer systems in over 40 EMEA jurisdictions.
- Advising a multinational technology company on the legal risks and liabilities it would face from the manufacture and supply of autonomous technology products, including for driverless vehicles.

Publications. *E-Commerce Law Policy; Corporate Livewire; Global Business Magazine; and Data Protection Law & Policy.*

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Areas of practice. Employment law.

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Recent transactions/activities. Particular expertise in advising on the employment aspects of corporate and commercial transactions and the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 to such transactions

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Non-professional qualifications. BA (Hons) Geography and French, University of Durham

Recent transactions/activities

- Acts for a wide range of listed companies, investment banks and brokers.
- Particular expertise in the energy and natural resources and life sciences and healthcare sectors, having acted for a number of clients in these arenas. Nick also has expertise in the financial institutions and technology sectors.

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Recent transactions/activities

- Advises on a wide range of taxation matters, including the creation, implementation and operation of employee share plans; the taxation aspects of mergers and acquisitions, reorganisations and reconstructions, joint venture, private equity and finance transactions; employment tax related issues; stamp duty land tax and VAT implications of property transactions.
- Transactional experience includes advising large multinationals, medium-sized companies, private equity/venture fund-backed private companies, investors, management teams and entrepreneurs.

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Areas of practice. Commercial.

Non-professional qualifications. MA (Hons) Jurisprudence, St. Peter's College, University of Oxford, 2001; LPC, Oxford Institute of Legal Practice, 2002

Recent transactions/activities

- Advises on the ever-changing consumer law landscape, including website terms and conditions, terms and conditions of sale and e-commerce requirements.
- Specialises in advising on commercial issues connected with sport.

Publications

- *Author of the UK chapter of Practical Law Digital Business Global Guide, Thomson Reuters.*
- *Co-author of the chapter on Sports Governance in the leading textbook Sport: Law & Practice.*
- *Contributes a range of materials on sponsorship and broadcast law for publications such as LexisPSL and Westlaw.*

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Areas of practice. Commercial.

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- Advises on the supply of products and services, e-commerce terms, software licensing and other technology-based solutions.
- Recent project experience includes working as part of a team providing drafting and strategic legal support to a major retail business on a webstore development agreement for several countries across the Middle East.

Publications

- *International Journal of Franchising Law*.
- *The Franchise Law Review on Africa and Kazakhstan*.

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