

Guide to Doing Business in the UK

In spite of the current global climate, cross border trade continues and, for any foreign owned company doing business with firms in the UK, there are some basic aspects of the UK legal system which are essential to understand.

This Cousins Business Law **Guide to Doing Business in the UK** has been written for overseas business owners who are either currently doing business here or are considering trading in the UK. It's also a useful 'quick guide' for British businesses too as it records the basic aspects of the law which related to all trading relationships here.

Understanding the Issue of Jurisdiction

The UK is in fact not one single country but four: England, Wales, Scotland and Northern Ireland. For legal purposes, England and Wales are considered one country and have the same systems and laws. However, Scotland and Northern Ireland have their own, often very different, systems and, if you intend to do business in either of these countries, you should take advice from a lawyer in that country.

The following only applies to England and Wales.

Structure

There are several different ways you can set yourself up to transact business in the UK. Which will be the best for you depends on exactly what you intend to do, your existing structure, tax considerations and personal preferences. You may need to speak to an accountant about the best way to set yourself up and we can help by recommending someone suitable.

The most common structures are as follows:

1. You can simply conduct your business from outside the UK and export your goods and services into the UK.

There are no specific requirements to enable you do this although you will need to take advice on taxes (VAT and import duties) and whether you need any specific import licences.

It is becoming quite common now to conduct business via the internet. If you do this, you will need to comply with various UK and EU regulations.

You will probably need to notify the Information Commissioner under the Data Protection Act and comply with [UK data protection obligations](#). You also need to make sure your website is compliant with the privacy and e-commerce rules and the requirements under the Companies Act 2006 as to information that must be on your website (company name, place of registration, registered number and address).

You will also need to comply with the Distance Selling Regulations if you sell to consumers rather than businesses. You will need to give your

customers a right to cancel their order and a cooling-off period in case they change their mind.

2. You can work with a UK company or individual to undertake your UK business: they could do so as an agent (someone who conducts business on your behalf), a distributor (someone who sells on your goods or services), a joint-venture partner (a UK firm who you start a partnership with) or a franchisee (who undertakes business in their own right but under your brand in return for a payment to you).

If you do any of these, it is vital to get advice on which method would suit you best and to get all parties to sign a [contract drafted in accordance with English law](#) to protect your position. If not, this can prove to be a very expensive mistake.

3. You could set up a UK branch of your existing company.

If you do this, your customers and suppliers will be transacting with your existing (parent) company.

However, your branch will still be subject to certain UK company requirements although not as stringent as for a UK-registered company.

You will still need to register the branch with [Companies House](#) and file certain documents, such as your constitution (the documents which set up the parent company), details of the parent company's officers and the name and address of a person in England or Wales who will accept service of any legal documents. You must also file at Companies House annual accounts of the parent company as well as the UK branch and you will need to comply with regulations as to what you should state on company documents (your name, country of incorporation and the fact that you have limited liability, if applicable).

4. You could set up a UK company and do business through it.

There are no restrictions about a UK company being owned by foreign nationals. A company has a separate legal identity to the parent company and its liabilities do not affect the parent company (unless any cross guarantees have been given).

You will need to file the registration and other constitutional documents with Companies House and then file annual returns and accounts – unless your company is defined as small, these accounts will need to be audited. (The Companies House website has a [useful Guide explaining these exemptions.](#))

You must appoint officers; the minimum requirement is to have one director – who does not need to be resident in the UK but must be a 'natural person' rather than a company. Other directors and a secretary can be appointed and they can either be natural persons or companies.

You must have a registered office where all legal documents can be served and where your 'statutory books' (e.g. register of members, share certificates and minute book) are kept.

Trading Law and Regulations

There are many laws, rules and regulations that affect businesses trading in the UK – some are general and some are specific to particular business sectors, such as financial services, legal services, food, gambling and telecommunications. You should check to see if there are any specific regulations that affect your business.

In general, the law is more relaxed if you sell to businesses than if you sell to consumers.

Some things to bear in mind are as follows:

- Although it is not a requirement, you are strongly advised to have some standard Trading Terms and Conditions (“Ts & Cs”) drafted by a solicitor and take advice as to how to ensure that you are trading in accordance with them. Do not rely on ones that work in your country: they might have a completely different effect under English law or might even be completely unenforceable.
- Although businesses are generally free to agree whatever terms they want with business suppliers and customers, English law implies some terms into contracts automatically, including that goods must be of a satisfactory quality and services must be performed with reasonable care and skill and within a reasonable period of time. If you are selling to consumers rather than businesses, the law is much more in favour of your customers than if you are selling to businesses.
- You are free to agree that your customers must pay you interest if they pay beyond terms but this interest must not be too high, or it will be classed as a ‘penalty’ and not be enforceable.
- Advertising must not be misleading.
- If selling to consumers, the Consumer Protection Regulations and other rules set out how you can advertise, market and sell your goods and services with an emphasis on fairness, giving information to potential customers and not pressurising them into buying. A copy of the [Consumer Protection and Unfair Trading Regulations](#) is available to download from the Office of Fair Trading Website.
- You may be affected by data protection law, distance selling regulations and/or e-commerce rules. You should take advice on this before trading in the UK.

Different state bodies are responsible for enforcing the different rules and regulations. The main ones are Trading Standards (each local authority has one and they are responsible for enforcing certain trading activities in their area), [BERR](#) (The Department for Business Enterprise and Regulatory Reform, formally the DTI), the [OFT](#) (Office of Fair Trading) and the [ICO](#) (Information Commissioner’s Office). However, many business sectors also have their own regulators. It is certainly advisable to spend some time looking at the websites of the various regulators.

Staff

People from other countries in the European Economic Area ("EEA") and Switzerland are free to come to the UK to work without any visas or work permits although, if they come from one of the countries that joined the EEA in 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), you will need to ensure that they are registered with the [UK Border Agency](#) within 1 month of starting work in the UK. If they come from Bulgaria or Romania, they must obtain the permission of the UK Border Agency before starting work.

People from all other countries generally need a work permit, which is issued by the [UK Border Agency](#). They might also need a visa in addition to a work permit.

You will also need to comply with UK employment law. You must provide certain written particulars to your employees, there is a maximum number of hours that can be worked each week, there is a minimum wage you must pay, employees have rights to holidays and other time off work and there are laws to provide for job security and to prevent discrimination.

You are strongly advised to [take legal advice](#) before hiring, disciplining or firing members of staff.

Commercial Property

You will probably need a property from which to trade. You can either buy property outright (called 'freehold') or lease/rent it for a period of time (called 'leasehold').

If you buy a freehold property, you will need to ensure that that you have the necessary planning permissions and consents to conduct your business. You should also be aware that you will need to pay a local tax on the property (called 'rates'). There are many pitfalls when buying freehold property that you need to be aware of and [commercial property jargon](#) to learn.

If you buy a leasehold property, you will be renting it for a number of years and you will be responsible for the rent throughout that period. A lease usually has a 'rent review clause' that allows a landlord to change the rent on a periodic basis and there are strict procedures to follow when it comes to this. There might also be 'break clauses' enabling the tenant to bring a lease to an end before its time. However, business tenants usually enjoy security of tenure and it is difficult for a landlord of a business tenancy to bring it to an end.

It's important to know [what to look out for when taking on a new lease](#). You will certainly need advice before agreeing a lease (whether you are a landlord or tenant), when there are rent reviews and when you want to bring it to an end (or keep it going beyond its term).

Handling Business Disputes

Disputes, whether between customer and supplier or employee and employer are generally handled by the UK court and tribunal system unless the parties agree some other form of resolution (such as mediation or arbitration). In the construction sector, there is also a form of adjudication to enable parties to

obtain a quick (albeit not necessarily final) decision that can be enforced by the courts.

There are certain things you should be aware of when using the UK court system that might be different to other court systems:

1. Usually the 'loser' pays most of the 'winner's' costs, with the precise amount decided by the judge, as explained in our article [Court case – who pays the legal costs](#). This is decided at the end of the case and usually after each court hearing that takes place before a trial. This is very different to many other countries, such as the USA, where each party pays its own costs.

If you start a case and lose, you will therefore have to pay your own legal costs and most of your opponent's costs as well. The situation is even worse for those defending a case, where, if they lose, they have to pay their own costs, most of their opponent's costs and damages too!

All this has the effect of reducing the amount of litigation that goes to court and prevents most of the speculative cases, which are common in other countries such as the USA. It also means that most cases settle at a fairly early stage and very few get to trial. Careful consideration needs to be given to the merits of your case before taking any legal action, as otherwise you risk starting a case for damages and ending up having to pay out instead!

2. High prominence is given to documentary evidence. Cases are usually won and lost on what documents the parties can produce rather than what a witness says in court. For this reason, a lot of time in preparing cases is spent on reviewing and examining documents. The more your documents are in order, therefore, the better your chance is of winning your case and paying a much smaller legal bill.
3. There are many different types of court that can deal with business cases. The usual ones are the County Court, the High Court, the Magistrates' Court and Employment Tribunals. There are also different types of lawyers: Solicitors (who generally prepare cases) and Barristers (who generally conduct advocacy or who act as specialist consultants in a particular area of law). However, the distinction is becoming increasingly blurred and Solicitors will often conduct advocacy using Barristers as a cost-effective specialist resource in a particular type of case.

If you have a dispute, you will normally need to [instruct a Solicitor](#) – you can't go directly to a Barrister. Beware, as not all solicitors are the same. Some (generally referred to as High Street Solicitors) deal with all sorts of matters from buying and selling houses, through representing those arrested in a Friday night punch-up, to handling some business matters. Others specialise in particular areas and therefore build up an expertise in that area.

It is advisable to find a specialist. There are several specialist business law firms, although many are only geared to having large corporates as clients – and are very expensive. In most of these firms, SME litigation is usually handled on a day-to-day basis by newly qualified solicitors with the occasional supervision by partners.

SMEs are usually better served by smaller specialist business solicitors' firms who can ensure that partner-level solicitors handle the case throughout. You should ask before appointing a firm who will be working on your case, how many years they have been qualified for and, more specifically, what their experience is in the kind of case you need them to handle.

Keep up to date

[Subscribe to Cousins Business Law Ezines](#) to receive a monthly newsletter to help you keep abreast of legal and business issues as they affect SMEs. Also, subscribe to the [Cousins Business Law blog](#) by using the RSS feed to read our observations about business issues that affect SMEs doing business in the UK.