Legend Business

BUSINESS GUIDE TO THE UNITED KINGDOM 2017

COBCOE

Special edition produced for COBCOE

BUSINESS GUIDE TO THE UNITED KINGDOM 2017

Legend Business

An authoritative guide focused on investment and including regulations and practices that affect companies looking to do business in the UK.

Covering essential areas such as;

- **Investment: The Current Outlook:** *Grants, Incentives, Infrastructure and Investment Opportunities, Science Park and Business Incubators*
- **The Business Environment:** *IP, Formation, Immigration and Regulations*
- **Operating a Business in the United Kingdom:** *Accounting, Tax and Law*
- **Banking, Property and Financial Services:** *Mergers and Acquisitions,*
- **UK International Trade in the Wider World:** *World Trade Organization, outlook post-brexit, exporting, profiles of nine targeted countries in form of digests of the leading international data source which supplements information available from DIT website.*

COBCOE · MAZARS · WATSON FARLEY & WILLIAMS · PNO · Intellectual Property Office · CARTER JONAS · BExA British Exporters Association

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Special Edition
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FOREWORD TO UK BUSINESS GUIDE

At the time of writing, Brexit negotiations have just begun. The exact nature of the UK's future trading relationship with the other 27 countries in the European Union is therefore uncertain, and many business organisations, including COBCOE, are working hard to help ensure a stable outcome.

What is clear, however, is that Britain will not leave Europe geographically, and international business between the UK and the EU27 will find a way to continue. I also believe that business will continue to be a unifying force across Europe and beyond.

The UK has, in recent years, been a leading destination globally for foreign direct investment (FDI), attracting more investment than any other country in Europe. Speculation about this continuing post-Brexit is only natural, although any changes to Britain's trading relationships will undoubtedly bring new opportunities as well as challenges.

For businesses investing in the UK from overseas, there is a wealth of useful information in this guide. All the key considerations are clearly laid out, from the economic outlook to employment and intellectual property law and from the immigration regime to grants and incentives.

When it comes to finding practical support in the UK, the Department for International Trade and grass roots business organisations have much to offer.

As Executive Chairman of COBCOE, an organisation representing chambers of commerce, it is worth recognising the contribution that chambers of commerce make in supporting and helping to coordinate inward investment.

Across the country, these independent business organisations, funded by their memberships, partnerships and the services they provide, work closely with 'tried and tested' professional service firms and members of the wider business community in their local areas with whom they have close and long-standing relationships.

Cities and regions around the UK are promoted as business locations by chambers of commerce. These chambers have strong links with the Department for International Trade as well as international chambers of commerce networks, such as our own. I am

proud to say that one such chamber, Thames Valley Chamber of Commerce Group, recently became the first UK-based member of COBCOE earlier this year, following a change to our articles of association.

Additionally, if you are looking to export from the UK, chambers of commerce can also provide information and practical support services, such as document processing services.

My organisation, COBCOE, was established in 1973, when the UK entered what was then the European Economic Community, to represent British chambers of commerce located in Europe. Since that time, we have grown our network and have a British chamber member in nearly all European countries, representing a total of around 12,000 businesses. We have also developed a network of affiliated chambers of commerce around the world.

We are working with our members, corporate partners and affiliated organisations to create a hub for international trade and investment support, commercial services and best practice in business. Our networks and our new digital platform, COBCOE Connects, featured in this guide, provide access to local market expertise and assist in building the local relationships that help businesses to succeed. (Please visit www.cobcoe.eu for more information.)

We wish you well in your international business venture and hope that you will find the information you need through this guide.

David Thomas MBE
Executive Chairman, COBCOE
Council of British Chambers of Commerce in Europe
July 2017

BUSINESS GUIDE TO THE UNITED KINGDOM

INTRODUCTION

Unlike the previous Legend Business investors' guide, focused on inward investment, the scope of Business Guide to the United Kingdom has been expanded to include overviews of the post-Brexit international trade outlook for companies locating in the UK as an export hub.

As before, the first four parts of the book provide authoritative information on the regulatory environment and legal framework, audit, accountancy and the taxation regimes for UK registered companies. Also covered are the immigration and visa regime for foreign nationals working in the UK, employment laws and pension practice. These are all issues for serious study by prospective investors before commitment and are presented and discussed by our content partners, the international accountancy firm Mazars and law firm Watson, Farley and Williams.

Additional background information is provided in Part One on the UK's economic environment, grants and incentives available to UK registered companies, the prime sectors of infrastructure investment and science parks and business incubators. Part Four focuses on financial regulation, mergers and acquisitions processes, the Aim market of the London Stock Exchange and investment in commercial property.

Part Five is the additional foreign trade content of the book with chapters on the WTO, on the UK's position after leaving the EU and on the trade outlook after disengagement, supplemented by chapters from the Council of British Chambers of Commerce in Europe (COBCOE) and the British Export Association. Appendix I, to be read in conjunction with Chapter 5.2, will be of interest to all UK exporters seeking new markets beyond the EU. It provides profiles of each of nine target countries in the form of digests of the leading international data sources most used by desk researchers and economists. These profiles supplement the headline information available on the Department for International Trade's websites.

As editor, I express my grateful thanks to the more than 20 authors who have written and without whose contributions this book could not be published. Their further advice is available to all readers through the Contributors' Contacts listed in Appendix II. My appreciation also to David Thomas, Chairman of COBCOE, for his Foreword.

Jonathan Reuvid, Editor

1. THE UK ECONOMY AND INWARD INVESTMENT

Jonathan Reuvid, Legend Business

The outcome of the June 2016 Referendum on UK membership of the EU had little visible effect on the UK economy up to March 2017 when the Prime Minister invoked Section 50 of the Treaty of Rome confirming termination from March 2019. Following the intervention of the UK General Parliamentary Election called in April, negotiations on the terms of departure were delayed until 19th June when formal negotiations in Brussels opened. Understandably, uncertainties which surround the likely outcomes and which will persist until there is an outline agreement on the future relationship between the EU and the UK are now having a dampening effect on the economy.

However, the economy remains robust and there are encouraging signs of possible bilateral trade deals with some leading global economies beyond the EU when Brexit finally takes place. (Profiles of these economies and their foreign trade are included in Appendix I of this book.) The UK Department for International Trade is leading these initiatives.

MACRO-ECONOMIC INDICATORS

Forecasts for 2017/18

Composite forecasts for the basics of the UK economy published by HM Treasury are highlighted in Table 1.1.1.

Table 1.1.1 Macro-economic indicators June 2017

	2017			*2018*		
	Lowest	*Highest*	*Average*	*Lowest*	*Highest*	*Average*
GDP growth (%)	1.1	2.1	1.6	0.4	2.6	1.4
Inflation Q4 (%)						
- CPI	2.1	3.6	3	1.7	3	2.5
- RPI	3.2	4.9	3.9	2.6	4	3.3
Unemployment (Q4%)	4.4	5.5	4.8	4.1	6.4	5.1
Current Account (£bn)	-89.5	-17	-60.4	-82.7	-19.8	-49.5
PSNB (2017-18, 2018-19: £bn)	42.8	79.8	58	23.9	70.2	46.8

Source: Macroeconomic Co-ordination & Strategy Team, HM Treasury No. 361, June 2017

The highest and lowest forecasts are extracted and the averages calculated from the forecasts made by 20 City banks and accredited advisers and by 19 international institutes and professionals during the previous three months excluding May. The non-City institutions include the European Commission, OECD, IMF, the Economist Intelligence Unit (EIU), the Confederation of British Industry (CBI) and the British Chamber of Commerce (BCC).

Growth prospects for the UK are compared with those of other major advanced economies and the emerging and developing economies in Table 1.1.2 by reference to the most recent OECD forecasts of real GDP.

Table 1.1.2 Forecast GDP growth for 2017 and 2018 vs 2016

	2016	2017	2018
	%	%	%
Advanced economies			
UK	1.8	1.6	1.0
US	1.6	2.1	2.4
Australia	2.4	2.5	2.9
Canada	1.4	2.8	2.3
France	1.1	1.3	1.5
Germany	1.8	2.0	2.0
Italy	1.0	1.0	0.8
Japan	1.0	1.4	1.0
Spain	3.2	2.8	2.4
Euro Area	1.7	1.8	1.8
Emerging and developing Asian economies			
China	6.7	6.6	6.4
India	7.1	7.3	7.7
Korea	2.8	2.6	2.8
Total OECD	1.8	2.1	2.1

Source: OECD statistical Table 1, June 2017

The lower rate of growth projections by the OECD for the UK in 2018 compared to HM Treasury's current forecasts reflects a more pessimistic view of the progress of Brexit negotiations . Nevertheless, it is clear that the short-term outlook for the UK economy is significantly weaker than for North America and for the larger EU countries other than Italy. All of these are overshadowed by the continuing high growth rates of Asia's two biggest economies.

The UK Population

At mid-year 2016 the population total stood at 65.6 million having increased by 538,100 over the previous year. Of this increase net immigration accounted for 336,000, representing 62.4%.(Source: Office of National Statistics, June 2017).

As of May 2017, 32.1 million were in work, 324,000 more than a year earlier. As of July the jobless rate stands at 4.5% (www.tradingconomics.com). Applying the international measurement standard, the UK's unemployment rate compares favourably with the EU average of 9.3% (source: Eurostat, 2017) although higher than the US (4.4%) and Germany (3.9%).

The last UK census of population was taken in 2011, when 83.9% of the population were resident in England, 8.4% in Scotland, 4.9% in Wales and 2.8% in Northern Ireland. Of those living in the UK at that time 8.4 million (13%) were born abroad.

UK INWARD INVESTMENT

The UK enjoyed a successful year in 2016-17 with the number of projects rising by 2% compared with the previous year to 2,265, creating 75,226 new jobs and protecting a further 32,672 jobs. However, the total of jobs related to inward investment projects declined from 115,974 in 2015-16 to 107,986. Of the new projects registered 1,053 were funded by investors new to the UK and 1,212 by existing investors extending their UK engagements. Over the past five years, the number of new FDI projects in the UK has increased steadily each year as illustrated in Table 1.1.3.

Table 1.1.3 FDI performance over five years

	2012-13	2013-14	2014-15	2015-16	2016-17
New projects	1,559	1,773	1,368	2,213	2,265
New jobs created	89,153	66,390	84,693	82,650	75,326
New investments	777	820	1,058	1,130	1,237
Expansions	577	677	740	821	782
Mergers & acquisitions	205	276	190	262	246

Source: Department for International Trade

Inward investment flows to the UK over the past four years have been impressive by comparison with EU fellow members and the EU in total according to UNCTAD statistics (World Investment Report 2017).

Table 1.1.4 Value of FDI inflows

US$ milion

	2013	2014	2015	2016
UK	51,676	44,821	33,003	253,826
France	34,270	2,689	46,991	28,352
Germany	15,573	3,954	33,312	9,526
Total EU	336,811	256,613	483,839	566,234
UK share (%)	15.3	17.4	6.82	44.8

Source: United Nations Conference on Trade and Development

In terms of accumulated investment UK inward FDI in 2016 reached USD$1.2 trillion, representing 15.6% of the EU total and compared to US$771 billion for Germany and US$698 billion for France. UK outward FDI stocks, net of disposals, stood at US$1.4 trillion.

Sources of FDI

The top sources of UK FDI in 2016-17 in descending order are listed in Table 1.1.5 together with the new jobs created and safeguarded jobs.

Table 1.1.5 The UK'S major investment sources

Country	*FDI projects*	*New jobs*	*Safeguarded jobs*
United States	557	24,607	7,197
China and Hong Kong	160	3,326	1,444
France	131	5,831	2,182
India	127	3,999	7,645
Australia and New Zealand	127	2,197	1,803
Japan	116	3,511	6,095
Germany	100	5,802	426
Italy	99	1,482	167
Canada	72	1,788	122
Spain	70	1,789	1,152
Ireland	56	2,914	752
Netherlands	53	2,292	546
Switzerland	49	1,428	643
Other Europe, Middle East, Africa	261	6,867	923
Other American countries	59	1,080	206
Other Asian Pacific countries	82	1,896	394

Source: Department for International Trade

Regional dispersion

FDI in 2016-17 was spread widely among the regions with the Greater London Area taking the lion's share as Table 1.1.6 demonstrates:

Table 1.1.6 Regional dispersion of 2016-17 FDI

	No. of projects	*New jobs created*
London	891	20,753
South East	217	5,432
North West	147	6,501
West Midlands	151	6,570
Yorkshire and the Humber	132	3,872
East of England	125	3,634
South West	101	3,402
East Midlands	74	1,796
North East	69	4,609
England	1,907	56.569
Scotland	183	5,547
Wales	85	2,581
Northern Ireland	34	1,652

Source: Department for International Trade

Sectoral focus of 2016-17 FDI

As the report issued by the Department for International Trade for 2016-17shows, the tech sector attracted the greatest number of new projects with the second highest number of new jobs after the business and consumer services sector. Many of these are located in the Greater London area and at the beginning of July London & Partners reported a record level of investments in UK tech companies in the first six months of 2017 accounting for £1.3 billion. The UK remains the leading destination for venture capital investments, attracting more than twice as much invested than in Berlin.

The sectoral dispersion of investment and job creation is illustrated in Table 1.1.7.

Table 1.1.7 Sector results 2016-17

	FDI projects	*New jobs*	*Safeguarded jobs*	*Total jobs*
Advanced engineering and supply chain	146	3,716	7,913	11,629
Aerospace	47	1,818	1,275	3,093
Automotive	127	5,711	8,803	14,514
Biotechnology and pharmaceuticals	90	2,329	896	3,225
Business and consumer services	211	13,603	1,353	14,956
Chemicals and agriculture	50	787	1,044	1,831
Creative and media	151	3,654	89	3,743
Electronics and communications	115	3,170	902	4,072
Environment, infrastructure and transportation	184	6,302	1,301	7,604
Extraction industries	49	642	758	1,400
Financial services	217	8,847	2,661	11,508
Food and drink	144	4,620	2,417	7,037
Life sciences	116	2,457	1,385	3,822
Renewable energy	87	2,749	344	3,093
Software and computer services	418	10,971	1,476	12,447
Wholesale	113	3,850	74	3,924

Source: Department for International Trade

Among the other sectors receiving the most new projects creating high numbers of jobs and protecting existing jobs are advanced engineering and software. Together with the automotive, financial and business services sectors they are all driven by digitisation as they seek to generate innovation and new products.

Funding for tech investment after Brexit

The funding sources available to all companies located in the UK are identified and explored extensively in Chapter 1.2. However, inward investors may have concerns about the continued availability of EU funding for UK enterprises after March 19, particularly in the tech sector, from the European Investment Fund (EIF). At this early stage all outcomes of Brexit negotiations are unknown, but it seems unlikely that the UK can retain its role in the Fund. The EIF's parent body is the European Investment Bank which is wholly controlled by EU member states and under the oversight of the European Court of Justice. In the event of withdrawal from the EIF, the UK government is expected to provide alternative sources to maintain support funding, possibly through UK Innovation which is increasingly proactive or through a major expansion of the British Business Bank. Repatriation of the Barclays Bank and Scottish Enterprise stakes in the EIB would provide seed funding for establishing an alternative mechanism.

THE UK AS A BASE FOR INTERNATIONAL TRADE

A major factor in encouraging new and repeat investment in the UK has been tariff free access to the rest of the EU for foreign investors establishing manufacturing operations and service centres in the UK. Some of the consequences should the UK fail to maintain open access to EU markets are explored in Part 5 of this book. While it is plain that the tariff effect of transferring to independent WTO membership will have to be addressed on an industry by industry basis, the administrative burden of leaving the EU customs union, which would fall on all, will be mitigated to some degree by new opportunities to build exports and establish bilateral free trade agreements elsewhere worldwide.

The patterns of UK exports in merchandise and services in 2015 are summarised in the current WTO data of Table 1.1.8.

Table 1.1.8 UK export shares by destination

	Merchandise	*Services*
	%	*%*
European Union	43.8	37.2
United States	14.9	23.3
Switzerland	7.3	5.8
China	5.9	-
Japan	-	2.6
Other	28.1	31.1

Source: WTO country profiles

Note: Merchandise exports to Japan and services exports to China are included under the 'Other' categories

The sub-sector of other commercial services and goods-related services accounts for 74% of total services. of which financial services in turn accounted for one third in 2015.

The top 10 product groups in UK exports and imports represent the following shares of the merchandise totals:

Table 1.1.9 Top export and import product goups

	Exports			*Imports*	
	US$ Bn	*%*		*US$Bn*	*%*
Gold	41.6	9.8	Cars	49.9	8.2
Cars	40.8	9.6	Packaged medicaments	21.0	3.5
Packaged medicaments	19.9	4.7	Refined petroleum	20.2	3.3
Gas turbines	14.7	3.5	Crude petroleum	17.3	2.9
Refined petroleum	13.2	3.1	Vehicle parts	15.0	2.5
Crude petroleum	12.9	3.0	Gold	11.8	1.9
Aerospace parts	10.8	2.5	Petroleum gas	10.8	1.8
Hard liquor	7.8	1.8	Broadcasting equipment	10.0	1.6
Vehicle parts	5.8	1.4	Planes, helicopters etc,	9.9	1.6
Nucleic acids	4.7	1.1	Delivery trucks	9.0	1.5

Source: https://atlas.media.edu/en/profile/country

For readers researching the foreign trade opportunities for the UK beyond the EU, nine priority markets including the US, China, Japan and Switzerland are identified in Chapter 5.2 and profiled in Appendix I.

SUMMARY

Overall, with its world beating combination of permissive regulations and transparency, innovative businesses, access to talent and interconnected sectors, the UK remains a highly attractive location for FDI and as a hub for international trade.

Note: Much of the statistical content for this chapter relating to inward investment is derived from the Department for International Trade's 2016-17 report.

2. MAKING THE MOST OF IP IN YOUR BUSINESS

Guy Robinson, UK Intellectual Property Office

All businesses have some intellectual property (IP), whether they realise it or not. For some, it is the very cornerstone of their business; for example, the hugely successful British company ARM which licensed the manufacture of its silicon chips. For others, it can be incidental to their core activities.

Since the early 2000s levels of investment in intangible assets, that is ideas and knowledge, have outstripped investment in tangible assets such as buildings and machinery. Our research shows that in 2014, UK firms invested £133 billion in intangible assets, 7 per cent higher than investment in tangible assets (£121 billion). Of this investment, more than £70 billion (53 per cent) was protected by IP rights. It is clear that the knowledge-based economy is of increasing importance to the UK, but business knowledge of IP does not meet these growing demands.

Our business surveys tell us that knowledge of IP, throughout UK businesses, is generally very low. For example, nearly 80 per cent of companies surveyed did not know that telling people about your invention could lead to an unsuccessful patent application. Fewer than one in ten firms has any formal IP training for staff and, unsurprisingly, 96 per cent of them had not valued their IP. However, of real interest to us was that 94 per cent of businesses we spoke to thought protecting IP was important and one in five firms license its IP for others to use for a fee.

At the Intellectual Property Office (IPO) we want to help businesses, of all shapes and sizes, to understand their IP better so they can make informed and strategic decisions to support the running and development of their business.

IP is an investment and, like any investment, a business needs to weigh up the pro and cons of spending money on one thing and not another. The resource required to apply for an IP right needs to be considered in the context of all of the other decisions

that need to be made to keep a business running. We routinely direct firms to seek expert advice when applying for IP rights, especially patents, to help to navigate the technical and legal processes. We know that of the unrepresented individuals that apply for patents only around 5 per cent of their applications are granted. And, despite the great advances improving access to low cost and effective justice, a business should still consider the impact of having to defend its rights. On the other hand a lack of understanding about the value of your IP assets and how to exploit them, may mean many a firm might be missing a trick.

So, how do we go about changing this situation? Over the last decade the IPO has developed an increasingly sophisticated business outreach programme. We have chosen to focus our efforts on face to face engagement, mainly because engaging firms on IP is not simple and straightforward. We attend around 300 events a year, from conferences to seminars, working in partnership with other government organisations such as Companies House, where we meet and speak to around 60,000 people annually. In addition to that we have built a business advisers network, providing them with information and training including our successful IP Masterclass. We know that increasing the understanding of IP among the professional community that directly supports businesses will always reach more people than we can.

But, we are always alive to new ideas and the latest developments in the way we communicate. As our face to face work has matured, so we have developed our digital content and social media activities in parallel. We have built a suite of online tools that aim to build more detailed knowledge and its application, IP Equip, (available on the GOV.UK website as well as downloadable as an app) takes you through basic learning modules to help understand the different IP rights, whether they are relevant to your business and how best to access them. Our IP Healthcheck is a more thorough questionnaire-based tool that produces a tailored, confidential report for your business. It makes specific recommendations, provides guidance on how to implement them and points you to useful sources of further information.

We support this offering through a range of other rich content to get a complex message across. We have a series of video case studies of companies that have had a positive business experience by making informed decisions about their IP. We have also produced a series of animated films called IP Basics which areaccessible on YouTube and we provide a series of podcast discussions, a highly regarded blog through GOV.UK and LinkedIn and Facebook Live events to cater for the widest audience possible on as many aspects of IP practice as we can manage. We are taking on the challenge of trying to bring IP to life, making it relevant to everyday business practice. We want to get creators, companies and investors to think about IP as part of their whole approach to business, as an integrated business process just like planning an investment strategy.

Year on year we know we are reaching more businesses; in 2016-17 we estimated that we directly and indirectly reached more than 200,000 business across the country.

In the coming years we will build our understanding about what decisions businesses take after we engage with them so we can improve our offering further.

Engaging with firms, assisting them to identify, understand and better manage their IP, does not sit in isolation. By drawing insight from our existing customers and our well established stakeholder community we have a well-developed and strategic approach to business support. This support is also integrated into the Government's wider approach to making the UK the best place to start and grow a business by focusing on driving growth across the whole country, encouraging investment in research and innovation and supporting trade and inward investment.

At the heart of this is helping firms understand the value of their IP and then providing hands-on tools to help them commercialise it. Your IP could be as valuable as your plant, premises or stock. It could even be your single most valuable asset which you could use to secure finance for company growth. You may also need to know the value of your IP assets when looking for more funding, thinking of joint ventures, mergers and acquisitions and, in the worst case, during bankruptcy. But not all IP is valuable. Unless your IP assets help to create, maintain or increase cash flow they may have no financial value.

But valuing IP is not an easy task. How much is your brand name worth after years of marketing? Does your patent protect your product or is it redundant?

IP rights might change in value for a variety of reasons. A patent may begin its life as a unique solution to a problem, but in time other solutions to the problem may be found which reduce its worth. Alternatively, successfully marketing your product can ensure your patent is very valuable. Trade marks generally gain value as they become better known.

There are a number of ways to value IP rights. They all have their limitations and no method is appropriate in every case. The stage of development of the IPR, the availability of information and the aim of the valuation all have a bearing on the method used. We provide some detailed information on methods that can be used, such as the cost, market value and income or economic benefit methods, and support this with a useful checklist and skeleton licence to guide you through the process of exploiting your IP.

Being able to easily value IP may well lead to better commercialisation and trade. Unfortunately there is no universally agreed methodology for the valuation of IP. We know that IP rich businesses struggle to secure lending against their IP due to the opaque nature of the asset and this can be one of the things preventing them from scaling up. Over the past few years we have been working closely with the investment community to help them understand better the nature of IP as an asset and facilitate the development of the market in IP. For a number of years we have worked with partners across government to identify high growth potential businesses and offer them IPO part-funded IP audits. This has helped them get a better grip on the value of their IP assets and supported the development of a proper business strategy to develop and

exploit their value to the business.

This work has a knock-on beneficial effect in supporting better collaboration between research institutes and businesses and, in turn, driving innovation. In 2016 we reviewed and refreshed a set of tools, known as the Lambert toolkit, designed to help facilitate negotiations between potential partners, reduce the time, money and effort required to secure agreement and provide examples of best practice. The toolkit consists of a decision guide, model agreements and guidance notes to walk you through the process and address a wide range of situations.

Closely tied to better valuation and commercialisation of your IP is better protection. Setting up and running a business can be a risky business. In the same way you can protect your physical assets from a variety of risks you can also insure your intangible assets. Much of this insurance (but not all) is aimed at businesses who have already secured IP rights. However, you can also protect yourself against inadvertently infringing the rights of others. We provide a range of information on types of insurance that are available and how they can be used to protect your investment. As with all other aspects of business decision-making, expert advice should be used to help make the best choices for your circumstances.

In the same way, we work with business advisors to help spread our message through our outreach activities, so we work with other business representative and support organisations to extend and improve our reach. We are putting increasing emphasis on driving growth across the whole of the country by putting IP representatives in key regional areas to enhance existing regional networks. By the end of 2017 we will be running pilot approaches in the North West and West Midlands.

As the trend for greater investment in knowledge and ideas continues to grow it is apparent that the ability to use your IP more effectively is a key business advantage. By bringing together our efforts to help businesses, through targeted information and support and a creative approach to outreach and engagement, we are building a better informed business community ready to face the challenges of a more complex and challenging global marketplace.

The Intellectual Property Office

The Intellectual Property Office (IPO) is the official UK government body responsible for intellectual property (IP) rights including patents, designs, trademarks and copyright. The IPO is an executive agency of the Department for Business, Energy & Industrial Strategy.

3. THE UK IMMIGRATION REGIME FOR STARTING UP IN THE UK

Alison Hutton, Mazars LLP

The UK Government are keen to attract the 'brightest and best' talent to the UK and to encourage overseas businesses and entrepreneurs to invest here. Companies choose to expand or move their businesses to the UK because it's an ideal location. Aside from the attraction of it being a multi-cultural environment and the benefits of English being the main language, the UK can offer a skilled talent pool, a competitive tax rate system, first class educational institutions, and a transparent regulatory system making it easier to do business. The current immigration regime offers a number of visa options to foreign nationals wishing to do business in the UK which cater for short term business visitors, startups and entrepreneurs looking to set up in business, as well as routes for larger businesses who already have an established entity in the UK.

The following two chapters provide a high level overview of the key immigration options and how they operate in practice.

BUSINESS VISITORS

The Standard Visitor visa category is the immigration category now used for people who are based abroad but who intend to visit the UK for a short time to do business on their own or on their employer's behalf. It encompasses various business related visitor activities that were previously treated as separate types of visitor application including the Business Visitor visa (including visas for academics, doctors and dentists), Sports Visitor visa, Entertainer Visitor visa and the Prospective Entrepreneur visa.

A business visitor must be genuinely seeking entry to the UK for a period not exceeding six months and must:

- Leave the UK at the end of the visit;
- Maintain and accommodate themselves without using public funds;
- Not be paid or employed in the UK (subject to the exception below);
- Meet the cost of the return or onward journey; and
- Be at least 18 years old.

PERMITTED ACTIVITIES

The activities that business visitors are permitted to undertake in the UK are very restricted and ultimately must not result in them undertaking 'productive' work.

PERMITTED ACTIVITIES	ACTIVITIES WHICH ARE NOT PERMITTED
Attend meetings, conferences and interviews, providing such arrangements are made prior to arrival in the UK. If the visitor is a board-level director who wishes to attend board meetings in the UK they can do so, providing they are not employed by a UK company (although they can be paid a fee for attending the meeting). Attend trade fairs for promotional work only, provided the visitor is not directly selling. Arrange deals, or negotiate or sign trade agreements or contracts. Carry out fact-finding missions or conduct site visits. Attend classroom based training and/or undertake observation and familiarisation.	Take employment. Produce goods or provide services within the UK. Undertake hands-on/on-the-job training. Undertake a course of study except in limited circumstances. Project management.

Speak at a one-off conference which is not organised as a commercial concern, and is not making a profit for the organiser. Service or repair the company's products for a UK based customer within the initial guarantee period. Be briefed on the requirements of a UK customer, provided this is limited to briefing and does not include work involving use of the applicant's expertise to make a detailed assessment of a potential customer's requirements. Act as an adviser, consultant, internal auditor, trainer or trouble shooter to the UK branch of the same group of companies as the applicant's overseas company.	

RECEIVING PAYMENT IN THE UK

As a general rule a business visitor to the UK must not receive payment from a UK source. However, there are several exceptions to this:

1. Where the individual is the employee of a multi-national company who, for administrative reasons, handle payment of all their employees' salaries from the UK; or
2. Where the applicant is engaged in a Permitted Paid Engagement (PPE), provided the applicant holds a visa or leave to enter as a PPE visitor; or
3. Where the individual is a board member attending a board meeting and receives a fee in this respect.

Often there is a fine line between what a 'business visitor' activity is and what 'work' is. Ultimately, there will be an element of judgement exercised by the visa issuing officer or Immigration Officer at the port of entry as to whether they feel the activities fall within the permitted activities or not. Other aspects that will be taken

into consideration are where lengthy or frequent visits are undertaken which may lead the officer to have concerns as to whether the individual is a genuine business visitor.

The Standard Visitor visa is usually valid for six months, and if you can satisfy the decision maker that you have the genuine need to visit the UK regularly over a longer period of time, you can also apply for longer-term multiple entry visit visas which last two, five or even ten years. However, the maximum duration you can stay in the UK on each visit is still six months.

DO I NEED A VISA?

Certain nationals travelling to the UK will require a visa in all instances, regardless of the reason for their travel. This includes travelling to the UK temporarily as a visitor. They are known as visa nationals. Non-visa nationals (which includes European nationals and 56 other nationals who are visa exempt) do not require a visa to enter the UK as a visitor in most instances. The UK government reviews the visa national list periodically and so it is wise to check whether you require a visa or not before travelling.

If a visa is required, this will necessitate an application being made to the British diplomatic post in the individual's home country or country of main residence to obtain the visa (known as entry clearance) prior to travel. For non-visa nationals no application is required to travel to the UK as a visitor, but the Immigration Officer at the port of entry will assess the individual against the visitor criteria prior to granting entry.

It is important to note that the UK is not a party to the Schengen agreement and so it is not possible to travel to the UK using a Schengen visa (a Schengen visa allows an individual to travel freely across certain other EU countries who are party to the Schengen agreement for up to 90 days in a 180 day period). Nor is it possible to travel into other EU countries on a UK visitor visa.

EUROPEAN NATIONALS & BREXIT

In June 2016, the UK voted to leave the EU and on 29th March 2017 the Prime Minister triggered Article 50, which means that during the intervening two years up to March 2019, negotiations will take place regarding Britain's departure from the EU. It is difficult at the current time to comment on how the UK immigration landscape will look after that date. It is clear that the UK Government, in addition to looking at how European Economic Area (EEA) nationals will be treated for immigration purposes post Brexit, will also take the opportunity to review UK immigration policy as a whole.

In the meantime, nothing has changed in respect of the rights of EEA nationals travelling into or living and working here in the UK. EEA nationals still have full and free movement rights into the UK and are entitled to exercise Treaty rights here, which

means that they can study, work, look for work, set up in business or be self-employed or indeed reside here as a self-sufficient individual. They do not require a visa to enter the UK and although it is possible to obtain an EEA Registration certificate or Permanent Residence Card to evidence status, these documents are not mandatory (note that for Croatian nationals, as new members of the EU, the immigration position is currently different and work permission may be required).

START-UPS AND ENTREPRENEURS

If you are looking to do more than just visit the UK, then there are a number of visa options, depending on what you plan to do in the UK and your future intentions. This next section sets out the main options that work best for start-ups and individuals.

TIER 1 INVESTOR VISA

This visa route is for high net worth individuals who wish to obtain long-term residence in the UK for themselves and their family members by making a substantial financial investment to the UK. This can be achieved by investing £2 million into UK government bonds, share capital or loan capital in active and trading companies registered in the UK. The one exception to this is that is it not acceptable to invest in companies mainly engaged in property investment, property management or property development.

The applicant must have money of their own, under their control, held in a regulated financial institution, and which is already in the UK or transferrable and disposable in the UK, amounting to not less than £2 million. They must also be able to show that they have opened an account with a UK regulated bank for the purposes of investing not less than £2 million in the UK. There is now also a new requirement that overseas applicants and adult dependants obtain a criminal record certificate from any country they have lived in for 12 months or more in the last 10 years to submit with their application.

Following a change in the rules from 6 November 2014, it is no longer possible to apply with funds acquired via a loan from a financial institution. However, it is possible to apply with funds held jointly with, or solely by, a spouse, civil partner, unmarried partner or same sex partner. Gifts, wills, deeds of sale, divorce settlement, evidence from a business and financial awards and prize winnings may all be considered as acceptable sources of funds, providing certain criteria are met.

Maintaining the £2 million investment is vital for applicants to secure an extension of leave to remain after three years and to also apply for indefinite leave to remain (settlement) in the UK after five years.

Tier 1 Investors can also take advantage of the accelerated route to settlement if they can make a greater investment:

- £5 million investment – settlement after three years,
- £10 million investment – settlement after two years.

The Tier 1 Investor visa allows a person to take up self-employment and employment in the UK (certain exceptions apply) as well as to study if they wish. It is not necessary to meet the English language requirements (as it is for many other visa categories).

English language	No
Initial visa grant	3 years 4 months
Extension	2 years
Indefinite leave to remain	After 5 years (or after 3 years/2 years via accelerated route)
Dependants	Spouse and children under 18
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

TIER 1 ENTREPRENEURS

For those with the intention of setting up their own business or investing in an existing UK business, the Tier 1 Entrepreneur category might be an option worth considering. Unlike the Tier 1 Investor category discussed above, a Tier 1 Entrepreneur must have the intention of being a registered Director and actively involved in the running of the business.
Individuals wishing to apply under this category will qualify if they can provide evidence to show that:

- They have access to at least £200,000; or
- They have access to £50,000 through a venture capital firm registered with the Financial Conduct Authority (FCA), a UK entrepreneurial seed funding competition endorsed by UK Department for International Trade (DIT) or a UK Government department making funds available for the purpose of setting up or expanding a UK business.

The funding rules are different if the applicant is changing ('switching') from certain UK visa categories, such as a Tier 1 Graduate Entrepreneur visa, Tier 1 Post-study work visa (closed now to initial applications), Tier 1 General visa (also closed now to initial applications) or a Tier 4 Student visa and additional criteria apply in these circumstances.

The applicant can also qualify if they have already made the investment into the UK business. In these circumstances, the investment must have been made in the 12 months leading up to the application.

Two business partners can qualify for Tier 1 Entrepreneur status together relying on the same investment funds, known as an 'Entrepreneurial Team', provided that they have equal access and control over the funds and will both be actively involved in the running of the business.

Similar to the Tier 1 Investor visa, applicants (and adult dependants) who apply from overseas will need to obtain the suitable criminal record certificate(s).

It is necessary to meet the English language requirements for this visa category. This can be done by the applicant in one of 3 ways:

- Showing that they are a national of a majority English speaking country;
- Demonstrating that they have passed an approved English language test to the prescribed level in reading, writing, speaking and listening; or
- By having an academic qualification that was taught in English and is recognised by UK NARIC as being equivalent to a UK Bachelors degree, Masters degree or PhD.

It is also necessary for the applicant to meet the maintenance requirements to show that they have sufficient personal funds to support themselves and any accompanying family members. This means having a certain level of funding held in personal bank accounts for at least 90 days leading up to the submission of the application.
Key criteria must be met regarding the investment of the funds and the creation of two full-time jobs in the UK in order to meet the requirements for an extension of leave to remain in the UK.

It is important to note that applications are subject to a 'Genuineness Test', meaning that the UK Visas & Immigration will take into account all evidence submitted, with a particular focus on assessing the viability and credibility of the source of the funds, and the business plan, as well as the applicant's previous educational and business experience and immigration history before making the decision.

Tier 1 Entrepreneurs will also be able to settle in the UK after three years via an accelerated process if they create ten jobs or turn over £5m in the initial three year period.

English language	Yes
Initial visa grant	3 years 4 months
Extension	2 years
Indefinite leave to remain	After 5 years (or 3 years under accelerated route)
Dependants	Spouse and children under 18
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

Tier 1 Graduate Entrepreneur

This route is designed for graduates who have been endorsed as having a genuine and credible business idea which has been endorsed by either:

- UK DIT as part of the elite global graduate entrepreneur scheme (Sirius); or
- A UK higher education institution (HEI) providing it is an authorised endorsing body.

Every year the Tier 1 (Graduate Entrepreneur) route has a limit of 2000 places (beginning on 6 April and ending on 5 April the following year). 1900 places are allocated to the HEIs with the remaining 100 allocated to the UK DIT. Applicants can apply for leave (permission to stay in the UK) under the Tier 1 (Graduate Entrepreneur) route for an initial period of one year. If their endorsing body agrees to sponsor them after this, they can apply again and they may be granted further leave for another year. Applicants are only allowed a maximum of two years under this route and it does not lead to settlement, but of course they can switch from this route to the Tier 1 Entrepreneur route in certain circumstances.

It is necessary to meet the English language requirements for this visa category as detailed above. It is also necessary to meet the maintenance requirements to show that the applicant has sufficient personal funds to support themselves and any accompanying family members.

English language	Yes
Initial visa grant	1 year
Extension	1 year
Indefinite leave to remain	No
Dependants	Spouse and children under 18
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

REPRESENTATIVE OF AN OVERSEAS BUSINESS (ALSO KNOWN AS SOLE REPRESENTATIVE)

A remnant of the immigration system prior to the Points Based System being introduced, this visa category is designed to allow businesses based outside of the UK to send a senior employee into the UK to set up its very first commercial presence (a wholly owned branch or subsidiary of the parent company overseas) in the UK.

The application is a personal one, made by the individual who intends to be the sole representative, but is supported by the company. The company's track record and business plans for the UK entity will be assessed as part of the application process, as well as the skills and experience of the applicant themselves.

Unlike the Tier 1 Investor and Tier 1 Entrepreneur options, it does not require any level of financial investment in the UK and so is a popular choice for businesses. However, there are certain other specific criteria to be met which include that the applicant:

- Has been recruited and employed outside the UK by a company whose headquarters and principal place of business are outside the UK;
- Has extensive related industry experience and knowledge;
- Holds a senior position within the company (but is not a majority shareholder) and has full authority to make decisions on its behalf;
- Intends to establish the company's first commercial presence in the UK, e.g. a registered branch or a wholly owned subsidiary.

It is very important that the company does not yet have a legal entity in the UK that employs staff or transacts business. If it does, then unfortunately this route cannot be used . In addition, only one sole representative is allowed, so if the parent company overseas wishes to send other employees to the UK to staff up the UK business they must come in under the Tier 2 Skilled Worker route (see below).

Unlike the Entrepreneur route there are no set deadlines as to when the set-up of the business must be achieved, providing that this has been done in advance of any extension application. Indeed, initial time spent on this visa can be used to undertake market research and market testing before any firm corporate roots are established.

The sole representative must be able to meet the basic standard in English language for this type of visa and although there is no minimum salary criteria, the applicant must be able to show that he/she can maintain themselves and any accompanying dependants without recourse to public funds. They cannot take employment with another company whilst in the UK and must work full time.

English language	Yes
Initial visa grant	3 years
Extension	2 years
Indefinite leave to remain	After 5 years
Dependants	Spouse and children under 18
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

TURKISH NATIONALS

Specific options are available to Turkish nationals by virtue of the Ankara Agreement which facilitates Turkish entrepreneurs and business people, as well as Turkish workers in certain circumstances.

The Turkish Businessperson visa allows Turkish nationals to come to the UK to start a new business or to join and help in the running of an existing business. An initial one year visa will be granted, which can be extended for a further three years. It is also possible to apply for settlement after four years in the UK.

Initial visa grant	1 year
Extension	3 years
Indefinite leave to remain	After 4 years
Dependants	Spouse and children under 18
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

The Turkish Worker visa is an option open to Turkish nationals who have legally worked in the UK for at least one year as the spouse of a British or settled person, the holder of a work visa (such as a Tier 2 visa) or as a student who has been allowed to work 20 hours a week during term time and full time during vacation periods. How long the individual can stay in the UK and what work they can do will depend on how long they have already been legally working in the UK.

Initial visa grant	1 year
Extension	Up to 3 years
Indefinite leave to remain	No
Dependants	Spouse and children under 18 if already in the UK
Dependant activities	Spouses and partners can work or study if they wish and children of school age can attend school.

4. COMPETITION LAW AND POLICY IN THE UK

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INTRODUCTION

When engaging in many common business transactions in the UK or having an effect in the UK, it is sensible to consider whether competition law may apply. Failure to abide by the rules can be costly: civil and indeed criminal penalties may be enforced; damages (including collective damages) actions are possible and there can be severe consequences for an individual's career.

Here are some common situations (although this list is certainly not exhaustive):

- You are attending a meeting of your trade association and the question of industry prices and volumes is raised;
- You receive – without asking – information about a competitor's future pricing intentions;
- You learn that your major supplier may have been involved in a price-fixing conspiracy that could have raised your costs substantially;
- The supplier of your main input, who is dominant, is charging customers in the downstream market in which you operate little more than it is charging you for the input, leaving you with no margin to be competitive;
- Two of your suppliers merge and you face having less choice (and perhaps higher costs) in future;
- You and your nearest competitor decide to merge and wish to implement the deal quickly;
- You are buying a company which has received a grant from a public body;
- You are nervous about entering a new market without knowing your competitor's future conduct in that market; and

- In response to an invitation to tender, you have received some peculiar bids.
- In some of these situations your business may face competition law liability; in others, you may be the "victim" of possible anti-competitive activity and wish to claim redress.

It pays therefore to have a basic understanding of the rules both to avoid liability and to protect your business.

A book chapter cannot replace in-depth consideration of your specific circumstances nor does it replace a proper compliance programme. This chapter is instead designed to raise awareness and provoke questions.

COMPETITION LAW, THE EU AND RELATED AREAS OF LAW

Competition law in the EU seeks to address several problems:

- Anti-competitive agreements between two or more "undertakings" (Article 101 of the Treaty on the functioning of the EU – TfEU – and chapter I of the Competition Act 1998);
- The abuse by one or more undertakings of a dominant position (Article 102 TfEU and chapter II of the Competition Act 1998);
- Mergers, acquisitions or – in some cases – joint ventures above a particular size (the EU merger regulation – Regulation 139/2004; the Enterprise Act 2002);
- State Aid (Articles 107-109 TfEU); and
- Public procurement (regulated by Directive 2014/25 in the Water, Energy, Transport and Postal Services, by Directive 2014/24 in other sectors, and by Directive 2014/23 for concession contracts.

The EU competition rules form part of the broader body of EU law, the goals of which include the creation and development of an internal market within the EU. The free movement of capital, services and workers and the freedom of establishment are fundamental principles of EU law which at times overlap with the application of competition law.

Competition law is not an isolated discipline: it may overlap or share common principles with other forms of regulation, and this alone makes it exceptionally important for any business operating in the EU and in the UK; in particular:

- *Sector regulation:* in addition to competition law, many industries are subject to specific regulation, which may serve economic, consumer, environmental or other purposes. These industries include: financial services, payment systems, communications and the traditional utilities, such as energy (gas pipelines, storage facilities and electricity transmission and distribution networks); airports

(Heathrow and Gatwick are subject to a price cap on their overall returns); the railway network; and water (and water and sewerage) companies.

- *Consumer law*: one of the main objectives of competition law is the protection of consumers; consumer law (both EU and UK) complements this objective and some consumer law investigations are carried out by the same institution as competition law investigations (e.g. the Competition and Markets Authority);
- *Fraud and criminal law*: in the UK, it is a criminal offence for an individual to make or implement (or cause to be made or implemented) arrangements that could result in price fixing, limiting or prevent supply or production; or bid rigging – this is known as the "Cartel Offence" and it carries a maximum penalty of five years in prison or an unlimited fine. Either the Serious Fraud Office or the CMA can prosecute and in some cases of market abuse activity the question may arise whether they are to be prosecuted as fraud or as a cartel.

Businesses operating in an IP-rich environment, particularly where the industry creates common standards (for example, in the IT or comms sectors), should mind the interface between competition and intellectual property law.

Consequently, you must consider competition law compliance in your business activities as a priority.

ANTI-COMPETITIVE AGREEMENTS

The most obvious example of an anti-competitive agreement is a price-fixing or market-sharing cartel, but the scope of the EU's legal prohibition is broader.

The law prohibits agreements, decisions of associations of undertakings or concerted practices (a form of understanding falling short of an agreement) which have as their object or effect the prevention, restriction or distortion of competition and which may affect trade between EU Member States. The UK rules are the same, except that the requirement to affect trade is directed towards trade within the UK.

There is an important distinction between agreements which are anti-competitive by object and those which are anti-competitive by effect. Simply put, an agreement which is anti-competitive by object is by its nature so serious that there is no need to prove that it has actually had an anti-competitive effect. "By object" infringements encompass the most serious anti-competitive agreements, such as cartels, but in practice, competition authorities and businesses have argued over the threshold at which an anti-competitive agreement can correctly be considered a "by object" infringement. This argument – which at first sight appears to be a pure "lawyers' point" - can have very significant effects for the ability of a business under investigation to defend itself.

The law then provides that agreements (etc) falling within the prohibition are void (and therefore unenforceable), but that certain agreements may be exempt from the prohibition if they meet four cumulative criteria, which may – at the risk of over-

simplification – mean that the pro-competitive aspects outweigh the anti-competitive aspects. An agreement may be exempt either because – individually – it meets the criteria for exemption, or because it fulfils the criteria for "block" exemption, that is, an exemption for agreements belonging to a defined class. The EU competition law recognises several types of agreement as capable of being block exempt, and these are set out in Appendix 1.

In practice, the law often needs to be considered in the context of a range of common business agreements, from licensing distribution and supply arrangements, non-compete clauses/restrictive covenants, joint venture arrangements, to research and development agreements and more, but in many cases the prohibition may not apply, or if it does, the agreement is exempt.

The greatest concern for competition authorities – and the target of substantial enforcement time and resource – are the cartels, which are considered the most serious infringements of competition law, because they cause the greatest consumer and economic harm. They attract the highest penalties.

The EU as a whole has not criminalised infringements of competition law. However, some Member States have chosen to criminalise cartels: for example, Ireland, the UK, Hungary and Romania.

There are two ways in which competition authorities learn about cartels: intelligence gathering (this includes information it may learn through carrying out market studies, or even through using covert human intelligence sources) or whistle-blowers. The main form of whistle-blower is the corporate leniency applicant. Leniency programmes have been a highly effective way for competition authorities to detect cartels, because they promise substantial reductions in corporate fines in return for information on the cartel. Such reductions extend to complete immunity for the first to reveal the cartel to the authority. The second form of whistle-blower in the UK is the individual corporate informant, who can receive up to £100,000 in return for informing the CMA about a cartel.

THE ABUSE OF A DOMINANT POSITION

Competition law prohibits the abuse by one or more undertakings of a market dominating position. Again, where trade might be affected determines which rules – EU or UK – apply.

A dominant position allows a business to behave in a way that impedes competition, or as one case put it, in a manner "to an appreciable extent independently of its competitors and customers and ultimately of the consumers." The law does not prohibit having a dominant position, but only its abuse. That said, it is also possible for the abuse to take place in a non-dominated market, if such market is sufficiently closely related to a dominated one.

There are many established forms of abuse (and these have grown over time). Broadly, we can distinguish between "exclusionary" abuses – those which tend to exclude competitors from the market and so harm competition – and "exploitative" abuses – those which seek to take advantage of customers or suppliers.

Exclusionary abuses are sometimes described as "price-based" and "non-price based" abuses. Price-based abuses include predatory (below cost) pricing, margin squeeze (where a supplier competes with the customer in the downstream market and distorts competition in the downstream market); and certain discounts. Non-price abuses include refusal to supply and tying/bundling.

MERGER CONTROL

Merger control rules make the conclusion of structural business deals involving parties above a certain size threshold – mergers, acquisitions, structural joint ventures – subject to a competition review. There are two ways a business can be affected by these rules: as a party to the deal, or as supplier, customer or competitor, affected by the deal.

In practice, it is essential to distinguish between the "jurisdiction" rules and the "substantive" rules. The jurisdictional rules determine whether – and if so where – merger notifications may be required or advisable (if not otherwise required). The substantive rules determine whether a merger subject to review may proceed, and if so on what terms. For example, some complex cases may be granted permission to proceed, but only subject to the combined group divesting certain assets to preserve competition.

The distinction between jurisdictional and substantive rules is an important one: many mergers are required to be notified and pre-cleared each year even though they are harmless to competition.

Jurisdictional tests

Jurisdictional tests set out (a) the types and (b) the size of the parties brought together which the merger control rules cover. In EU law and practice, the first stage is normally to assess whether the EU rules (contained in the EU merger regulation) will apply. The types of transaction covered by the EUMR are broad: these are "concentrations", which include mergers, acquisitions (including acquisitions of minority stakes where these allow the acquirer to exercise decisive influence over the target) and structural ("full function") joint ventures. The size of the parties brought together by the transactions is determined by two alternative sets of turnover information, set out in Appendix 2.

The advantage of a concentration falling within the EUMR is that with few exceptions, the national merger control rules of the EU Member States will not apply. This is known as the "one stop shop" principle. The risk of multiple concurrent

competition authority timetables as well as the overall administrative burden are thereby reduced.

That said, deals may also be subject to merger review outside the EU as over 100 jurisdictions worldwide now operate some form of merger control. It is important to remember that the rules are not harmonised globally, and it will be important in some cases to take local law advice.

For deals falling outside the EUMR, national EU Member State rules may apply. In the UK, the rules operate slightly differently in three relevant respects: the definition of the transactions covered; and the size threshold at which the rules are engaged; and the requirement to obtain clearance.

The UK rules apply when two enterprises cease to be distinct, as a result of merger, or one party acquires legal control, de facto control or material influence over the other. The target enterprise must achieve an annual UK turnover over £70 million; or, as a result of the transaction, the parties will together supply at least one quarter of the relevant goods or services in the UK, or in a substantial part of the UK (and this means there must be an increment in that share of supply).

Unlike many other jurisdictions, the UK still operates a voluntary filing regime, which means that in principle, the parties are not required to obtain clearance from the CMA before implementing the deal. However, the CMA can investigate all mergers (before or after implementation) and force divestments if necessary. In practice, the CMA may intervene to prevent a completed merger being implemented while it is carrying out its investigation. Consequently, merging parties should carefully consider the risks involved in implementing a deal without first having obtained clearance.

MARKET INVESTIGATIONS

Where the CMA considers that particular features of a market may give rise to anti-competitive effects which may not be caught by the prohibitions on anti-competitive agreements and the abuse of dominant positions, it may investigate these markets where it considers that consumer harm may result. Note that the focus here is on industry practices, rather than the actions of specific firms, although in one notable investigation, into BAA Airports, the market under investigation was also one single firm.

Following a market study, the CMA may refer the case for more detailed investigation by the CMA Panel if it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK, or a part of the UK. The reference period is 18 months, extendable to 24 months where there are special reasons for doing so, and a timetable of six months (extendable to ten) for implementing any remedies. The sector regulators may also make references to the CMA Panel for issues within their own sectors. If a

market is found not to be working well, the CMA can impose significant regulatory or structural reforms.

THE ENFORCEMENT OF COMPETITION LAW

Competition compliance is important. Consider the CMA's powers:

- In cases of suspected infringement of the rules on anti-competitive agreements and the abuse of dominance, the CMA may make surprise inspections ("dawn raids") to gather information, interview employees and block access to email accounts (to prevent tampering with evidence). In practice, these investigations can be exceptionally disruptive to the operation of a business as well as marking the start of what could be lengthy investigative proceedings. The CMA can also submit lengthy questionnaires for the business to complete. These take time and care to complete properly.
- The CMA can impose "interim measures" where it considers that "significant damage" is likely to result from the alleged anti-competitive behaviour. Although there has been only one example of the UK competition authorities imposing interim measures (in the London Metal Exchange case, where the measures were later withdrawn), reforms have lowered the threshold for imposing interim measures from "serious and irreparable harm" to "significant damage." Interim measures are most likely to be sought (and applied) in cases where an abuse of a dominant position is alleged.
- A price-fixing case may see the CMA conducting parallel civil and criminal law proceedings. The threshold for sending individuals to prison has been lowered by reforms which have removed the requirement for a jury to find that the individual was "dishonest". Under the old law, which required a finding of dishonesty, four individuals received prison terms between six and thirty months.
- The CMA can impose fines of up to 10% of worldwide turnover for infringing competition law;
- The CMA can also seek to have a company director disqualified for up to fifteen years;
- In the UK, individuals may be extradited if their actions breach both the cartel offence in the UK and competition rules in another country, for example, the USA.

There are numerous competition regulators in the UK. If you are operating in certain regulated sectors, other bodies will have powers to apply competition law alongside the CMA – this principle is known as "concurrency" and the sector regulators are said to have "concurrent" competition law powers. These bodies, and their remit as competition authorities, are as follows:

Regulator	Responsibilities
Ofcom	Communications and post
Ofgem	Gas and Electricity markets
ORR	Rail
OFWAT	Water Services
Utility Regulator NI	Northern Ireland energy, water and sewerage
CAA	Airport Operation Services and Air Traffic Services (but not air transport providers such as airlines, or tour operators)
Financial Conduct Authority	Financial services firms
Payment Systems Regulator	Payment systems

PRIVATE ENFORCEMENT OF COMPETITION LAW

For many years it has been possible in principle to seek damages to compensate for losses suffered as a result of anti-competitive behaviour. The mechanism exists for the victim to begin a case in the High Court for damages, or – following a decision by the CMA or the European Commission that competition law has been infringed – in the Competition Appeal Tribunal. The latter route is seen to be more attractive for the victims of anti-competitive behaviour, at least in principle, because the competition authority has already established the infringement.

For some, this right was more apparent than real, as those often harmed by anti-competitive behaviour – consumers – were often unmotivated and unable to enforce their rights. It is the policy and intent of both the European Commission and the UK Government that more consumers be able to enforce the law. To that end:

- The EU Damages Directive (Directive 2014/104) aims to harmonise the EU Member States' national rules and procedures for damages cases, and the EU Member States were required to implement the directive by 27 December 2016.

At the time of writing, only 17 Member States (including the UK) have fully transposed the directive.

- The UK's Consumer Rights Act 2015 provides for enhanced consumer rights to enforce competition law, particularly (a) allowing for a form of class action lawsuit (known as a representative action) to be brought on an opt-out basis – i.e. all the consumers within the class would be included unless they specifically chose to opt-out (b) allowing damages claims to be concluded with a collective settlement between business and consumers; and (c) allowing infringing businesses to set up a collective redress scheme as a partial or full alternative to court action, by which consumers can be compensated.

Table 2.6.1 Competition enforcement institutions

UK Institutions	
Competition Markets Authority (CMA)	• The CMA is responsible for enforcing the Competition Act 1998, carrying out merger control functions and conducting in-depth market investigations with a primary duty to promote effective competition. • The key sectoral regulators in Tab 2.2.1 above also have concurrent powers with the CMA in Competition Act cases and in-depth market investigations in their sectors. The sectoral regulators do not have the leading role in merger control cases in their sector.
Financial Conduct Authority (FCA)	• Regulates financial firms providing services to consumers and maintains the integrity of the UK's financial markets. • It focuses on the regulation of conduct by both retail and wholesale financial services firms.Powers include regulating conduct related to the marketing of financial products. • Responsible for regulating the consumer credit industry from 1 April 2014, taking over the role from the Office of Fair Trading.
Payment Systems Regulator (PSR)	• The PSR is responsible for promoting competition and innovation, and ensuring that payment systems are developed and operated in the interests of service-users, working alongside the Financial Conduct Authority and Competition and Markets Authority, thus creating a more competitive banking industry.

Competition Appeal Tribunal (CAT)	• hears appeals on the merits of decisions made under Competition Act 1998 – appeals against decisions of the CMA or other sector regulators; • hears actions for damages on a stand-alone or follow-on basis, including collective actions; • can approve collective settlement of claims in collective proceedings • reviews mergers and market references; appeals against regulatory decisions of Ofcom.
High court	• Claimants can bring private actions for damages to the High Court. Claims can follow on from an adverse finding by the CMA or CAT or can be brought directly to the High Court.

EU Institutions	
European Commission (DG Competition)	• enforces competition rules of the TfEU; • reviews mergers with a European dimension (phase I and phase II); • publishes guidelines on the application of competition rules for consumers, industry and national competition authorities.
General Court (was Court of First Instance (CFI))	• Hears appeals against decisions of Community institutions, including DG Competition.
Court of Justice of the EU (was European Court of Justice (ECJ))	• hears references for preliminary rulings – the Court of Justice provides decisions or reasoned orders on specific points of law referred from national courts; • hears appeals against decisions of the General Court.

BREXIT AND UK COMPETITION LAW

Brexit will change UK law, including competition law, in ways that depend on the UK's post-Brexit relationship with the EU. Before the referendum and in the immediate aftermath, many speculated about future "models" for this relationship, whether the "Norway" model (EEA), the "Swiss" model (EFTA), the Canada or the Turkey models. After the UK government stated that it was prepared to leave the single market and the customs union, talk of different models ceased in favour of a bespoke UK-EU deal, or no deal at all. The UK's June 2017 General Election did not

give a clear majority to the ruling Conservative Party, which has led to speculation that "softer" Brexit models may again be open for consideration.

Even assuming – as the rest of this chapter does – a "hard" Brexit (UK leaves the EU Single Market and Customs Union), the EU competition rules will continue to apply to agreements or conduct of UK businesses that have an effect within the EU, in the same way as agreements or conduct of non-EU businesses are currently subject to EU competition law where their agreements and conduct affect EU markets. A UK participant in a global cartel will therefore continue to face investigation and fines by the European Commission.

Following Brexit, however, the European Commission will lose its power to carry out dawn raids in the UK and will no longer be able to ask the CMA to do so on its behalf. Although the CMA is part of the European Competition network and works closely with the European Commission and other national competition authorities of the EU Member States, it is likely that over time there will be some divergence in the two authorities' strategies post-Brexit. This could even lead to the two authorities investigating the same competition law issue, resulting in added legal costs and an increased administrative burden for businesses.

Furthermore, after Brexit, the UK is likely to lose the benefit of the "one stop shop" principle of EU merger control, and the merging parties could potentially be required to notify their transaction both to the European Commission and to the CMA where the transaction meets both the EU and the UK thresholds. This could lead to increased transaction costs, both in terms of adviser costs and merger filing fees. It could also increase uncertainty for companies, as separate notifications to the European Commission and the CMA may lead to conflicting decisions from the two authorities.

Similarly, Brexit may harm the UK's status as a premier destination for bringing private competition damages claims but this will not become clear until the post-Brexit relationship between the UK and the remaining EU Member States has been established.

SUMMARY CHECKLIST

Activities in the contexts of:

a. Negotiating with customers
b. Cooperation with competitors
c. Mergers/joint ventures
d. Information gathering
e. Unilateral action by "dominant" companies

Activities which are likely to be permitted and those which are likely to be prohibited under EU Law are listed in Table 2.6.2 below.

The main block exemptions at the time of writing are identified in Appendix I and threshold for European notification under merger control are listed in Appendix II.

Table 2.6.2 Activities likely to be permitted and prohibited

LIKELY TO BE PERMITTED	LIKELY TO BE PROHIBITED
A. NEGOTIATING WITH CUSTOMERS OR SUPPLIERS	
• Checking aggregated industry-wide statistical data. • Offering discounts to customers based on the suppliers' costs. • Setting recommended retail prices ("RRPs") for distributors, provided that there is no explicit or implicit pressure on the distributor to follow the RRPs and that you are not dominant.	• Agreeing minimum or fixed resale prices with a distributor or a supplier. • Preventing a distributor from exporting a product to another EU member State. • Charging a distributor prices that vary according to whether the goods are to be resold in a specific country or exported to another EU member State. • Preventing a distributor from selling a product to a customer because they intend to export the product to another EU member State. • Preventing manufacturers of components from selling these components as spare parts.

LIKELY TO BE PERMITTED	LIKELY TO BE PROHIBITED
B. CO-OPERATION WITH COMPETITORS	
• Attending meetings of trade association. • Discussing health and safety. • Discussing proposed regulatory changes.	• Bid-rigging, i.e. allocating tenders between competitors. • Agreeing production quotas with competitors. • Agreements or arrangements with the effect of dividing product or geographic markets with competitors. • Warning a competitor to stay away from "our territory" or specialist field. • Discussing prices, profit margins, rebates or discounts with competitors. • Discussing the cost of key raw materials with competitors that also source similar materials. • Agreeing to boycott particular suppliers or distributors. • Discussing prices or profit margins with competitors. • Agreeing current or future prices with competitors. • Discussing terms of sale or supplier/ customer business relationships. • Discussing strategic plans, such as pricing strategy or product/territorial expansion. • Agreeing with a competitor to fix the timing for the introduction of a new technology that has been developed independently. • Delaying quoting a price until you know a competitor's price.

LIKELY TO BE PERMITTED	LIKELY TO BE PROHIBITED
C. MERGERS / JOINT VENTURES	
• Entering into a research & development co-operation agreement with a competitor, where both parties are free to exploit the results independently.	• Agreeing with a competitor to fix the timing for the introduction of a new technology that has been developed independently.
D. INFORMATION GATHERING	
• Obtaining information on competitors' sales and prices from publicly available sources or from customers in the ordinary course of business. • Giving historical sales data to a third party which distributes aggregated, industry-wide sales figures to participants.	• Contacting customers specifically to gather competitors' pricing information ("fishing trip").
E. UNILATERAL ACTION BY "DOMINANT" COMPANIES	
	• Excessively high pricing, i.e. where the price has no reasonable relation to the economic value of the product. • Selling goods below cost in order to foreclose competitors from the market. • Offering discounts to customers in a discriminatory manner, e.g. offering discounts to customers if they source all or most of their supplies from you. • Suggesting recommended retail prices to a distributor. • Refusing to sell a product to a purchaser with an existing business relationship. This will be permitted only if there are sound commercial reasons for refusing to sell, such as poor credit history. • Refusing to sell a particular product unless it is purchased with another non-essential product from your dominant market. • Insisting that a distributor must stock the whole range of your products.

APPENDIX 1

Block Exemptions
The main EU block exemptions in force at the time of writing are listed below:

Block exemption	**Council Regulation**
Vertical agreements – agreements between non-competitors – new block exemption	Regulation 330/2010 Expires 31 May 2022
Specialisation/production agreements – unilateral specialisation; outsourcing; reciprocal specialisation; joint production agreements	Regulation 1218/2010 Expires 31 December 2022
Research and development – joint R&D and joint exploitation of findings	Regulation 1217/2010 Expires 31 December 2022
Motor vehicle distribution – purchase, sale and resale of motor vehicles or spare parts; repair and maintenance services	Regulation 461/2010 Expires 31 May 2023
Technology Transfer Block Exemption Regulation – certain patents, knowhow and software copyright licensing agreements	Regulation 216/2014 Expires 1 May 2026
Insurance – joint establishment of calculations and tables; establishment of non-binding standard policy conditions for direct insurance	Regulation 267/2010 Expires 31 March 2017
Road and inland waterways groupings	Regulation 169/2009 Indefinite duration
Liner consortia – joint operation of liner shipping transport services	Regulation 906/2009 25 April 2020

The *Commission's Notice on Agreements of minor importance (de minimis notice) 2001/C368/07* applies to agreements where the combined market share of competing/ potentially competing undertakings ("horizontal agreements") is less that 10% and less than 15% for non-competitors ("vertical agreements"), provided they do not contain any hardcore restrictions.

APPENDIX 2

Merger Control:
Thresholds for European Notification

Issue	**Primary test**	**Alternative test**
Combined worldwide turnover	> €5,000 million	> €2,500 million
Individual EU-wide turnover	At least two parties > €250 million	At least two parties > €100 million
Presence in three member States		Combined turnover of all parties in at least three member States > €100 million AND Individual turnover of two or more of the parties in three of the member States referred to above > €25 million
Exception	A merger will not have a Community dimension if each of the parties achieves more than two-thirds of its EU-wide turnover in one and the same member State.	

The European Commission can refer the merger analysis to a national authority where the concentration would affect competition in a distinct market of a specific member State (Art. 4(4) or Art. 9 EUMR).

5. A GUIDE TO INVESTMENT IN UK COMMERCIAL PROPERTY

Gary Ritter and Charlotte Williams,
Watson, Farley & Williams LLP

The UK has historically had one of the most dynamic and transparent property markets in Europe, with a broad variety of property options, stable rents and flexible short term lease structures.

Commenting on the UK property investment market in April 2017, the London office of Cushman & Wakefield, one of the world's leading commercial property consultants, states that:

> *"As with much of the economy, the UK property market faced heightened uncertainty in 2016 as the Brexit debate and referendum rolled forward. Most notably this led to a stalling in activity as occupiers and investors paused to see what would happen. However, by the end of the year, while some occupiers remained on the sidelines or were investigating contingency plans in other markets, investment activity had sparked back into life, with quality assets in high demand, particularly from foreign investors enjoying more buying power due to the fall in the Pound.*
>
> *Total annual returns for the year dropped to 3.9% compared to 2015's 13.3%, according to the IPD UK Monthly Property Index. With a steady improvement in rental growth and sustained downward pressure on yields, the industrial sector was the strongest performer of the main commercial property sectors, with total annualised returns of 7.8%, fractionally ahead of the hotel sector, which returned 7.7%. The office market fell the most significantly from 18.3% in 2015 to 2.5% in 2016,*

with London's city core office rents experiencing a downturn, and national office rents also beginning to see slower growth as the services sector faced perhaps the most immediate uncertainty arising from Brexit. However, while year-end investment volumes into the office sector were also down on 2015, the final quarter saw an uptick in leasing activity in Central London and a pick-up in business sentiment on a national level to support demand. For the retail sector, the occupier market remained more robust through 2016, albeit with leasing activity still focussed on larger retail centres. The hotel market gained from the fall in the Pound, helping tourism and the investment market hold up well over the year, transacting just over £3.2 billion, ahead of the 10-year average.

As noted, investment activity is now being aided by the fall in sterling, with the UK's appeal to international investors increasing and Asian and Middle Eastern capital in particular coming into firstly London but also now some regional markets. Looking ahead, the long-term impact of the UK's decision to leave the EU on the real estate sector is yet to manifest. The economy has performed ahead of expectations but with higher inflation and exit talks now underway, slower rather than faster growth is generally anticipated, in the short-term at least and increased flexibility will therefore be sought by occupiers. Despite this, given the relativity of yields and, indeed, growth potential in the right assets and locations, property remains an attractive asset class for investors."

This chapter will seek to provide a legal background for overseas entities or individuals considering investing in or leasing UK commercial property (whether industrial, retail, offices or hotel/serviced apartments), either to occupy them or for investment purposes. Importantly, there are no restrictions on foreign nationals or overseas companies buying or leasing property in the UK, subject only to tax implications.

As well as acquiring the property directly, there are a number of structures through which to invest in property including:

- Property companies;
- Partnerships;
- Joint venture vehicles; or
- Real Estate Investment Trusts (REITs) A REIT is a quoted company that owns and manages income-producing property, either commercial or residential, which complies with certain conditions and may achieve certain taxation benefits.

OWNERSHIP OF LAND

The form of ownership and legal rights over a property can be very significant to an owner and/or occupier. Statute has established two forms of legal estate in land, with a relatively recent addition, namely:

- A Freehold Estate: Where the property (both land and structures) is effectively owned by the freeholder in perpetuity. An investor may prefer to own a freehold as this gives the most control, has a capital value and enables the grant of leases to secure an income stream. However, freehold ownership may nevertheless be subject to certain covenants (e.g. restricting the use of the property) and/or may be subject to the rights of others (e.g. rights of way for third parties across the property).
- A Leasehold Estate (i.e. taking a lease or renting the property): Where the leaseholder's ownership of the land is contractually limited in time to the length of the term of the lease. The lease will be granted out of a freehold or superior leasehold estate.
- Commonhold: This relatively new form of freehold tenure has existed since 2004. Commonhold is similar to the 'strata title' and 'condominium' systems that exist in Australia and the United States. Essentially, this is where each owner of a unit in a development (e.g. a flat, office or shop) owns the freehold of their unit and is also a member of a commonhold association which owns and manages the common parts of the development.

The English system enables the legal interest in the property to be split from the beneficial interest, should this be desired. The legal title holder will be the registered proprietor at the Land Registry or the legal owner of the title deeds, while the beneficial owner will be entitled to the pecuniary interest in the property and will receive the income. This would be of relevance in establishing structures for tax and accounting purposes.

As regards the beneficial interest, land can be held by more than one person in one of two ways; either as a joint tenancy or a tenancy in common. A joint tenancy is a form of ownership where, normally, should one owner die, the property will automatically vest in the surviving owner(s), regardless of the terms of the deceased's will. A tenancy in common, however, is a form of ownership where on the death of one of the joint owners, the relevant share in the property will form part of the deceased's estate and will pass to their beneficiaries by their will or, where there is no will, in accordance with the law on intestacy.

LEASEHOLD

Key elements

A lease is a contract between a landlord and tenant which creates a leasehold estate.

It is characterised by the landlord granting the tenant exclusive possession of the property for a fixed time (i.e. for a specified term or a period that is capable of being brought to an end by notice).

If these criteria are not met, a personal licence may be created instead of a leasehold estate. This is significant in terms of whether third parties will be obliged to recognise the occupier's rights and also because statute contains substantial protection for tenants, but not licensees; for example, security of tenure for certain residential and business tenancies.

Main types of lease

- The ground lease: This is a (normally residential) long lease often granted for more than 99 years, usually for a one-off sum, called a 'premium', with a nominal rent payable (sometimes called a 'peppercorn') throughout the rest of the term. A ground lease may be perceived to be closer in nature to a freehold owing to its capital value. Residential apartments/flats are normally sold or held on a long lease.
- The rack rent lease: This is the most prevalent form of commercial occupational lease, usually granted for around 5-10 years. The tenant will pay a full-market rent, normally quarterly, and, usually, no premium is payable.
- Short term residential occupational leases: These generally take the form of an Assured Shorthold Tenancy which, at the end of the lease term, entitles the landlord to possession of the premises.

COMMERCIAL LEASES

Pre-lets

Companies can take a lease of premises that are already available or may be entitled to enter into a 'pre-let' agreement with a developer to lease premises prior to the carrying out or completion of construction work, enabling the future tenant to specify the design, layout and fittings of the building.

Security of tenure

In most cases where a tenant occupies premises for business purposes, statute grants them the right to renew their lease on largely identical terms (subject to a review of rent and length of term) at the end of the term, the intention being to protect the tenant's goodwill at the premises established whilst in occupation.

Certain rights to compensation may also be available in the event that the landlord

is able to rely on one or more of seven grounds to refuse to renew the lease (e.g. if it requires occupation of the premises for its own use or wishes to redevelop the property).

Nevertheless, it is common for the parties to agree to exclude the tenant's right to security of tenure and right to compensation by 'contracting out'. A contracting out agreement will only be valid where the parties have followed a statutory process before the parties are contractually bound to enter the lease. This process requires the landlord to serve a prescribed notice on the tenant and the tenant to make a declaration that they have received the notice.

If the lease is contracted out, then the tenant must vacate the premises when the lease expires, with no right to renew and no right to compensation.

Restrictions on use

Leases usually restrict how the premises can be used. This is often linked to planning permission but sometimes, for example, with leases of commercial units in shopping centres, the use stated may be very specific so as to ensure that the landlord has a variety of businesses within the development.

Rent review

Where leases are granted for more than five years, it is standard to provide for a rent re-calculation (rent review) every fifth year. These reviews can be based on the open market rent which would be payable for a lease of the property on similar terms, may be linked to the Retail Prices Index or (less commonly) on fixed increases. Such provisions generally provide for 'upwards only' reviews.

Full repairing and insuring lease

The majority of leases of commercial premises in the UK are on a full repairing and insuring basis (FRI lease) which means that the tenant is liable for the upkeep and decoration of the property and for the costs of the landlord in insuring the building.

Service charge

Where a property is let to several different tenants, the landlord will retain responsibility in relation to the structure and the common parts of the building. The landlord will recover these costs from the tenant through charging a fee called a 'service charge'. The amount of service charge paid is generally proportionate to the size of the tenant's individual unit in relation to the lettable space in the whole building.

Break rights

Some leases include break rights giving the landlord and/or the tenant the option to end the lease before its expiry date. These provisions specify how much notice has to be given and may have financial implications.

Privity of contract

Where a lease is transferred to a new party, the original tenant will be subject to different liabilities dependent on the date of the lease.

For leases signed before 1 January 1996, the original tenant remains legally responsible for the rent and other lease commitments for the duration of the lease, regardless of whether they transfer the leasehold interest to a third party.

For leases signed after this date, subject to certain exceptions, the tenant will not remain liable after lawfully transferring the lease unless the landlord requests the tenant to sign a guarantee (known as an 'AGA'). In this situation, the tenant will remain liable during the period of ownership of the lease by the new tenant, but not beyond.

PLANNING

Prior to making certain alterations, erecting new buildings or changing the use of an existing building, businesses must contact their local authority's planning department in order to obtain planning permission. Most UK planning applications are administered by the local authority covering the area in which the particular building or site is located (contact details are available on most council websites).

The UK system is set out in statute and guidance published by the Government and by local authorities. The statutory timeframe for a planning application to a local authority to be decided is between eight and 16 weeks from the formal application, depending on whether it is treated as a major application, and whether an environmental impact assessment is required. If this timeframe is not adhered to by the local authority, the applicant may appeal. Additionally, if the application is refused, the applicant may also appeal. The appeals system in the UK also follows a statutory process.

REGISTERED LAND V UNREGISTERED LAND

Registered land

The majority of land in England and Wales is registered at the Land Registry. The register is a matter of public record and the title is guaranteed. It contains information concerning the type of estate (e.g. freehold or leasehold), the property description (through reference to a filed plan), the current owner (known as the 'registered proprietor') and details of all third party rights which have been registered against the estate or protected by notice (e.g. mortgages).

Not all information relating to the property will be displayed on the register. Certain third party rights ('overriding interests') will bind a purchaser of registered land regardless of whether they are recorded on the register, or whether a purchaser has any knowledge of them.

Unregistered land
Alternatively, where land has remained in the same hands for many years, there may not have been a trigger event requiring registration at the Land Registry and the land may still be unregistered. In the absence of a register entry, a landowner can only deduce title by proving an unbroken chain of ownership by reference to the title deeds and documents relating to the property. In practice, for a landowner to prove a good root of title, the chain of deeds must go back at least 15 years.

HOW IS LAND TRANSFERRED?

A typical sale and purchase transaction is a two-stage process involving an exchange of contracts between the buyer and the seller, followed by completion of the legal transfer. A seller's solicitor will issue a draft sale contract which will be negotiated and then exchanged with a deposit usually being paid. This is the point of no return, when both parties commit themselves to complete on a certain date. Up to this point, either party can withdraw without any liability to the other side.

Following exchange of contracts, the transfer of the property from the seller to the buyer is effected by completing the transfer deed and by complying with Land Registry registration requirements. Completion is, in effect, moving day, when the money is paid to the seller's solicitors and the keys to the property are handed over to the buyer.

Principle of 'Caveat Emptor'
In UK conveyancing, the principle of 'caveat emptor' ('let the buyer beware') is key and places the responsibility for due diligence and searches relating to a property on the buyer. It is normally the task of a lawyer to consider and negotiate the legal documentation and discover as much information as possible about the property through a variety of searches and enquiries, including, but not limited to:

- Local search – list of enquiries about property sent to the local authority which includes questions about planning, highways, drainage etc.
- Environmental search – historical information about previous uses of the land.
- Preliminary enquiries – questions about the property which are sent to the seller's or landlord's solicitors requesting information about issues such as disputes with neighbours and the use of the property.

Survey and valuation
Any property investor (whether using their own funds or funding through bank debt or sale and leaseback arrangements) should take the precaution of ensuring they have a physical survey and valuation of the property carried out by a surveyor.

Whilst not strictly property contracts, some types of real estate may be

encumbered by virtue of arrangements the seller has entered into. For example, a management agreement or operating agreement may be in place which, according to the circumstances, may affect value. Any investor contemplating UK real estate investment in a specific sector will benefit from advice at an early stage to ensure that issues that may affect their investment decision are identified early in the process (e.g. any issues that go to value or may inhibit its yield, such as large scale adjoining development).

TAX IMPLICATIONS OF ACQUIRING AN INTEREST IN PROPERTY

Value Added Tax (VAT)

Commercial property transactions may be subject to VAT. Whether a commercial property transaction is subject to VAT will depend on several factors, mainly being whether it is regarded as a new property or whether the seller has opted to tax the property. VAT is currently charged at 20%.

Stamp Duty Land Tax (SDLT)

This is a mandatory tax chargeable on the purchase of property situated in England, Wales and Northern Ireland. A similar tax called 'Land and Buildings Transaction Tax' is payable in Scotland. SDLT is payable by the buyer on the purchase price, on completion or substantial performance of the contract (which generally means occupation or a payment of at least 90% of the price), whichever is earlier.

The rate of SDLT payable depends on the purchase price. For residential property, SDLT is currently chargeable at a rate of up to 15% of the purchase price. In contrast, the maximum rate of SDLT on acquisitions of UK commercial property is only 5% of the purchase price. SDLT is also payable on the grant of a lease upon both the premium (if any) and the 'net present value' of the rent payable, which is based on the value of the total rent over the life of the lease. For current rates and information on calculating SDLT please see the HMRC website[1].

There are a number of transactions which may be exempt from SDLT, such as intra-group transfers within the same group of companies.

Business rates

Business rates are a property tax that business occupiers pay towards the costs of local government services.

Details of business rates can be found at:

- England and Wales – https://www.gov.uk/guidance/valuation-office-agency-and-business-rates-non-domestic-rates

[1] http://www.hmrc.gov.uk/sdlt/calculate/calculators.htm

- Northern Ireland – https://www.finance-ni.gov.uk/topics/property-rating
- Scotland – http://www.gov.scot/Topics/Government/local-government/17999/11199

This chapter gives a brief summary of the legal issues relating to investment in UK commercial real estate. It is not intended to give any specific legal advice or take the place of advice from property experts.

6. BUSINESS WITHOUT BARRIERS

Glynis Whiting, Managing Partner, TIAO

What if non tariff, non-physical trade barriers were removed? British chambers of commerce in overseas markets and the UK have started using technology to facilitate international trade around the world.

Restrictions imposed by governments are not the main barriers to trade. The greatest barrier for SMEs is finding the right people to help them do business in a new market.

There is an ever growing number of online platforms which seek to use the internet to create business opportunities. Learning from Amazon and other giants, many businesses would like to find an easy and inexpensive way to extend their market and develop business. But in the online world, with scare stories every day of cyber-crime and online hackers, how do you know who you are really dealing with?

Traditional face-to-face networking, the tried and tested way to develop business with people you know, like and trust, is often very inefficient. It can be time consuming and expensive, especially for small businesses and startups with limited resources.

Chambers of commerce have traditionally provided a strong, trusted environment in which companies can build long-term lasting business relationships. Networking events, personal and business development opportunities are the mainstay of the chamber calendar. However, building your business this way can be a slow process, and chambers themselves can find recruitment and retention of their business members in a competitive environment to be challenging.

As Marc Decorte, Chair of new technology company TIAO says, "If you look at chambers from a member's perspective, after three or four years you have done the tour of all the other members. Where do you go then?"

AN ONLINE PLATFORM FOR CHAMBERS OF COMMERCE

COBCOE, the organisation representing British chambers in mainland Europe for over 40 years, has teamed up with TIAO, a new technology company based in Belgium, to put together the best of both worlds.

The challenge is how to create a global online platform which combines opportunities for every company to do business with each other in an environment in which the key ingredient is trust. Trust cannot be bought – it must be earned, and as we have seen in recent months, in an increasingly connected online world of social media, it can easily be lost.

COBCOE Connects is a matchmaking platform for businesses anywhere to find opportunities to grow their business in a trusted environment "at the click of a button".

TRUST IS THE KEY INGREDIENT

"Trust is forever fragile and attempts at control futile. Managing the message simply won't work in today's complex and interconnected world." – Robert Philips, Jericho Chambers.

Chambers of commerce know their members, often over many years. They also have unique insights into their local market place; how it works in practice, what are the key questions every business new to the area needs to ask – and all the answers.

So the COBCOE Connects platform is personally moderated at local level by chamber staff, who can also call on the expertise of their own members – an unparalleled hub of local professional knowledge and support creating a unique trusted environment for new entrants to market.

TIAO itself is predicated on this premise – TIAO stands for 'Trust is an Outcome' and this element is core to how COBCOE Connects works at every level.

WHAT DOES COBCOE CONNECTS OFFER?

The platform offers four services which together create a unique trading hub for companies:

1. The means to develop and enhance their profile, searching out the right opportunities
2. A tailored, automated 'matchmaking' service between company members within the COBCOE network
3. Facilitated transactions between members that have 'found' each other via the platform

4. A service platform for strategic partner companies – these may be at COBCOE level, like our founding partners Kompass International, or at the local network level. The offer can include visibility and branding or a more direct service offer for a limited number of selected members to assist their trading experience.

WHAT DIFFERENTIATES COBCOE CONNECTS FROM OTHER ONLINE PLATFORMS?

- Multi-level/ multilateral – The reach and breadth of the network across Europe and beyond with companies locally and internationally, whether for export, accessing supply chain webs across the world, for joint ventures, investments in any market place – business without barriers.
- Membership driven in-depth local knowledge in each local chamber/network, from startups to major corporates – everyone can build a profile and reputation on the platform.
- Moderated – The unique aspect which ensures that the platform is a safe and trusted space in which to do business. Much of the matchmaking online is automated, but there will also, when needed, be personal follow-up by each chamber/network. This personal contact through known networks is a key element which builds trust for all participants.

HOW DOES IT WORK?

There are five distinctive features:

1. *Create a profile and upload opportunities*
   Each chamber becomes a network on the platform and uploads basic information about its members (company name/description/sector, etc.) Members are then individually invited to activate their membership of the platform (with acceptance of terms and conditions) and build their profile in the platform. This can include as much detail as possible about who they are, what they do, their key products and services as well as the key people running the company.
   They can also upload business opportunities – what they are looking for – to offer or state what their needs are. All key words are searchable by others, which increases the opportunity to make the right match.

2. *Intuitive search to find future business opportunity or partner*
   The COBCOE Connects search engine helps define every search using key words that match what is written in profiles and opportunities and other search criteria. Members can refine their search (location, sector, name, size of company and other keywords). Based on the information in the member profiles and the

opportunities they have posted, other members can find them.
Once they have identified a possible match, members can make direct contact with them via inline messaging directly to the primary contact of their match.

3. *No dead ends – guaranteed search results*
With COBCOE's strategic relationship with Kompass International, every member has access to the 4.8 million businesses in 68 countries around the world in the Kompass International Directory.

COBCOE and Kompass work with members to select any or all of these companies, to invite them to join the platform, and participating networks have the opportunity to offer full network membership where relevant. Each member can invite up to 100 companies (five at any one time) to join the platform and develop further contacts.

4. *Improve results by building trust*
Trust is a combination of three elements: delivery, transparency and accountability. As TIAO puts this at the heart of the platform, every member can improve their results by building trust through their TIAO score. The TIAO score rewards **delivery** by how active they are on the platform, **transparency** by the completeness level of their profile, and **accountability** by how responsive they are and how many opportunities they upload. The higher the TIAO score, the higher the company ranking in searches.

5. *Moderation – integrating digital with personal*
The role of the chamber/network moderator is a unique element in building trust in the platform.

Each chamber/network has a dedicated moderator. Although most connections in the platform are automated, the role of the moderator is a key differentiating ingredient to:

- Act as a personal point of contact for all chamber members in the platform – this works in two ways – adding value to the membership offer, plus raising the profile of the chamber with new prospects;
- Assist members in using the platform (creating profiles, doing searches and posting opportunities) and support with match-making and business development opportunities;
- Validate applications for new memberships – maintaining trust in the network and providing opportunities to recruit new members to their own network.

The moderator has real-time access via a personalised dashboard to what is happening on the site, so can make personal contact where necessary as well as monitor activity

and report back to the chamber and its members, promoting success stories. A moderators' community has been created, which meets online fortnightly to develop ideas and share experience nationally and internationally.

IN SUMMARY

At a time of increasing global uncertainty and potential political impasse, businesses need support to weather the storms and navigate in 'choppy waters'. It is, conversely, also a good time to act and take advantage of global opportunities.

People like to do business with people they know, like and trust. Chambers and local business networks are uniquely positioned to deliver real business opportunities because of the unique combination of:

- **Local knowledge** and experience of business reality in each market or sector place, either in-house or via the breadth of existing/prospective members, who may be local SMEs or larger B2B service providers with international coverage;
- **Strong personal, often long standing relations** with members which cannot be replicated by governmental or single commercial players – ideally placed to provide personal moderation;
- **Global reach** of the COBCOE network – multi-lateral/multi-level **network of networks**;
- **Personal moderation** – COBCOE will help chambers/networks to interact and exchange **best practice**. The COBCOE accreditation process is continuously improving the effectiveness and governance of chambers and the growing 'moderators community' assists with the sharing of ideas and experience;
- **User led** – The platform is being continuously developed, facilitating more **self learning** to improve the matchmaking

WHO IS BEHIND COBCOE CONNECTS?

Launched as a pilot earlier this year, COBCOE Connects is now fully operational with seven partner networks already online, plus COBCOE to moderate companies from further afield and two additional networks joining every month. As of June 2017 participating chambers were Thames Valley Chamber Group and Hertfordshire Chamber of Commerce in the UK, with British Chambers of Commerce in Belgium, Italy, Lithuania, Slovenia and Bulgaria in mainland Europe.

It is early days in the development of the platform, but feedback from companies is already positive. As one of the UK's largest electronics distributors said at the Hertfordshire Chamber launch in June 2017: "COBCOE Connects

is an opportunity to both procure products throughout Europe and possibly sell as well. We do appreciate that it is early days for this platform, but this makes for exciting times."

The TIAO team, which has developed the software as a service for COBCOE Connects, has in-depth understanding of both technology and, more importantly, how chambers and their members work.

The Chairman of TIAO is Marc Decorte, President and CEO of Shell in Belgium and Luxembourg with considerable experience in chambers of commerce and technology startups. Explaining what attracted him to TIAO, he said: "I only look at startups that have a disruptive element in their business model. They must create a new opportunity that did not exist before. One of the criteria for success is that TIAO starts from the customer, and that's what I liked. They didn't start with the technology. They knew that business was missing an element and that it was an opportunity for the chambers, and from that they generated the idea.

"TIAO has a very clear understanding of what chambers do, what chambers need, what the opportunities are, and what members are looking for. And they can position themselves as partners, rather than suppliers to chambers. That's essential."

He believes that the platform offers a unique win-win opportunity, adding, "Being active in chambers of commerce, I see two key elements:

1. The number one hope that members have on joining a chamber is that they will grow their business
2. Growing business very quickly equates to going international, for exporting, finding distributors and partners they can trust

"For chambers, to go on a platform is a unique opportunity that nobody else can offer. It's like virtual networking. It creates the possibility to do commercial business in a digital way. If I was a chamber, this would be the tool to give my members a concrete offer about what the value-add is of joining and staying a member."

ABOUT THE TEAMS

COBCOE

COBCOE is the Council of British Chambers of Commerce in Europe. Established 45 years ago, it is the not-for-profit membership body for British chambers of commerce located in continental Europe. Since 2017, UK chambers can also join.

The member chambers of COBCOE are currently based in 36 countries. Their combined membership stands at around 12,000 companies.
COBOE acts as an umbrella organization and works with its members and supporting partners, such as Jaguar Land Rover, to promote international trade and business. It also seeks to protect and promote the interests of members and their business members through united representation and initiatives on current topics such as Brexit.

A further 40 organisations are affiliate partners of COBCOE. These include UK chambers of commerce, British chambers of commerce around the world and other related membership organisations. This global network provides access to local market expertise and assists in building the local relationships and stakeholder engagement that helps businesses to succeed.

TIAO

TIAO is one of the fastest growing business development platforms in Europe. The founders and team members bring together a unique set of relevant experiences and expertise: experienced serial entrepreneurs, management and board experience in chambers of commerce and governmental agencies, multinational global sales, marketing and strategy expertise, plus in-house tech entrepreneurs with a solid track record of building platform startups and online services.

Marc Decorte, Chairman of TIAO has 35 years' experience in technology, business development, marketing and in driving the bottom line of B2C and B2B businesses at global level. In the last six years, he has built up extensive expertise in digital transformation through his current position as CEO of Belgian Shell and former position as Global VP Connected Digital Technologies at Shell.

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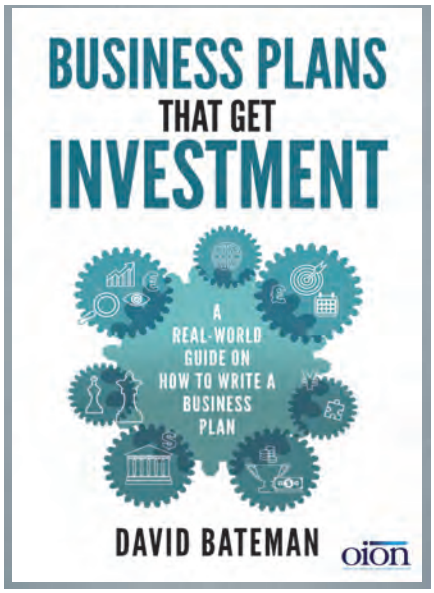

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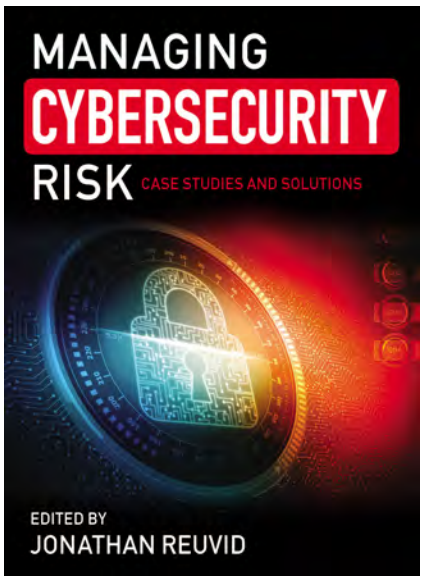

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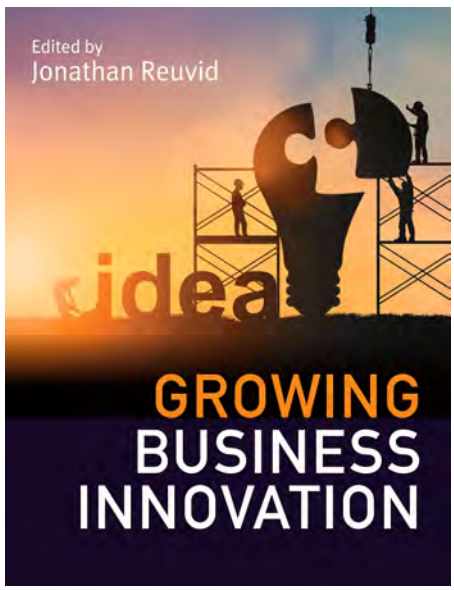

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