PAUL
HASTINGS

Establishing Business in the UK

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Establishing Business in the UK

The UK is a popular destination for businesses due to its central global location, which acts as a bridging point between the Americas and Asia and as a gateway to Europe and the European Single Market.

Following Britain's decision to leave the European Union ("EU") in a referendum on 23 June 2016 ("Brexit"), the UK government triggered Article 50 of the Lisbon Treaty, the legal basis for leaving the EU, on 29 March 2017. Brexit negotiations are expected to last for a two-year period, during which EU laws would continue to apply to the UK and the UK will continue to have full access to the EU Single Market. It is also expected that the UK and the EU will look to agree a transition arrangement following the UK's formal exit, expected in March 2019.

Despite the inevitable uncertainty Brexit has brought, the UK continues to attract record inward investment. Based upon the Ersnt & Young UK Attractiveness Survey 2016, the Financial Times' Foreign Direct Investment ("FDI") Report 2016 and the OECD's FDI in Figures (2016), the UK ranks first in Europe for FDI projects in total and for FDI projects from high-growth markets.

The UK continues to have a particularly strong services sector and has world-leading expertise in providing financial and legal services. There is also a blossoming technology sector with many tech start-ups continuing to choose the UK as their base.

This guide provides an overview of key initial considerations that should be taken into account when deciding whether to establish a business in the UK. It is provided for informational use only and does not constitute legal advice. The information herein should not be relied upon in regard to any particular facts or circumstances without seeking specialist advice. We would be delighted to offer more specific and tailored advice on request.

Information provided in this guide is correct as of 1 April 2017.

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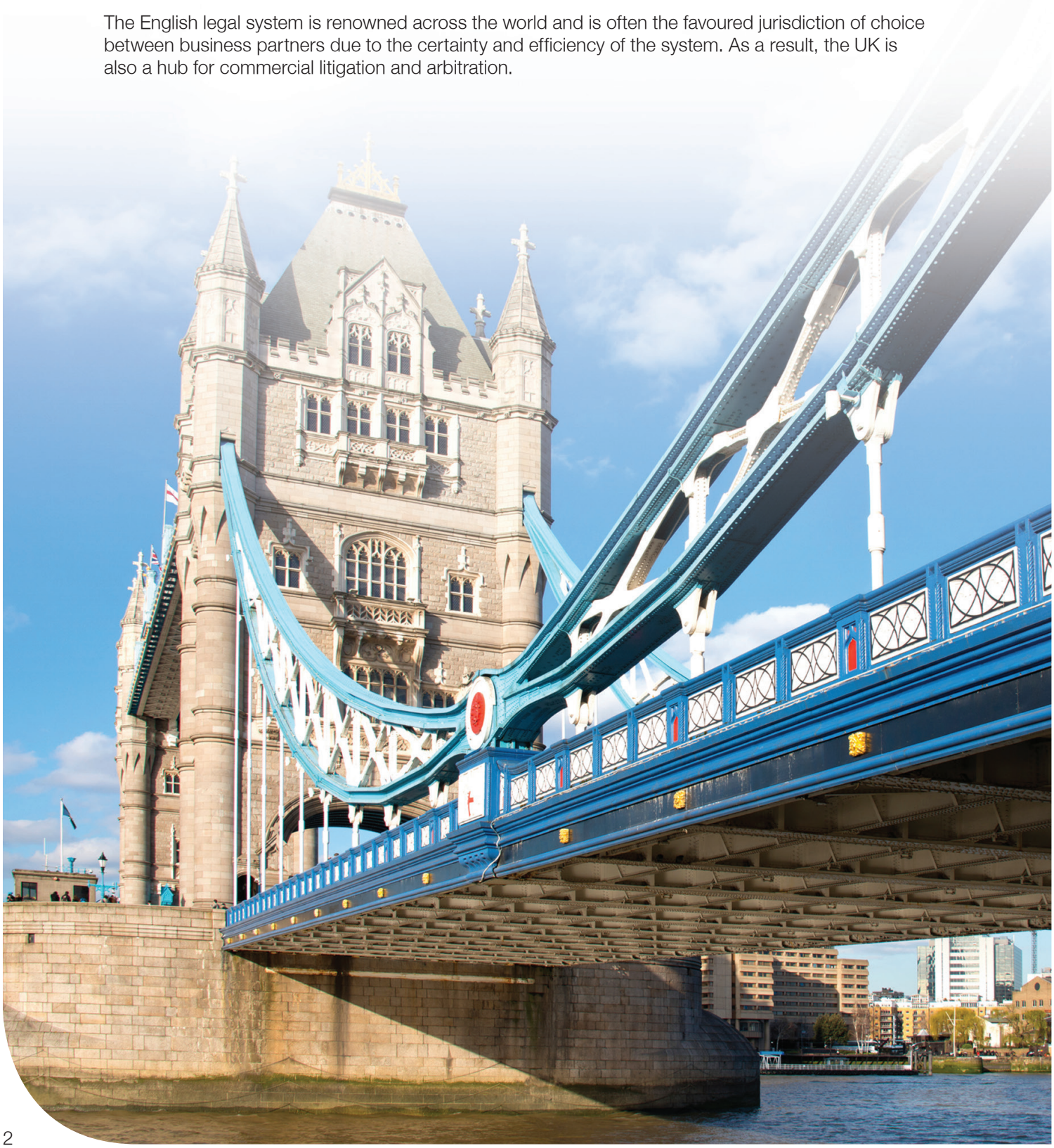
LEGAL SYSTEM

The United Kingdom is comprised of four nations: England, Northern Ireland, Scotland and Wales.

England and Wales have a single legal jurisdiction based on common law. Northern Ireland and Scotland each have their own separate legal systems; however, the UK Parliament has the ability to pass laws applying to the whole of the UK (except in certain areas where powers have been delegated to the individual nations).

The English legal system is renowned across the world and is often the favoured jurisdiction of choice between business partners due to the certainty and efficiency of the system. As a result, the UK is also a hub for commercial litigation and arbitration.



BUSINESS STRUCTURE

There are a variety of vehicles to choose from when setting up a business in the UK and the preferred vehicle will invariably depend on the type of business being conducted. The table below gives a brief overview of the most common vehicles and the main advantages/disadvantages of each.

	Branch	Private Limited Company ("Ltd")	Public Limited Company ("Plc")	General Partnership	Limited Partnership ("LP")	Private Fund Limited Partnership ("PFLP")	Limited Liability Partnership ("LLP")
Overview	Same legal entity as parent. Parent will be responsible for all liabilities of the branch.	A distinct legal entity, separate from its owners whose liability is limited to the amount of any unpaid share capital.	A distinct legal entity similar to a private limited company but with the ability to raise capital from the general public.	Not a separate legal entity. Automatically formed when two or more people enter into business with a common view of making a profit. Partners will be jointly and severally liable.	A distinct separate entity from its partners which have limited liability. An LP must have a General Partner who is responsible for the day-to-day management of the LP and does not benefit from unlimited liability.	An LP that satisfies the private fund conditions, which is a partnership that is constituted by an agreement in writing and is a collective investment scheme.	A distinct separate entity from its partners which have limited liability. All partners can participate in the day-to-day management of the business.
Registration Requirements	Yes	Yes	Yes	No	Yes	Yes	Yes
Filing Requirements	Yes	Yes	Yes	No	Yes	Yes	Yes
Tax	Liable to UK corporation tax on income arising through activities in the UK.	Liable to UK corporation tax.	Liable to UK corporation tax.	Partners are taxed in relation to their share of the partnership's profits and gains.	Tax-transparent entity. Profits of partnership are attributed to the partners who are taxed based on their individual circumstances.	Tax-transparent entity. Profits of partnership are attributed to the partners who are taxed based on their individual circumstances.	Tax-transparent entity. Profits of partnership are attributed to the partners who are taxed based on their individual circumstances.

Key considerations when deciding the most suitable business structure

01
What level of independence should the UK business have?

02
Risk – should UK business activities be ring-fenced from other overseas activities?

03
Nature of the venture – is this a new business area or are you working with new partners?

04
Are customers and suppliers familiar with the business and/or entity being considered?

05
Tax – tax implications vary considerably between each structure.

Branch

One of the simplest ways for an established overseas business to launch in the UK is by establishing a branch.

There are minimal registration requirements. The overseas entity simply has to register with Companies House within one month of establishment in the UK. Registration requires the following information: details of the overseas company, its constitution, last filed accounts and details of the company's directors and secretary. There is also a registration fee, which is currently £20.

There are, however, significant drawbacks in simply opening a branch. For example, the branch is not a separate legal entity, and accordingly, the overseas company will remain liable for all liabilities and obligations of the UK branch. Furthermore, if UK customers and suppliers are not familiar with the type of entity being used, there may be some reluctance to engage with that entity.

The overseas company will still be subject to ongoing filing requirements, based either on the requirements of the company's country of incorporation or, alternatively, in accordance with UK law if no such requirements exist in the overseas jurisdiction. A register of charges over land, real property and intellectual property in the UK must also be maintained.

Overseas entities will be subject to UK tax on the profits of the UK branch and it should be noted that overseas entities may not always receive the same tax treatment in the UK as they do in their country of incorporation. For example, HMRC does not generally treat LLCs as tax-transparent entities. This could create additional administrative burdens and tax implications.

Many overseas businesses therefore seek to contain these liabilities and obligations within the UK by setting up UK limited companies or partnerships.

Limited Companies

Overview

In the UK, a company can be incorporated either as a public (Plc) or private company (Ltd). The two types of companies are broadly similar, apart from the inability of private companies to raise capital from the public and the additional regulatory requirements to which public companies are subject.

A summary of the key advantages and disadvantages is provided in the table below:

ADVANTAGES +	DISADVANTAGES −
▪ Shareholders' liability is limited to any amounts unpaid on the shares they hold. ▪ Familiar capital and legal framework assists with finding investors. ▪ Transfer of ownership is straightforward.	▪ Filing and audit requirements must be adhered to and accounts are publicly accessible. ▪ Specific procedures must be followed to return capital to shareholders. ▪ Possible double tax charge on profits at company and shareholder levels.

Incorporation

Companies are incorporated by registering with Companies House which maintains a public register of all incorporated companies including details of their directors, secretary, shareholders and financial statements.

Incorporation of a company in the UK is straightforward with the availability of a "same day" registration service. The following information must be sent to Companies House in order to incorporate a company:

- Incorporation form (IN01) which sets out the basic information of the company including the name, registered office address, details of directors, secretary, shareholders and the initial share capital (companies must have at least one director).
- A copy of the company's articles of association which form the company's constitution. The Companies Act 2006 provides a set of "Model Articles" which can be adopted and contains information relating to decision-making, profit distribution and other internal management processes. Companies may, however, choose to have their own bespoke articles drafted to address any specific requirements envisaged or to increase statutory restrictions on decision-making processes.
- A memorandum of association which states that the subscribers wish to incorporate a company.
- A registration fee which currently varies between £12 for an online application and £100 for the same day registration service.

Filing requirements

Companies must produce and file annual audited accounts which give a "true and fair" value of the state of the company's affairs together with directors' and auditors' reports. (Exceptions apply for dormant, small and medium-sized companies).

Since 30 June 2016, the requirement to file an annual return has been replaced with the requirement to file an annual confirmation statement to Companies House confirming that all information required to be delivered by the company in relation to the confirmation period has been delivered, or is being delivered at the same time as the confirmation statement.

Any changes in relation to the composition of the directors, the company secretary, the registered office address, the articles of association or the creation or release of a charge must be provided to Companies House.

Public limited companies and listing options

Public limited companies have the option to raise capital from the general public. Public limited companies, however, are required to have and maintain a minimum share capital of £50,000 (25% of which must be paid upfront). If, however, a company wishes to raise capital through the financial markets, it will face higher share capital thresholds, together with a stricter regulatory regime and ongoing reporting obligations.

The UK is one of the leading financial centres in the world, with liquid capital markets and a well-established services sector to support those markets. This is a key attraction for larger businesses seeking to tap into the finance available through these markets. Companies may therefore decide to list their shares on a variety of markets available in the UK, the most popular choices being the Main Market, which is generally suitable for larger businesses which already have a proven track record abroad, and formerly the Alternative Investment Market ("AIM") which seeks to allow smaller companies to gain the advantages of being a listed company whilst providing a lighter-touch regulatory regime.

Main Market listing

A company seeking to list on the Main Market has two options: a Premium Listing, which requires the company to meet the UK's Listing Rules which are far more stringent than the EU harmonised standard, alternatively, companies can opt for a Standard Listing by meeting the EU's minimum rules for listing.

Initial Public Offering ("IPO") Requirements		
	Premium Listing	**Standard Listing**
Sponsor	A sponsor will be required as part of the IPO process and will have to provide various declarations to the Financial Conduct Authority ("FCA").	No sponsor required.
Prospectus	A prospectus must be produced and will be vetted by the UK Listing Authority before it is made public to potential investors.	Same for standard listing.
Market Capitalisation	Companies listed on the Main Market must have a minimum market capitalisation of £700,000.	Same for standard listing.
Minimum Free Float	At least 25% of the shares in the company must be held by the general public.	Same for standard listing.
Track Record	▪ At least 75% of the business must be supported by a revenue-earning track record for at least three years. ▪ Three year track record of audited accounts.	Three year track record of audited accounts (or since incorporation, if shorter).
Other Requirements	▪ Demonstrate that it will be carrying on an independent business as its main activity. ▪ Confirmation is required that adequate financial reporting procedures are in place. ▪ Unqualified working capital statement.	Not required. Same for standard listing. Not required, although the prospectus must contain a working capital statement.

Ongoing Obligations		
	Premium Listing	**Standard Listing**
Corporate Governance	"Comply or explain" basis of compliance with the UK Corporate Governance Code.	Annual report should include a corporate governance statement.
Related party transactions	Company may have to send an explanatory circular to its shareholders, obtain shareholder approval and make a market announcement for related party transactions.	N/A
Financial Reporting	Annual reports must be published within four months of the year-end and half-yearly reports must be published within three months of the end of the reporting period.	Same as premium listing.

Alternative Investment Market Listing

AIM is targeted towards smaller, high growth companies and has less stringent regulations in order for companies of this size to cope with the requirements. AIM has proven to be a popular platform for many small cap companies since its launch in 1995.

AIM IPO Requirements	
Sponsor	Must have a nominated advisor ("Nomad").
Prospectus	An admission document must be produced (unless it is required to publish a prospectus in relation to the issue of AIM securities). The prospectus is not vetted by the UK Listing Authority. The FCA will vet an AIM admission document if it also constitutes a prospectus.
Market Capitalisation	No additional market capitalisation requirements.
Track Record	Three year track record of audited accounts (or since admission, if shorter).
Other Requirements	▪ A statement that the company will have sufficient working capital for at least the next 12 months from the date of its admission (quoted applicants only).
AIM Ongoing Obligations	
Corporate Governance	Expectation that there is an adequate level of compliance with the UK Corporate Governance Code.
General Disclosure Obligations	Obligation to manage and disclose price sensitive information or inside information.
Substantial Transactions	Must make a market announcement for substantial transactions which exceed 10% of any class tests.
Financial Reporting	Annual reports must be published within six months of the year-end and half-yearly reports must be published within three months of the end of the reporting period.

UK Corporate Governance Code (the "Code")

The Code provides a set of good governance principles that companies should follow. All premium listed companies are expected either to comply with the Code or explain any areas of non-compliance in their annual financial report.

The Code covers five main areas:

LEADERSHIP

All companies should have an effective board which is collectively responsible for the long term success of the company. The board is responsible for setting strategic aims as well as values and standards for the company to abide by.

EFFECTIVENESS

The board should have a combination of skills, experience, independence and knowledge with a mix of executive and non-executive directors. Director appointments should be in accordance with a formal, rigorous and transparent process.

ACCOUNTABILITY

The board should present a fair, balanced and understandable assessment of the company's position and prospects. There should be an independent audit committee with a clear mandate.

REMUNERATION

Executive directors' remuneration should promote the long-term success of the company. Remuneration should be sufficient but not excessive and a remuneration committee should be established to determine remuneration levels.

RELATIONS WITH SHAREHOLDERS

The chairman should ensure the views of shareholders are communicated to the board and the general meetings should be used to encourage shareholder participation.

Key aspects of UK company law

One of the main advantages of operating through a company is that shareholders benefit from limited liability. There are, however, limited circumstances where the English courts may decide to "pierce the corporate veil" and make shareholders personally liable for the debts and obligations of a company. Such instances will usually only arise where shareholders have acted in a wholly unacceptable manner and/or have deliberately tried to evade existing legal obligations, liabilities or restrictions by interposing a company under their control.

The Companies Act 2006 also imposes several statutory duties which company directors owe to the company as a whole; failure to adhere to which could result in the directors being personally liable for the company's debts. These duties were recently extended to apply to shadow directors. These duties include:

- Acting within their powers and in accordance with the company's constitution and using those powers only for the purposes for which they were conferred.
- Promoting the success of the company for the benefit of its members.
- Exercising independent judgement.
- Exercising reasonable care, skill and diligence.
- Avoiding conflicts of interest.
- Not accepting benefits from third parties.
- Declaring any personal interest in a proposed transaction or arrangement.

Breaching the above duties may also result in a director being disqualified and prohibited from acting as a director of any company for a number of years (breach of which constitutes a criminal offence).

Although the duties are owed to the company as a whole, rather than individual shareholders, there are limited circumstances in which individual shareholders can take action against the directors if they have been unfairly prejudiced.

Additionally, if a company goes insolvent, a director may become personally liable for the debts of the company if he/she carried on trading through the company at a time when it would be apparent to any reasonable director that the company was in a position where it would be unable to meet its debts and obligations when due and he/she did not take steps to mitigate potential loss.

Recent changes

Some important company law changes were introduced by the Small Business, Enterprise and Employment Act 2015 ("SBEEA 2015"). Most notably:

- Companies will be expected to keep a register of all people exercising "significant control" over the company. Significant control will include the direct or indirect holding of at least 25% of the shares or voting rights by an individual. This register will be publicly available.
- A ban on corporate directors was due to be implemented from October 2016 but has been delayed. However, there is, as yet, no firm implementation date. It is anticipated that there may be some exceptions to this rule, for example, allowing corporate directors provided that all the directors of that corporate director are natural persons.

General Partnerships

A partnership is formed automatically when two or more people carry on a business with a view to making a profit. There is no need for a formal written agreement to enter into a partnership, although such agreements are strongly recommended so that all partners have a clear and certain understanding of how the partnership will be run and how profits will be distributed. In the absence of a formal agreement, the partnership will be governed by the Partnership Act 1890 which contains provisions dealing with the distribution of profits and events which would lead to the dissolution of the partnership.

Partnerships seem attractive due to the absence of formal registration or incorporation requirements, as well as the flexibility they allow in terms of capital and profit distributions. It must be noted, however, that partners have unlimited liability in terms of the liabilities and obligations incurred by the partnership. Furthermore, partners act as agents for each other and can therefore bind each other, making each partner jointly and severally liable. This could therefore carry a great amount of risk, and it is usually worth considering other forms of business entity for larger and more complex businesses.

Limited Liability Partnerships

A Limited Liability Partnership or "LLP" is a distinct legal entity which allows its partners to separate themselves from unlimited liability in much the same way as a limited company. In contrast to a general partnership, members entering into contracts do so on behalf of the LLP itself rather than on behalf of the other members.

This is a popular vehicle for advisory businesses and joint ventures and a key attraction is the tax-transparent nature of an LLP which avoids the double tax charge problem encountered with companies, where company profits are taxed at the company level and then shareholders may be taxed on any dividends received from the company.

ADVANTAGES +

- Limited liability for partners.
- Flexible structure in terms of capital and profit distribution.
- Tax-transparent.

DISADVANTAGES −

- Filing requirements similar to a limited company.
- Transferring ownership and partner exits can be more complicated compared to limited companies.

LLPs must be incorporated in a similar way to limited companies by submitting documents detailing the partnership (i.e. identity of members etc.), a statement confirming compliance with the Limited Liability Partnerships Act 2000 and the payment of a registration fee.

Although not a requirement for the formation of an LLP, a partnership agreement should be put in place to detail the decision-making processes and profit-sharing arrangements between members. This does not have to be filed at Companies House and can therefore be kept private.

Under the Limited Liability Partnerships Act 2000 there must be at least two "designated members" who are responsible for the day-to-day management of the LLP.

Many of the provisions of the Companies Act 2006 will apply to LLPs, such as the provisions in relation to fraudulent or wrongful trading. Additionally, members can be disqualified in the same way directors of companies would be disqualified.

The requirement for companies to maintain a register of people exercising significant control has been extended to LLPs.

Filing requirements

The filing requirements are similar to that of a limited company, as annual accounts and a confirmation statement must be filed at Companies House together with notifications of any changes to the LLP's registered address or membership. This is the responsibility of the designated member, and they will be responsible for any fines or penalties incurred due to late or incorrect filings.

Tax treatment

LLPs are typically tax-transparent for corporation tax, income tax, and capital gains tax purposes. The tax treatment will therefore depend on the circumstances of each member. For example, corporate members may be subject to corporation tax, whereas individual members may be subject to income tax.

LLPs can, however, register for VAT as a distinct entity and would therefore be able to charge VAT or reclaim VAT, where appropriate. For further information see the Tax section below.

Private Fund Limited Partnerships

Private Fund Limited Partnerships ("PFLPs") are a new form of limited partnership that will retain the flexibility and tax treatment of LPs. To be registered as a new PFLP, the LP must apply for designation. The designation will only be available if the LP satisfies the private fund conditions, namely, that it is both constituted by an agreement in writing and is a collective investment scheme. Existing LPs meeting the private fund conditions can apply for re-designation as PFLPs.

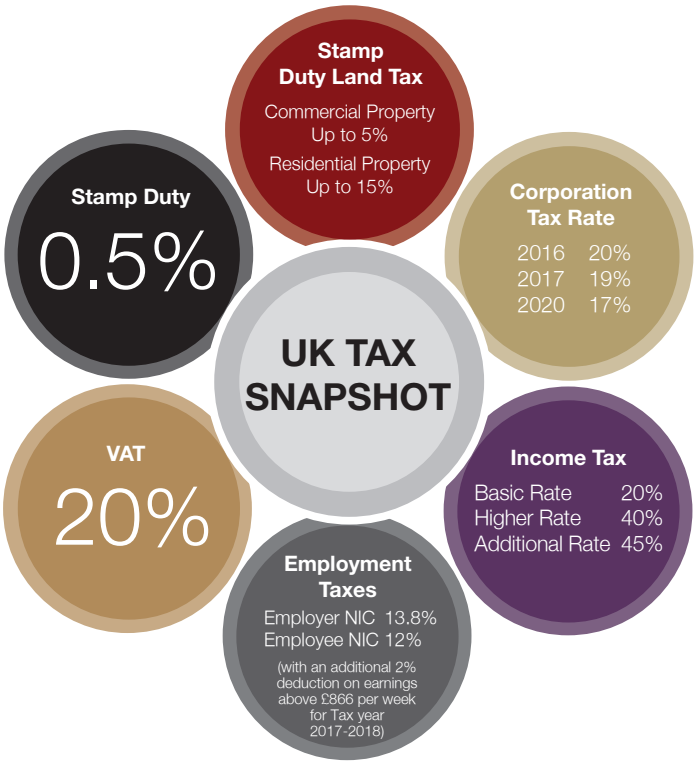
In contrast to LPs (described further below), limited partners in a PFLP are not required to make a capital contribution and where they choose to make a contribution, it can be withdrawn without their capital contribution being liable for debts and obligations. In addition, a limited partner in a PFLP may undertake certain activities without taking part in management and so not forfeit its limited liability status. Further, fewer changes need to be notified to Companies House and a PFLP is not required to advertise changes in the London, Edinburgh or Belfast Gazette, save for the requirement to advertise when a person ceases to be a general partner.

Limited Partnerships

Limited Partnerships ("LPs") are similar to LLPs in that they enjoy tax transparency and provide limited liability for most members. LPs do, however, require one member to be a "general partner" who is responsible for managing the partnership and does not benefit from limited liability (although a limited company could be used as the general partner).

TAX

The UK also has a competitive taxation system, with one of the lowest corporation tax rates of all the G20 nations. Coupled with an extensive network of double taxation treaties, the UK is an attractive place for many international businesses to operate from a tax perspective.



Chargeable Gains	Individuals are subject to capital gains tax on the disposal of assets. Most disposals are taxed at a rate of 20%, however, disposals of residential properties, not elegible for Private Residence Relief, and carried interest is taxed at a higher rate of 28%. For companies, the corporation tax rate applies to both trading income and income received from the disposal of non-trading assets held by the UK company. There are exemptions from the charge to corporation tax in relation to certain shares held by UK companies which represent a substantial shareholding.
Dividend Regime	Dividends received: UK companies are generally exempt from corporation tax on dividends received subject to certain criteria. Dividends paid: Dividends paid by UK companies are not generally subject to withholding tax.

Corporation Tax

UK incorporated companies or overseas incorporated companies that are “centrally managed or controlled” in the UK (i.e. strategic decisions are made in the UK) are deemed to be UK tax resident and will be subject to UK corporation tax on their worldwide profits from trade and capital gains (this is, however, subject to various reliefs or exemptions such that profits generated overseas may receive relief under an applicable double tax treaty).

Overseas companies that carry on a trade in the UK through a permanent establishment such as a branch will be liable to UK corporation tax on the profits generated from that trade. Tax credits may be available in the company's country of incorporation for any UK tax paid.

The current rate of corporation tax is 19%. However, this is set to be reduced to 17% in 2020. This rate of taxation is extremely competitive in comparison to other large economies such as the US which has a corporation tax rate of 35%. Furthermore, corporation tax powers have recently been delegated to Northern Ireland such that it is anticipated Northern Ireland will introduce a corporation tax rate of 12.5% beginning April 2018.

Deductions and reliefs

There are a number of deductions and reliefs available which can lower the amount of corporation tax payable:

- Losses - can be used in a variety of ways:
  - The trading losses of a company can be used to offset profits or gains occurring in the same period.
  - Alternatively, losses can be carried forward to be offset against future profits of the same trade.
  - To a more limited extent, losses can also be carried back against past profits for which the company can receive a tax rebate.
  - If a company is part of a group it can surrender its losses in order to lower the corporation tax charge of another company in the group.

  **Note*: the UK Government will implement a number of changes to the use of losses from 1 April 2017. Broadly the new rules mean that the use of carried forward losses will become more flexible by allowing losses to be used against any income of the company and carried forward losses may now be surrendered to another group company. However, the UK Government is also proposing to limit the amount of profit that can be offset by losses to 50% for profits in excess of £5 million per group. In addition, the new rules include a large number of anti-avoidance provisions.

- Financing costs - currently, interest payments on third party and intragroup financing are fully deductible from taxable profits subject to the worldwide debt cap, which broadly seeks to limit interest deductions of large groups where the UK net debt exceeds 75% of the group's worldwide debt.

  **Note*: the UK Government has made changes to the deductibility of interest, which are due to come into effect on 1 April 2017, and are designed to bring the UK in line with international recommendations designed to tackle aggressive tax planning. The measures include limiting interest deductions to no more than 30% of EBITDA and using a group ratio rule which would allow certain companies that are more highly geared to deduct interest in excess of what is permissible under the fixed ratio rule.

- Capital allowances - deductions are permitted to reflect the depreciation of certain business assets. The value of assets compromising plant and machinery of the business can be pooled together and 18% of the value of the pool can be written down and deducted each year and set against taxable profits when calculating corporation tax liability. Integral assets such as electrical systems and elevators attract a lower capital allowance rate of 8%.

- Annual investment allowance - a business is entitled to deduct up to £200,000 year on any qualifying expenditure for plant and machinery.

Filing and audit requirements

The table below provides a broad overview of the tax registration and filing obligations for UK companies.

Registering for Corporation Tax	Once a company has been registered with Companies House, it will need to be registered for Corporation Tax. **When a company should register** A company should register for tax within three months of starting to do business. The three months will begin when the company starts to engage in activities such as advertising, employing staff, buying, selling or renting any property. Failure to register on time may result in a penalty. **How to register** HM Revenue and Customs ("HMRC") will provide companies with a Unique Taxpayer Reference ("UTR") after the company has been registered with Companies House. On receipt of their UTR all companies must register for Corporation Tax using HMRC's online service. HMRC will require the following information: ▪ the company's registration number; ▪ the date the company started to do business (this will be the start date of the company's first accounting period); and ▪ the date the company's annual accounts are made up to. **After a company has been registered for Corporation Tax** Once a company is registered for Corporation Tax, it will be able to sign in and report in its Company Tax Return. The company will also be provided with its deadline for paying Corporation Tax.
Company Tax Returns	**Company Tax Returns** UK companies need to file their statutory accounts and tax returns within one year from the end of the company's accounting period. The person making the return will need to declare that the return is correct and complete to the best of their knowledge and belief. All companies must file their Company Tax Return online using HMRC's online service. Once an online return has been submitted to HMRC, the company will receive an acknowledgment of receipt. HMRC will be able to enquire into the return or amend it in order to correct any errors or omissions. **Penalties** HMRC can impose penalties for a variety of reasons. These include, but are not limited to: late filings of returns, failing to maintain appropriate records, submitting an incorrect return, making errors in certain documents sent to HMRC and failing to respond to a notice of enquiry within the specified time.
Audit Requirements	All UK limited companies (unless exempt) must have an audit of their annual accounts, including their group accounts if they are a parent company. The audit must be carried out by an auditor who is independent of the company. The auditor can be an individual or a firm. Audit exemptions for small private limited companies: Audits of annual accounts are not needed for most small private limited companies, unless they are required by the company's articles of association or requested by shareholders who own at least 10% of shares in number or value. Small companies may qualify for an audit exemption if they have at least two of the following: ▪ an annual turnover of no more than £10.2 million; ▪ assets worth no more than £5.1 million; and ▪ 50 or fewer employees on average. If a small company qualifies for an audit exemption, it can submit unaudited accounts to Companies House. The balance sheet will need to contain a specific statement. Some companies must have an audit even if they meet the rules for not having one, for example companies involved in banking or issuing e-money.

VAT

VAT is charged on the provision of most goods or services in the UK. The current rate of VAT is 20%. There is also a reduced rate of VAT which applies to certain goods or services, currently 5%. Other goods and services are either zero-rated (e.g. books) or exempt from VAT (e.g. financial services).

Businesses with a turnover above a certain threshold (currently £85,000) must register with and account to HMRC for VAT purposes. VAT-registered businesses must file VAT returns with HMRC every three months, or more frequently if requested.

A business that is VAT-registered is able to offset any VAT paid on supplies made to it (input VAT) with the VAT received from the sale of its goods or services (output VAT). To the extent that input VAT exceeds output VAT, the business will be able to reclaim the excess from HMRC.

Employer Taxes

Employee income tax is generally deducted at source. If a business intends to hire employees in the UK, it will generally be liable to collect income tax through the Pay as You Earn ("PAYE") system. This requires withholding a certain percentage of an employee's salary (up to 45%) and accounting for this to HMRC.

Furthermore the business will also be responsible for collecting and accounting for the employees' National Insurance Contributions through the PAYE system. In addition, the business will be liable to Employers NIC (which can be up to 13.8% of an employee's salary).

Over the last few years, HMRC has introduced various rules to combat avoidance through the use of "disguised remuneration" schemes. An example of these are the rules, introduced in 2014, which prevent partners of an LLP avoiding NIC liabilities in circumstances where their role within the LLP was more akin to employment than a partner. Broadly, a partner will now be treated as an employee for tax purposes if 80% of their remuneration from the partnership is fixed, they do not have significant influence in the partnership and their capital contribution is less than 25% of their "disguised salary."

Business Rates

Business rates, levied by local council authorities, are charged on most non-domestic properties and are calculated by reference to the rental value of the property and a multiplier set by central government.

Tax Incentives

There are a number of tax-based incentives which aim to encourage businesses to set up in the UK and also encourage certain types of activities.

R&D Credits

Small or Medium-sized enterprises ("SME") engaged in research and development projects which seek to make advancements in science or technology may be entitled to tax credits in relation to their qualifying R&D expenditure.

Currently, SMEs are entitled to a deduction of up to a maximum of 230% of their qualifying R&D expenditure (including any work sub-contracted out), which will lower the company's taxable profit or alternatively entitle the company to a payable tax credit.

Patent Box

The patent box regime entitles companies to a lower corporation tax rate of 10% on profits arising from the exploitation of UK or European patents which that company either owns or exclusively licenses and where it participates in the active management of the development or exploitation of the patent.

The regime was introduced on a transitional basis and the full benefit of the regime will be available from 1 April 2017.

The regime has been subject to some tightening and from 1 July 2016 the amount of profit that will be able to benefit from the reduced rate of corporation tax will be subject to the company being able to evidence a direct link between its qualifying R&D expenditure that was carried out in the UK and the profits arising from that expenditure.

Anti-avoidance

In line with international movements to clamp down on the avoidance of tax by large multinational enterprises, the UK has introduced a number of domestic measures to discourage such avoidance.

Diverted Profits Tax

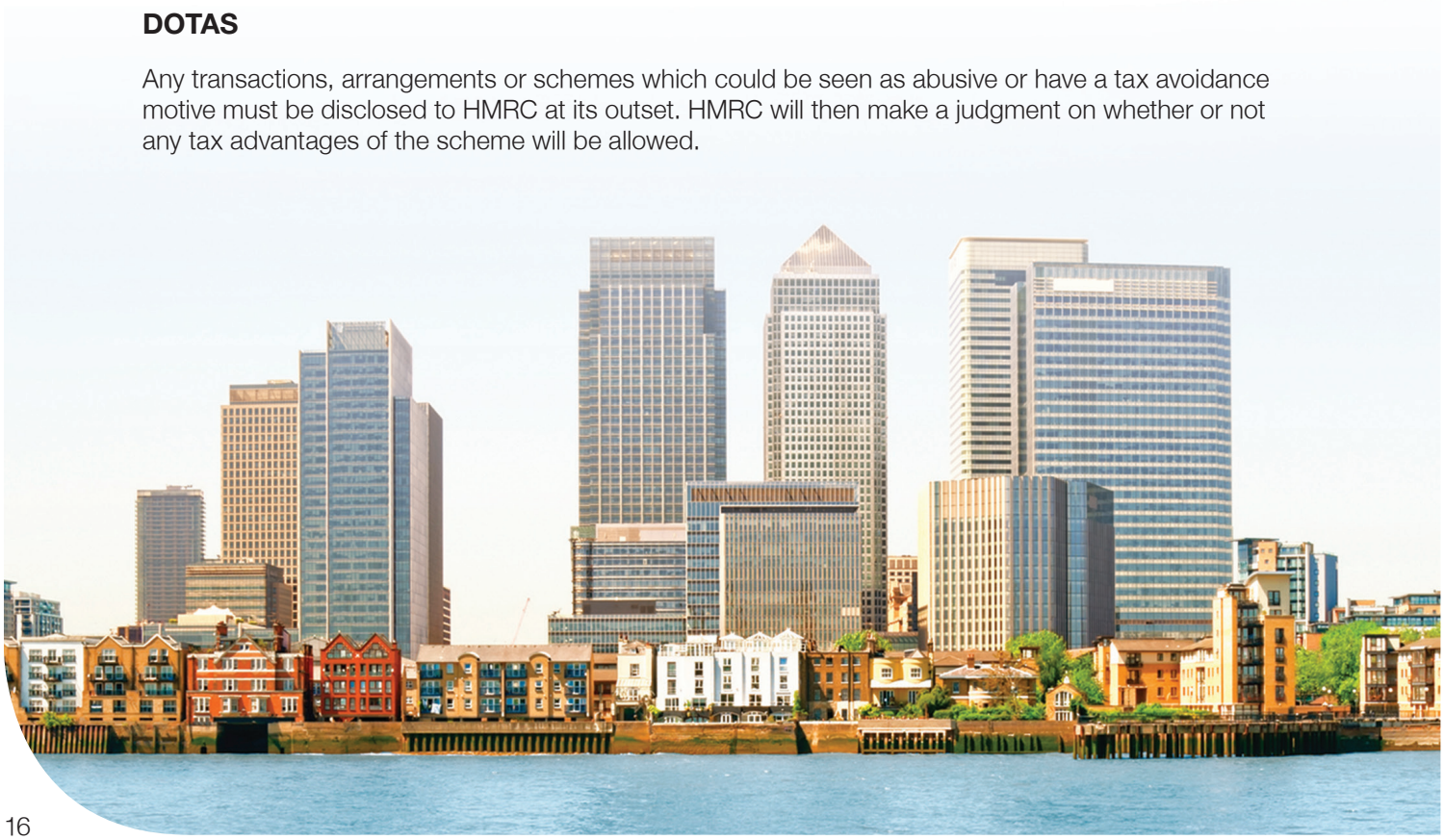
This tax, introduced in April 2015, is designed to tackle profit-splitting and profit-shifting. It imposes a 25% tax on any profits that are deemed to have been diverted from the UK in circumstances where a significant part of the economic activity that generated the profit was conducted in the UK.

GAAR

There is a General Anti-Abuse Rule ("GAAR") that aims to deny the tax advantages of any transaction or series of transactions if they lack material commercial objectives.

DOTAS

Any transactions, arrangements or schemes which could be seen as abusive or have a tax avoidance motive must be disclosed to HMRC at its outset. HMRC will then make a judgment on whether or not any tax advantages of the scheme will be allowed.



EMPLOYMENT

Useful considerations that need to be borne in mind if you are planning to employ people in the UK:

Contract of Employment

There is no concept of employment at-will in the UK. All employees should be provided with a written contract or terms of employment within two months of commencing employment. The employment relationship in the UK is governed by a mixture of mandatory statutory rights and an individual written contract of employment. Whatever their nationality, if the individual is working in the UK then it is likely UK employment law will govern the relationship, even if the contract contains a choice of law clause electing a different jurisdiction.

Any variation of employment terms can only be made with the express consent of the employee.

Minimum Wage

The UK has a national minimum wage, to which all employees in the UK are entitled. The amount an employee is entitled to depends on their age. Currently, anyone over 21 is entitled to at least £7.05 per hour. The levels at which the minimum wage is set is reviewed annually.

From April 2017, a National Living Wage will be introduced which entitles any employee over the age of 25, at least £7.50 an hour.

Other Employee Entitlements

Working time

EU regulations restrict employees from working more than 48 hours per week. However, employees are able to opt-out from this restriction by signing a declaration stating the same. It is open to an employee to opt back into the working time restriction at any time.

Annual leave

Full time workers in the UK are entitled to a statutory minimum of 5.6 working weeks' paid annual leave per year which can be inclusive of public holidays. Part-time workers are entitled to a pro-rated equivalent.

Employees should receive "normal remuneration" as holiday pay, and this includes payments intrinsically linked to the individual's employment including commission, overtime and performance-linked bonuses where relevant.

On termination of employment, employees are entitled to payment in lieu for any unused leave.

Statutory Sick Pay

Under statutory provisions, the first three days of sickness absence can be unpaid. After the third day of absence, statutory sick pay is payable for up to 28 weeks. The current level of statutory sick pay is £89.35 per week.

Family leave rights

Employees in the UK are entitled to additional leave on the birth or adoption of a child.

Mothers are entitled to up to 52 weeks of maternity leave. Provided the employee has provided at least 26 weeks of service up to the 'qualifying week' – the 15th week before the expected week of childbirth, they are entitled to statutory maternity pay consisting of 90% of their average weekly earnings for the first six weeks of leave and then the lower of 90% of their average weekly earnings or a statutory weekly rate of £140.98 for the following 33 weeks. Any additional leave beyond 33 weeks can be unpaid.

Two weeks' paternity leave is available for all employees who have provided at least 26 weeks of service up to the qualifying week (described above). Statutory paternity pay is the lower of 90% of the average weekly earnings or the statutory weekly rate of £140.98.

Alternatively, parents are now able to share up to 50 weeks of parental leave and up to 37 weeks of statutory pay. Leave may be taken by the parents in continuous or discontinuous periods which can run concurrently or consecutively.

During leave, employees have the right to benefit from all terms and conditions of their employment contract with the exception of remuneration. Entitlements to other benefits and the accrual of holidays should therefore remain in effect throughout the period of leave.

Employees with one year of service are also entitled to take up to 18 weeks, unpaid parental leave per child, limited to four weeks per year and exercisable whilst the child is under 18 years of age.

Pensions

New rules were introduced in 2012 that, by 1 February 2018, will require all UK employers to automatically enrol any employees between the age of 22 and 65 that earn at least £10,000 into a pension scheme. This includes permanent and temporary employees, agency workers, apprentices and partners of an LLP.

The employer must initially match employee contributions of 1% of annual earnings between £5,876 and £45,000, increasing to 2% from 6 April 2018 to 5 April 2019 and finally 3% from 6 April 2019 onwards.

Employees can opt-out of auto-enrolment. However, they will be automatically re-enrolled every 3 years.

Termination

All employees have statutory and contractual rights which protect them from unlawful termination of employment. Additionally, employees with over two years' service have the right not to be "unfairly dismissed." For a dismissal to be fair there must be both a permitted reason to dismiss and the employer must have followed a fair process.

An employee whose employment is terminated against the terms of their contract with respect to their notice period will usually have a claim for wrongful dismissal, provided they have not been dismissed for gross misconduct.

If an employee believes their employer has committed a fundamental breach of their terms of employment, then they can resign and claim constructive dismissal.

Employees who are made redundant may be entitled to statutory redundancy payments.

DATA PROTECTION

EU-derived data protection laws impact how companies process personal data and regulate how personal data may be transferred out of Europe. The timing of Brexit will be important here. The prospective General Data Protection Regulation ("GDPR") is due to be implemented in May 2018. It is possible that the UK government will continue with that implementation in advance of the exit from the EU. If it does, it will still need to seek a declaration of adequacy from the European Commission so that personal data may be freely transferred from EU to the UK. It is possible that the GDPR is not implemented in full, particularly in relation to the consistency mechanisms which regulate a co-ordination between national data protection authorities and give powers to the European Data Protection Board which is situated in the EU. In this circumstance a declaration of adequacy will not be given and it is possible that the UK government will seek to obtain a "Privacy Shield" status with the EU of the same type that the US is presently seeking.

The practical effect is that all companies which have a presence in both the UK and the EU, or which have trade in or to the EU will need to review the provisions of their contracts to ensure that there can continue to be a free flow of personal data. It is possible that we will see a similar effect in the market to that seen when the US "Safe Harbor" was invalidated on 6 October 2015; many US cloud service providers have now set up data centres in the UK and the EU. With the exit of the UK from the EU, we may see data centres moved from the UK or new data centres set up in the EU to serve the EU market.

Companies with staff in the EU and the UK will likely need to consider entering into data transfer contracts or obtain a "Binding Corporate Rules" status to permit personal data relation to their staff to freely transfer to and from their EU and UK subsidiaries.

One advantage of leaving the EU is that the UK will not be subject to the European Court of Justice and their rulings in relation to data protection and privacy. This is likely to assist in the free flow of personal data from the UK to the US and the rest of the world.

Intellectual property

Leaving the EU will likely mean that the new Unitary Patent System is not introduced to the UK. Unitary EU IP rights such as EU Trade Marks and Community Designs may not be continued. The system of EU community wide international exhaustion will expire and this will mean that there could be a restriction of branded goods and differential pricing on IP grounds between the UK and EU. Trade Mark and Patent portfolios should be reviewed and agreements containing licence terms may need to be amended.

CONCLUSION

We hope that this brochure has provided you with useful food for thought when considering the best approach to establishing a business in the UK and the key areas of law that should be borne in mind.

The best approach will depend on the type of business being conducted in the UK as well as the commercial requirements and future plans of the investors.

We would be delighted to provide you with further information, should you require it.

Key London Contacts

Ronan O'Sullivan
Partner, Corporate
+44.020.3023.5127
ronanosullivan@paulhastings.com

Garrett Hayes
Partner, Corporate
+44.020.3023.5153
garretthayes@paulhastings.com

Arun Birla
Partner, Tax
+44.020.3023.5176
arunbirla@paulhastings.com

Suzanne Horne
Partner, Employment
+44.020.3023.512
suzannehorne@paulhastings.com

Ashley Winton
Parnter, Data Protection
+44.020.3023.5121
ashleywinton@paulhastings.com

Matthew Poxon
Senior Associate, Corporate
+44.020.3023.5171
matthewpoxon@paulhastings.com

Jiten Tank
Senior Associate, Tax
+44.020.3023.5133
jitentank@paulhastings.com

PAUL
HASTINGS

Our Offices

The Americas

Atlanta
Chicago
Houston
Los Angeles
New York
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San Francisco
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Tokyo

21 Offices — Across the Americas, Asia and Europe

1 Legal Team — To integrate with the strategic goals of your business

The Americas

Atlanta
1170 Peachtree Street, N.E.
Suite 100
Atlanta, GA 30309
Phone: +1.404.815.2400
Fax: +1.404.815.2424

Chicago
71 S. Wacker Drive
Forty-Fifth Floor
Chicago, IL 60606
Phone: +1.312.499.6000
Fax: +1.312.499.6100

Houston
600 Travis Street
Fifty-Eighth Floor
Houston, TX 77002
Phone: +1.713.860.7300
Fax: +1.713.353.3100

Los Angeles
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071
Phone: +1.213.683.6000
Fax: +1.213.627.0705

New York
200 Park Avenue
New York, NY 10166
Phone: +1.212.318.6000
Fax: +1.212.319.4090

Orange County
695 Town Center Drive
Seventeenth Floor
Costa Mesa, CA 92626
Phone: +1.714.668.6200
Fax: +1.714.979.1921

Palo Alto
1117 S. California Ave.
Palo Alto, CA 94304
Phone: +1.650.320.1800
Fax: +1.650.320.1900

San Diego
4747 Executive Drive
Twelfth Floor
San Diego, CA 92121
Phone: +1.858.458.3000
Fax: +1.858.458.3005

San Francisco
101 California Street
Forty-Eighth Floor
San Francisco, CA 94111
Phone: +1.415.856.7000
Fax: +1.415.856.7100

São Paulo
Av. Presidente Juscelino
Kubitschek, 2041
Torre D, 21º andar
Sao Paulo, SP
04543-011
Brazil
Phone: +55.11.3521.7109
Fax: +1.212.230.7647

Washington, D.C.
875 15th Street, N.W.
Washington, D.C. 20005
Phone: +1.202.551.1700
Fax: +1.202.551.1705

Europe

Brussels
Avenue Louise 480-5B
1050 Brussels
Belgium
Phone: +32.2.641.7460
Fax: +32.2.641.7461

Frankfurt
Siesmayerstrasse 21
D-60323 Frankfurt am Main
Germany
Phone: +49.69.907485.0
Fax: +49.69.907485.499

London
Ten Bishops Square
Eighth Floor
London E1 6EG
United Kingdom
Phone: +44.20.3023.5100
Fax: +44.20.3023.5109

Milan
Via Rovello, 1
20121 Milano
Italy
Phone: +39.02.30414.000
Fax: +39.02.30414.005

Paris
96, boulevard Haussmann
75008 Paris
France
Phone: +33.1.42.99.04.50
Fax: +33.1.45.63.91.49

Asia

Beijing
26/F Yintai Center Office Tower
2 Jianguomenwai Avenue
Chaoyang District
Beijing 100022, PRC
Phone: +86.10.8567.5300
Fax: +86.10.8567.5400

Hong Kong
21-22/F Bank of China Tower
1 Garden Road
Central Hong Kong
Phone: +852.2867.1288
Fax: +852.2526.2119

Seoul
33/F West Tower
Mirae Asset Center1
67, Suha-dong, Jung-gu
Seoul, 04539, Korea
Phone: +82.2.6321.3800
Fax: +82.2.6321.3900

Shanghai
43/F Jing An Kerry Center Tower II
1539 Nanjing West Road
Shanghai 200040, PRC
Phone: +86.21.6103.2900
Fax: +86.21.6103.2990

Tokyo
Ark Hills Sengokuyama Mori Tower
40th Floor, 1-9-10 Roppongi
Minato-ku, Tokyo 106-0032
Japan
Phone: +81.3.6229.6100
Fax: +81.3.6229.7100