

# **ENGLAND And WALES**

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# England and Wales

## United Kingdom

### **PART I: CONTRACTUAL – NO OFFICE IN THE TARGET COUNTRY**

#### **A. Direct sale**

##### *A.1. Without written agreement – general terms*

1. *What are the formalities a foreign seller must complete in your jurisdiction in order to make sure that its terms and conditions of sale are binding and enforceable towards local purchasers? Are these conditions enforceable towards non commercial parties?*

There are no special formalities that a foreign seller must complete. The general terms and conditions are binding for the local purchaser where the purchaser a) has had a chance to examine the general terms and conditions of sale and b) has accepted them.

It must be clear as to whose standards terms apply and the terms must be in a language that the purchaser understands.

There is greater protection for a purchaser who is a consumer (ie business to consumer contracts B2C) and a whole host of legislation to govern this. For example, the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) set out that a term which has not been individually negotiated in a consumer contract is unfair (and therefore not binding on the consumer) if, (against to the requirement of good faith), it results in a significant imbalance in the rights and obligations of the parties to the consumer's detriment. This should be read in conjunction with the Unfair Contracts Terms Act and the Unfair Commercial Practices Directive. There are numerous other legislative provisions relevant to consumers.

##### *A.2. With a written agreement*

2. *What are the clauses a foreign seller should integrate in a written sales agreement (or in his general terms and conditions) and the reasons why?*
  - (a) **Retention of title:** *Is this provided for in your jurisdiction?*

*What are the conditions to make it enforceable towards local purchasers and third parties?*

**Yes, the retention of title (ROT) can be provided for.** To make it enforceable towards local purchasers and third parties the clause must be agreed by the parties before the agreement is entered and clear that the owner reserves 'title' or 'legal' title to the goods until one of the two following events occurs

- the buyer has paid all amount owing in respect of the goods (current and previous).
- the buyer sells the goods on in line with the agreement

It is insufficient to only reserve 'equitable and beneficial ownership.' A ROT clause cannot be limited (ie over mixed goods) otherwise it could be interpreted as a charge over the buyer's assets. Such charges are usually void subject to registration.

Depending on the requirements of the seller and buyer, the clause needs to specifically state particular elements i.e. to allow the seller to go onto the buyer's premises to recover goods, to provide for separate storage, for the buyer to insure the goods and hold proceeds of any insurance claim on trust for the seller, where possible to mark and identify the seller's goods, that risk of the goods only passes on delivery.

ROT can only be executed on goods that are identifiable at the purchaser's premises as the goods that are covered by the ROT.

Because the ROT clause prevents goods from 'passing' from the seller to the buyer in the first place, it is generally not registrable.

(b) ***Interest and penalty clause: Are these clauses enforceable in your jurisdiction? Can they be reduced or annulled? What are the consequences if this clause is not integrated in the agreement? What is the legal rate in your jurisdiction?***

- **Interest:** Yes this clause is enforceable if reasonable. Interest is payable by default under statute but this can be overridden by contractual clause covering the same.

The rate of default interest payable is usually 1 or 2% above the rate of interest payable in the ordinary course of the agreement, where all amounts are paid on time.

It is possible to include a clause to cover a premium rate of interest at 3 or 4% above a bank's specified base rate to support an obligation to pay a sum of money by a particular date.

- **Penalties:** No, these are unlawful as they are against the public interest. However, a contract can contain a 'liquidated damages' clause. This is a determined sum agreed between the parties which is payable on breach by one of the parties. The clause must represent a genuine pre-estimate of the loss that would be caused by the breach or it will be deemed a penalty clause and therefore void.
- (c) **Applicable law and competent jurisdiction:** *Are these clauses enforceable in your jurisdiction? What are the consequences if this clause is not integrated in the agreement?*

Generally where both parties are domiciled in Member States, a clause that determines territorial applicable law and competent jurisdiction as chosen and accepted by the parties is valid and prevails.

Failing this, the provisions outlined below apply.

- **Applicable Law:**

If no choice of applicable law is made, the law of the country most closely connected with contract; the presumption that this is the country of the party who is to effect 'characteristic performance' of the contract.

Furthermore, if any part of the chosen applicable law conflicts with local laws relating to the contract, the applicable law cannot be validly used. For example the Unfair Contract Terms Act 1977 prevents the exclusion of liability for death or personal injury from negligence despite any agreement to the opposite.

- **Competent Jurisdiction:**

Council Regulation 44/2001 applies for transactions between the parties who are resident in Member States.

The basic rule is that defendants are sued in the country of their domicile, regardless of their nationality. There are various exceptions to this including for example.

- Contracts, torts, where the defendant has a local branch office (special jurisdiction can apply)
- Real property, companies, IP, insurance, consumer contracts and employment contracts (exclusive jurisdiction can apply)

## B. Commercial Intermediaries

### 3. *What types of commercial intermediaries do exist in your jurisdiction.*

The most common commercial intermediaries are:

- **Franchise:** Where a franchisor licenses the franchisee to use the franchise trading format, whilst the franchisor remains independent. An agreement between two parties where the franchisee has a right to (in return for a direct or indirect financial consideration) to use; for example, a franchisor's name, trade mark, know-how, methods and systems and continuing provision of commercial or technical assistance by the franchisor.
- **Distribution:** An agreement where a manufacturer / supplier supplies a distributor with goods or services for resale. The distributor trades under his own name and on his own account.
- **Agency:** a person who acts as agent on behalf of a principal in return for commission from the principal. The agent can introduce a third party to the principal, take order or conclude contracts with the third party for the principal. The relationship is created directly between the principal and the third party and generally the agent will not have liability to the third party.

### 4. *What legislation does apply in your jurisdiction with regard to the above mentioned types of distribution agreements?*

- Franchising:
  - *General:* There is little regulation to franchising in the UK and self-regulation applies.
  - *The British Franchise Association* requires compliance of its members with the European Code of Ethics for Franchising where franchisors are required to: operate a pilot scheme before launching the franchise; own all relevant brand names and trade marks and provide initial and continuing training; and both parties to deal fairly with each other - the franchisor in relation to recruitment, advertising, disclosures, and the franchisee in relation to selection and the franchise agreement.
  - *The only applicable UK (not EC) legislation* concerns pyramid selling, when franchisees are encouraged to

use sub-franchisees to sell goods or services which are the subject of the franchise. This includes the Trading Schemes Act 1996 and regulations which deal with trading schemes, i.e. the Trading Schemes Regulations 1997; and the Trading Schemes (Exclusion) Regulations 1997.

- *Specific elements:* Parties will need to consider specific law in relation to separate elements such as;
  - The Competition Act and Articles 81 and 82 of EC Competition law
  - Trade Marks Act 1994 in relation to IP
  - Control of Misleading Advertising Regulations 1988 and
  - Control of Misleading Advertisements (Amendment) Regulations 2000
  - Property law including leases

- **Distribution Agreement:**

- *Competition:* Be aware of EC competition rules. Most distributorship arrangements do not present competition concerns, (provided that certain hardcore restrictions are avoided and the supplier's market share is below 30%) and benefit from an exemption afforded to vertical agreements, i.e. and agreement between businesses at different levels, for example agency, franchise and distribution agreements.
- *UK competition law* may apply to distributorship agreements, despite the fact that provisions of EC law may also apply. However the provisions are very similar to the EU provisions.

- **Commercial Agent:**

*The Commercial Agents (Council Directive) Regulations 1993* implement Council Directive 86/653 relating to self-employed commercial agents and apply whether the agent is selling or buying goods.

The regulations govern the relations between commercial agents and their principals in relation to the activities in Great Britain (but not Northern Ireland). They do not apply in several situations, including (amongst others) agents

whose activities are unpaid, agents who operate on the commodities market, agents whose activities as agents are considered secondary (ie where the primary purpose is generally not individual negotiation or conclusions of a transaction) and agents for the supply of services.

- **Duties:** The agent must look after the interests of his principal and act dutifully and in good faith; make proper efforts to negotiate and conclude transaction where appropriate; communicate all necessary information available to him with the principal and comply with reasonable instructions of the principal. The principal must act dutifully and in good faith; provide the agents with necessary documentation and information relating to the goods and his acceptance / refusal of a commercial transaction.
- **Remuneration:** The agent is entitled to commission on transactions concluded during the agency contract and concluded after the agency contract has terminated. In the absence of any agreement, an agent is entitled to remuneration that is customarily allowed in the place where he carries on his activities.
- **Termination:** If the agency contract is concluded for an indefinite period (or for a definite period with a provision that the contract can be terminated) either party may terminate by notice: 1 month for the first year, 2 months for the second year and 3 months for the third and subsequent years.

The agent is entitled to either indemnity or compensation of termination of the agency. As to which form they receive is either determined in the agency contract or if no, then the provisions on compensation prevail. The agent shall lose such entitlement if he has not notified the principal within 1 year following the termination, that he intend to pursue his entitlement. As a rule of thumb for compensation levels: indemnity is 1 years' commission and compensation is 2 years' commission.

- **Competition:** Be aware of EC competition rules as set out above.

## **PART II: BRANCH – OFFICE IN THE TARGET COUNTRY BUT NO LEGAL PERSON:**

5. *What are in your jurisdiction the differences between starting up a branch and starting up of a company (subsidiary)?*

- The formalities for setting up a branch (an overseas company trading under its own name) are minimal, although some notification is required to Companies House and notification to HM Revenue and Customs will also be necessary.
- To set up limited company subsidiary, the normal formalities of company formation will have to be fulfilled. As a branch, the overseas company will be directly responsible for all actions in England, whereas with a subsidiary, the parent company will have no liability beyond its investment in the subsidiary.

6. *What formalities must be fulfilled for opening a branch?*

The formalities are minimal with simple notification to Companies House.

7. *Why would you rather advise a foreign seller to set up a branch and not a company in your country, or vice versa?*

It would really depend upon the size of the operation and its ultimate objectives. If the branch is unlikely to undertake very much business or to incur much in the way of liabilities, then a branch is simpler, easier to manage and requires less formalities. However, where the company is likely to do a substantial amount of business in England, or could potentially incur significant liabilities, then a subsidiary would probably be better.

8. *Is a branch authorized to act before the court, to engage people?*

The Overseas Company can employ people and has full rights of access to the Courts in England. The branch itself would not be a legal entity and therefore could not do so in its own right.

9. *What is the liability of the legal representative of the branch?*

As already mentioned, the overseas company will have liability for everything that occurs if it is not operating in a separate subsidiary. The representative in England may well be liable to the overseas company for its actions, but will not generally be directly liable to customers.

10. *Is there an automatic liability of the head office for the operations or acts of the branch?*

An overseas company will generally have full responsibility for everything that is done by a branch.

11. *Which language will the documents be in?*

The documents will generally be in English.

12. *What are the accounting requirements for a branch?*

If a foreign company is registered as trading in the England then it does have to file its accounts drawn in accordance with English law with Companies House.

**PART III: SUBSIDIARY – LEGAL PERSON (SEPARATE LEGAL LOCAL ENTITY) IN THE TARGET COUNTRY**

13 *What are the advantages of establishing a subsidiary compared to establishing a branch?*

The most significant advantage is that where a parent company establishes a subsidiary, the parent company will be insulated against any potential liabilities that the subsidiary might incur and it will generally only risk such money as it actually invests.

14. *Can you present the main characteristics of the company forms existing under your jurisdiction in the following schedule:*

COMPANY FORM	Private Limited Liability Company (limited by shares) (LTD)	Private Limited Liability Company (limited by guarantee) (LTD)	Private Unlimited Company (very rare)	Public Limited Company (PLC)
Limited liability	YES	YES	NO	YES
Free transferability of the shares	YES subject to Articles but cannot offer to the public – only private transfers	YES subject to Articles but cannot offer to the public – only private transfers	YES subject to Articles but cannot offer to the public – only private transfers	YES subject to articles
Fixed or variable capital	Variable	Variable	Variable	Variable
Minimum capital	£0.01	£0.01	£0.01	£50,000 (about EUR 67,500)
Number of founders	1	1	1	2
Notarial deed	N/A	N/A	N/A	N/A

COMPANY FORM	Partnership	Limited Liability Partnership (LLP)	Limited Partnership	European Company (SE) created in GB
Limited liability	NO	YES as long as 2 Partners	YES but only for limited partners and not managing partners	YES (similar to a PLC )
Free transferability of the shares	NO SHARES	NO SHARES	NO SHARES	YES
Fixed or variable capital	Variable	Variable	Variable	may denominate share capital in any currency provided at least £50,000 is in Sterling.
Minimum capital	None	0	0	equivalent of at least EUR 120,000.
Number of founders	at least 2	at least 2 members	2	At least 2 commercial bodies. There are various ways to form an SE
Notarial deed	N/A	N/A	N/A	N/A

- European Economic Interest Grouping (EEIG) – very rare in UK

This type of grouping originates from European Regulation 2137/85 and from the European Economic Interest Grouping Regulations 1989 with the intention to facilitate cross-border alliances where the purpose is not to make profits. Can be used for alliances between accountancy firms, solicitors firm and research and development collaborations.

15. Which of the company forms is used most frequently in your jurisdiction?

Private Limited Liability Company (limited by shares)

16. Which company form is used most frequently in case of small or family business?

Private Limited Liability Company (limited by shares) (or Limited Liability Partnership (LLP))

17. *What are the main formalities a foreign company has to comply with in order to establish a subsidiary (filial/filiale)?*

There are no specific additional requirements imposed on a foreign company.

A subsidiary has its own legal identity (the same as for a private limited liability company). Formation is now very simple and can be completed online and the fee is £15 (around €12). Shares can be issued, additional directors added and the Articles of Association amended after completion of registration of the Company. Companies House generally states that it will take up to 2 days for formation to be completed, but usually, it is completed within hours.

Alternatively, a company can be formed by completing a relatively simple paper form (IN01) and submitting it with the Company's Articles of Association and a very simple Memorandum of Association to Companies House. The cost of paper formation is £40 (around €32) and it can take up to 10 days for registration to be completed.

There are some restrictions on company names that can be registered, for instance, the name cannot be too similar to an existing company and there are certain words, such as "royal" which cannot be used, without specific permission.

Once registered the company is given a registered company number and certificate of incorporation. The company will hold a first board meeting in which to appoint the director(s) and secretary and deal with other initial company matters, for example:

- opening a bank account: (although not legally necessary, is essential from a practical point of view)
- appoint accountant / auditor: there is only the requirement that an auditor is appointed before the first AGM
- directors service contracts: directors often deal with the terms of their own service contracts (including remuneration, working hours, holiday etc) but a fixed term contract of over 2 years needs shareholder approval
- fix accounting reference date: if the directors wish to file accounts to a different date than that set by Companies House.

- allot shares and issue share certificates: such authority to allot being in the Articles.
- approve cost of formation to come out of company funds.
- Other formalities:
  - As of 1 October 2008, 1 director needs to be an individual but the other directors can be companies (and foreign companies)
  - no requirement for any of the directors of shareholders to be resident in the UK
  - the registered office address and Statutory Registers must be in the country of incorporation (England Wales, Scotland or Northern Ireland)
  - keep Statutory Registers (which contain details of the shareholders, directors, charges, shares, etc) which must be written up on incorporation and amended from time to time to reflect any changes
  - register for VAT (except those with a small turnover). HM Revenue and Customs will issue a VAT number
  - ensure that company stationery (paper and electronic) bears the company name, number, place of registration and registered office
  - take out appropriate insurance
  - if the company is to have employees working for it (often the directors will also be employees) the directors should contact HM Revenue and Customs to arrange deductions of income tax from PAYE and payment of National Insurance Contributions

18. *What are the costs of establishing a subsidiary in your jurisdiction?*

Main costs are:

- Companies House Fee (£20 (around EUR 30) or £50 for same day filing (around EUR 67.5))
- Agents / advisers fees in addition. These vary.

19. *How long does it take to establish a subsidiary in UK?*

By post this is usually around 5 days after the formation documents and fee are sent to Companies House. Online or accelerated service of 24 hours.

20. *Is there specific legislation with regard to the liabilities of the founders and the directors of the most used company form?*

**Yes. There are numerous provisions, including:**

- **Companies Act 2006: duties of directors:** The Companies Act 2006 (CA 2006) aims to consolidate many areas of existing company legislation (including previous statutory legislation). There are staggered implementations in January, April and October 2007 and April and October 2008 for businesses to take immediate benefit of some of the new provisions. The whole of the CA 2006 will be in force in October 2009.

From 1 October 2007, the CA 2006 sets out 7 general duties that directors owe to their company:

- to act within their powers
  - to promote the success of the company in a way the director considers, in good faith, for the benefit of its members as a whole considering a list of factors when exercising the duty of good faith
  - exercise independent judgement
  - exercise reasonable care, skill and diligence
  - avoid conflicts of interest (although not in respect of a conflict arising in relation to a proposed transaction or arrangement with the company – not in force until 1 October 2008).
  - not to accept benefits from third parties (not in force until 1 October 2008)
  - to declare to the other directors of the company any interest in a proposed transaction or arrangement with the company (not in force until 1 October 2008)
- **Insolvency Act:**
    - *Fraudulent Trading:* If in the course of a winding up it appears that any company business has been carried out with the intent to defraud creditors or for any fraudulent purpose, the court may declare that any person who was knowingly a party to the fraud be liable as the court determines.

This imposes liability on directors and any other officer of the company who was party to a fraudulent activity. In

the past the courts have suggested that directors would be acting fraudulently if they enter into any transaction knowing that there is no reasonable prospect that the creditors will be paid.

Fraudulent trading is a criminal offence with the maximum sentence being 10 years in prison.

- *Wrongful Trading*: If in the course of a winding up it appears that the company is insolvent and before the start of the winding up the directors knew, or ought to have concluded, that there was no reasonable prospect that the company could avoid going into insolvent liquidation, the court may, (on the application of the liquidator) order that the directors contribute to the company's assets such amount as the court determines.

No order will be made if the court is satisfied that the directors took every steps that they ought to have taken to minimise the loss to the creditors –

When deciding what the director knew or ought to have concluded, the court may assume that he has the general knowledge, skill and experience which may reasonably be expected from a person carrying out his functions. Additionally, the director is expected to use the general knowledge, skill and experience he himself has, i.e. if a director has specialist knowledge and experience he is expected to use such knowledge and experience.

When considering the director's functions, the court will consider not only those functions he carried out, but also to those entrusted to him. Therefore the director can be made liable for those matters he should have done, but failed to do.

All directors should be aware of the company's financial position and if the company becomes insolvent they should take legal advice as to what steps they should take to protect their personal position.

- **Directors Disqualification**: a director may be disqualified for general misconduct in connection with the company. The grounds for disqualification and the Company Directors Disqualification Act 1986 are:
  - conviction of an indictable offence

- persistent breaches of companies legislation
- fraud in a winding up
- on summary conviction for a filing or notice default
- unfit director of insolvent companies
- disqualification after investigation
- fraudulent or wrongful trading; and
- a breach of competition law
- (see competition heading below)

Various factors are taken into account in deciding unfitness to act. The period of disqualification can range from 2 to 15 years – the director's previous behaviour and gravity of the current offence relevant in determining the length of time.

- **Corporate Manslaughter:** The Corporate Manslaughter and Corporate Homicide Bill creates an offence of corporate manslaughter against a corporation or limited company.

Focus is on the conduct of senior management, individually and jointly. An organisation is guilty of an offence if the way in which activities are managed or organised;

- causes a person's death, and
- amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased (only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach)

The jury will consider whether there is evidence that the organisation failed to comply with relevant health and safety law and if so, the degree of seriousness.

The penalty is unlimited fine. The Court may also require the organisation to remedy the breaches which led to the death with any failure to comply punishable by further fines.

Therefore, companies and their employees must do everything reasonably practicable to ensure the health, safety and welfare of everyone affected by their activities, that appropriate safety management systems are in place and that employees are compliant with this. Health and safety should be addressed by the board who should consider appointing a director specifically responsible for health and safety. Individuals cannot be prosecuted for corporate manslaughter

but can be charged with gross negligence manslaughter, where evidence shows a death is caused by gross negligence.

- **Competition (Enterprise Act – cartel offences)**

Under the Enterprise Act 2002 it is a criminal offence for individuals to dishonestly enter into cartel agreements (agreements between one or more persons to effect, (or to cause to be effected) arrangements between at least two undertakings to price fix, limit / prevent supply or production, divide markets or customers or fix bids).

Elements include:

- The offence applies only to horizontal agreements (not vertical agreements).
- Introduces draconian and invasive powers for the Office of Fair Trading (OFT) and the Serious Fraud Office (SFA)
- There are “no-action letters” (where whistleblowers can be given immunity from prosecution in return for their assistance).
- Proceedings may only be started regarding an agreement implemented in the UK.
- Directors may be disqualified for their involvement in any breach of competition law, not limited to hardcore cartel offences.
- The penalty is imprisonment for up to five years, fined or both. It is possible for individuals to be extradited to and from the UK.
- Offences of attempt and conspiracy to commit an offence apply. Therefore, even where an attempt to commit the offence is unsuccessful.

## **PART IV – MISCELLANEOUS**

### **A. Real estate**

#### *A.1. Purchase of a real estate*

21. *Who do you turn to in order to close a valid purchase agreement?*

- A solicitor or a conveyancing practitioner will usually carry out the transfer of ownership in land between the seller and the buyer (this process is known as **conveyancing**);

- After having agreed a draft contract for sale, the Buyer and the Seller will each sign their own copy of the contract and exchange it for the other copy at an agreed time on an agreed date (this is known as the “**exchange of contracts**”) and the date for completion of the transfer will be agreed. After this process has taken place, the contract becomes legally binding even though the ownership in land has not passed (ownership will pass on the day of completion);
- Once “exchange of contracts” has taken place, the solicitor or conveyancer acting for the Buyer will then send to the solicitor or conveyancer acting for the Seller an approved copy of the **purchase deed**. This purchase deed will then need to be signed **both** by the seller and the buyer. If this document is not signed then the legal title will not pass to the purchaser.
- At the time of “exchange of contracts”, the seller and the buyer will agree a time and a date for “**completion**” to take place. On that date the buyer will transfer the money owed to the seller and the seller will date the signed purchase deed and send it to the buyer. Once this has occurred the buyers can then take possession of the property they have bought, although they have legal ownership of the property, the formality with the Land Registry must be completed.
- Depending on the value of the property, the buyer’s solicitor/conveyancer will then need to pay a land tax on the property known as Stamp Duty Land Tax. Payment of this tax will apply depending on the value of the property. Following payment the buyer’s solicitor will then be able to register the conveyancing transaction at the land registry and the buyer will complete the formalities following the acquisition of the property.

22. *What are the costs related to the purchase agreement?*

- **Solicitors/Conveyancer’s fees:** these are sometimes charged as a fixed fee based on the value of the property;
- **Stamp Duty Land Tax** (as mentioned above) This is a tax paid by the buyer according to the price of the property being purchased. The threshold is £125,000 for residential property and £150,000 for commercial property. In ‘disadvantaged areas’, commercial property is exempt and the residential threshold is £150,000;

- **Land Registry Fees:** These will differ depending on the value of the property (these fees will usually be incorporated to the solicitor/conveyancer's final bill of costs);
  - **Search Fees:** As part of his due diligence duties the solicitor/conveyancer acting for the buyer will need to check that his client is acquiring good title to the property by carrying out searches on the property such as an environmental search- to determine whether there are any ground contamination issues which will need to be considered and resolved before exchange of contracts, or a water & drainage search- to check whether the property is connected to the public water mains (these fees will also usually be incorporated to the solicitor/conveyancer's final bill of costs).
23. *Is there in your jurisdiction legislation that can slow down the purchase process (e.g. environmental legislation requiring preliminary soil examinations)*

Under the Environmental Protection Act 1990 and the Environment Act 1995, the responsibility for polluting substances rests on the owner or occupier for the time being of the land in question.

For this reason, prior to completion of the conveyancing transaction, most solicitors/conveyancers will carry out specific environmental searches to ensure compliance with this legislation. These searches will differ depending on the location and the type of property being purchased. For commercial property, the solicitor may ask for an asbestos report to be carried out in order to ensure compliance with the Asbestos Regulations. In residential property, other environmental matters, such as the property being located near a landfill site, may also prompt the need for an environmental report and might affect the buyer's decision to proceed with the transaction.

The Environment Agency and the local authorities are the government bodies who are responsible for enforcing this legislation. They may therefore inspect any area in order to ascertain whether or not it is a contaminated site. If such a site is identified as being contaminated then the local authority will serve notice on its legal owner and will specify what steps he will need to take in order for it to be suitable for its intended use. This would therefore considerably slow down the purchase process.

## A.2. Rent a real estate

24. *Is there imperative law in your jurisdiction with regard to the rent of offices, industrial real estate or commercial real estate? Can you give a summary of the major stipulations of these regulations?*

- The primary legislation affecting commercial real estate is the Landlord and Tenant Act 1954 which, amongst other issues, entitles tenants in commercial leases to an automatic right to renew their tenancies. Provided that the landlord has not inserted provisions in the lease stating that the lease is contracted out of the security of tenure provisions contained in s 21 to s 28 of the Act, the Tenant will have an intrinsic right to renew the lease, unless the landlord can prove one of the ground under section 30, such as the landlord intends to redevelop the site. In that case, the court can consent to the landlord's application denying a renewal of the tenant's lease.

However, since the adoption of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 on the 1<sup>st</sup> June 2004, it is now possible for the right to renew to be excluded from the lease by agreement. This requires the landlord to serve a prescribed form of notice and for the tenant to make a declaration acknowledging it. In addition to this the legislation states that either the landlord or the tenant may now make an application to the court that the tenancy be renewed.

- The Landlord and Tenants (Covenants) Act 1995 abolished the concept of privity of contract for leases entered into on or after 1 January 1996. The effect of this is that once the original tenant has assigned the lease, he is not liable for any future breaches, eventhough he may be required to guarantee his immediate assignee.
- Section 19 (1) (a) of the Landlord and Tenant Act 1927: Assignment of tenancies- This statute provides that, in a commercial lease, a landlord cannot unreasonably withhold his consent to assignment of the lease by the tenant. This section cannot however be applied to an absolute covenant where the landlord has altogether denied the tenant from assigning the lease. The landlord and Tenant Act 1988 goes further in strengthening s19(1) of the LTA 1927 by providing that, where the tenant has made written application for

consent, the landlord owes a duty, within a reasonable time to give consent unless it is reasonable not to do so. Furthermore, the landlord must serve notice of his decision whether or not to give consent and specify, if the consent is given subject to conditions, what these conditions are, or if the consent is withheld, what the reasons are for withholding it.

25. *Are there any formalities to fulfill in order to enforce the lease agreement towards third parties?*

The tenant's solicitor should ensure that the leasehold title, if for a term exceeding 7 years, is registered at the Land Registry. The fee involved in such registration will vary depending on the value of the lease.

### A.3. *Environmental issues:*

26. *For what types of activities is an environmental permit required?*

Environmental permits are required for any disposal of waste and for any activities that may be potentially harmful to the environment.

27. *Can you describe briefly this procedure? How much time will this procedure normally take*

The procedure involves making appropriate applications to the relevant agency and permits will generally be granted within three months.

### A.4. *Employment:*

28. *Are there any specific regulations with regard to outsourcing of employees?*

There are generally no specific regulations.

29. *Applicable legislation according to the type of employment (differences between employment by local company or by head office for the local branch)*

Employment of any employee in England whether by the local subsidiary or by the overseas company will generally be governed by English law.

30. *Legal engagement and dismissal requirements and formalities*

All employees must comply with relevant tax legislation and should be notified in writing of terms of employment within three

months of their employment commencing. Generally, employees will not gain full rights of security in their employment for one year from the date of first employment, but thereafter will be protected against unfair dismissal. There are minimum periods of notice to be given on dismissal which are one week for the first two years and thereafter one week per full year of employment up to a maximum of twelve weeks.

Generally, employees are well-protected by the law against unfair dismissal and in the event of dismissal there are a number of formalities which have to be followed. If employees are made redundant, then they have a certain number of rights and are entitled to compensation, although that compensation is limited.

### 31. *Social security regulations*

Employers must pay National Insurance Contributions and such income tax as may be due.

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# **EUROJURIS INTERNATIONAL BUSINESS GROUP:**

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who we are



# Eurojuris International

*Eurojuris was formed in the late 1980s with the objective of providing clients with access to legal advice and representation from local lawyers throughout Europe and worldwide.*

Eurojuris is now the leading network of law firms in Europe and worldwide with over 600 member firms and approximately 5000 lawyers. In addition Eurojuris can, through its correspondent firms, provide access to local firms in many other countries throughout the world. Members and correspondents are always well established medium sized independent law firms satisfying the Eurojuris criteria.

Eurojuris aims to provide more than just a reliable directory of legal firms. A permanent headquarters with full time staff to manage the organisation was created in 1993 and its responsibilities include co-ordinating numerous national activities, publishing brochures, newsletters and guides, organizing meetings and congresses, promoting specialist groups and setting up an organisation to provide cohesion among different legal systems and business cultures.

The Eurojuris commitment to quality is paramount and is maintained by ensuring that management procedures and work methods are tailored to match the client needs and are dynamic and open to constant improvement. It is also essential that all Eurojuris International members understand and implement approved work methods and that regular internal and external control procedures are reviewed on a systematic basis.

## **Eurojuris International Business Group**

*The Eurojuris International Business Group (Eurojuris IBG) is one of a number of the Eurojuris practice groups. Eurojuris IBG is a proactive, business generating group that was formed to enable a small group of Eurojuris members to focus on the needs of business clients. Members of the Eurojuris IBG are experienced in their practice areas and leaders in the international legal and business community.*

Eurojuris IBG members aim to provide a Partner level service to clients and, through close co-operation with European colleagues, to provide a consistent and seamless service.

Eurojuris IBG aims to offer a uniform presentation and mutual legal education schemes with common practices and to develop common services for the clients of member firms.

As more and more businesses find that improved communication and access opens the way to more international trade, the need for legal representation throughout a number of jurisdictions becomes essential. Eurojuris IBG provides access to expert local knowledge through a lawyer in the jurisdiction of the client's head office.

The members of Eurojuris IBG maintain close levels of co-operation and knowledge of each other's firms. This is achieved not only via the usual media of email, fax and telephone, but also through regular meetings, some of which take place in the offices of the member firms to enable members to understand the way in which they can better serve their client's needs.

The members of Eurojuris IBG fulfill very strict criteria: they are business minded, they work with business clients across Europe and overseas, they all work in the English language and have some knowledge of other European languages. Importantly they are equipped with the most up to date information technology systems and maintain substantial Professional Indemnity Insurance.

# How to expand **your business** across borders



## **Board Members of IBG**

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