

Guidance note

Establishing a presence in the UK

For non-UK entities looking to establish a presence in the UK but not, for example, looking to acquire a UK entity, enter into a UK joint venture or appoint an agent/distributor there are, broadly speaking, two options:

- incorporate a private limited company (for example, as a UK subsidiary of an existing non-UK entity); or
- set up a UK establishment (more commonly known as a “branch”) of an existing non-UK entity.

The reasons for choosing one over the other will vary significantly from business to business. Typically our overseas clients choose to incorporate a UK subsidiary for their substantive UK business. However, some choose to establish a branch first and then incorporate a subsidiary once UK operations have grown.

The decision whether to incorporate a subsidiary or establish a branch will depend upon a number of factors - a summary of some of the key advantages and disadvantages of each option is set out below.



Incorporating a private limited company

Advantages:

- separate legal identity so (in the absence of parent company guarantees, for example) the liabilities of the UK entity are ‘ring-fenced’ and limited to the fully paid up amount of the share capital
- generally viewed as having more ‘substance’ so it will be easier for the entity to borrow and give security over UK assets – although a parent company guarantee might be required if the new entity has a weak balance sheet and/or a short trading history
- corporation tax liabilities of a UK entity are generally easier to compute than for a branch
- customers may wish to deal with a UK entity and see separate subsidiary accounts when assessing the strength of a business
- cheap and easy to set-up – for example, our Company Secretarial Team can incorporate a company (with standard constitutional documents) for as little as £500 (plus VAT and disbursements).

Disadvantages:

- it may increase the regulatory burden - for example, directors of the entity will be bound by the statutory directors’ duties set out in the Companies Act 2006 and, if not applicable already, the establishment of a subsidiary could trigger the requirement to produce group accounts
- it will be important to ensure that the company is resident in the UK for tax purposes (i.e. the company’s effective management must take place in the UK) as otherwise there is a risk that the company’s profits will be subject to double taxation
- there will be on-going filing requirements and running costs – for example, filings with the Registrar of Companies.

Establishing a branch or establishment

Advantages:

- limited up-front time commitment required (although the registration process requires, amongst other things, certified and translated copies of the non-UK entity's constitutional documents)
- allows maximum flexibility as a first step into the UK market.

Disadvantages:

- no ring-fencing of UK liabilities
- registration and ongoing compliance requirements for the non-UK entity – including, for example, a requirement to file accounts for the non-UK entity each year (which may not be desirable, particularly if the parent entity is not required to publicly file accounts in their own jurisdiction) and filing details of the non-UK entity's directors with the Registrar of Companies
- the corporation tax computations for a branch are likely to be more complex.

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