IR GLOBAL - MEET THE MEMBERS

# England

# IR Global - The Future of Professional Services

IR Global was founded in 2010 and has grown to become the largest practice area exclusive network of advisors in just a few years, this incredible success story has seen the network awarded Band 1 status by Chamber & Partners, recommended by Legal 500 and has been featured in publications such as The Financial Times, Lawyer 360 and Practical Law amongst many others.

The group's founding philosophy was based on bringing the best of the advisory community into a sharing economy; a system, which is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward thinking clients now have a credible alternative, which is open, cost effective and flexible.

## Our Founding Philosophies

**MULTI-DISCIPLINARY**

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

**NICHE EXPERTISE**

In today's marketplace, both local knowledge and specific practice area / sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

**VETTING PROCESS**

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

**PERSONAL CONTACT**

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

**CO-OPERATIVE LEADERSHIP**

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups who focus on network development, quality controls and increasing client value.

**ETHICAL APPROACH**

It is our responsibility to utilise our business network and influence to instigate positive social change. IR founded Sinchi a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities / tribes around the world.

**STRATEGIC PARTNERS**

Strength comes via our extended network, if we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR or someone else.

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FOREWORD BY EDITOR, NICK YATES

# An enduringly attractive investment destination

## There is no escaping the fact that Brexit is still front and centre in most international investors' minds, when it comes to the UK.

The good news is that the UK retained its status as the top destination in Europe for foreign direct investment (FDI) in 2017, according to the FDi Report 2018, produced by the Financial Times, despite a 10 per cent decline in project numbers and a 5 per cent retraction in capital investment.

More than USD33 billion was invested in the UK during 2017, giving it a European market share of 18 per cent, more than double its nearest rival.

Brexit...what Brexit?

These figures bear out the fact that, while uncertainty around trade and access to markets does affect capital, it is largely immune to wider political disagreements. The data would also suggest that, when Brexit is finally resolved and clarity around access to European markets returns, the UK stands to increase its dominance of the European FDI scene even further.

There are many things to recommend the UK, and each of its constituent countries, to international investors. Principal among those is the UK's corporation tax rate, which, at 19 per cent, is one of the lowest in the G20. The UK also has a wide network of double taxation treaties with other countries, ensuring the majority of UK-based companies don't pay corporation tax on foreign dividends.

Aside from these general tax incentives, there are also incentives for research and development (R&D) and technology. Companies located in the UK, can get a 100 per cent deduction of corporation tax for R&D-related work, while deductions from wider taxable income are also available. The UK operates a patent box scheme, which applies a corporation tax rate of 10 per cent on profits earned from patented inventions and innovations.

For smaller businesses, the Department for International Trade's (DIT) Global Entrepreneur Programme helps overseas entrepreneurs and early stage technology businesses to relocate to the UK. The scheme has helped more than 340 businesses to relocate and raised more than GBP1 Billion of private investment. The scheme can also secure entrepreneur visas for those companies that have raised at least GBP50,000 in funding from approved sources.

Access to capital can be a concern for some foreign investors, and the UK has an extremely well-developed funding infrastructure, across both debt and equity. The British Venture Capital and Private Equity Association (BVCA) represents the private equity industry in the UK and its figures for 2017 show a healthy environment for venture capital investment, which increased by 45 per cent in 2017 to GBP820 million, effectively doubling since 2014. Backing was extended to 485 companies, a 36 per cent increase, while seed investments grew by almost 300 per cent, reaching GBP56 million. Early-stage financing doubled in size to GBP 313 million, while start-up financing increased by 75 per cent.

While London remains the major driver of the UK economy, there are also powerful regional cities that are developing rapidly, aided by the forthcoming high speed rail network HS2. These cities, including Birmingham, Manchester, Liverpool and Leeds, offer a range of attractive investment incentives, over and above those to be found in London and the South East region.

As an example, the Yorkshire region has a gross domestic product (GDP) in excess of GBP80 billion, and specialist industry clusters in advanced engineering and materials, chemicals, environmental technologies, digital and new media, healthcare and finance.

Regardless of the outcome of Brexit, the UK will remain an attractive destination for FDI, retaining its close relationship with the European Union and providing an ideal base for US and Asian companies wishing to access Europe.

In the following pages, we hear from a number of professionals with expertise in a range of legal practices critical to commercial investment. They will go into detail on UK-specific developments in areas such as employment legislation, data privacy, leveraged finance and immigration. The brochure provides a comprehensive roundup of information and contacts for foreign investors considering the UK as a business destination.

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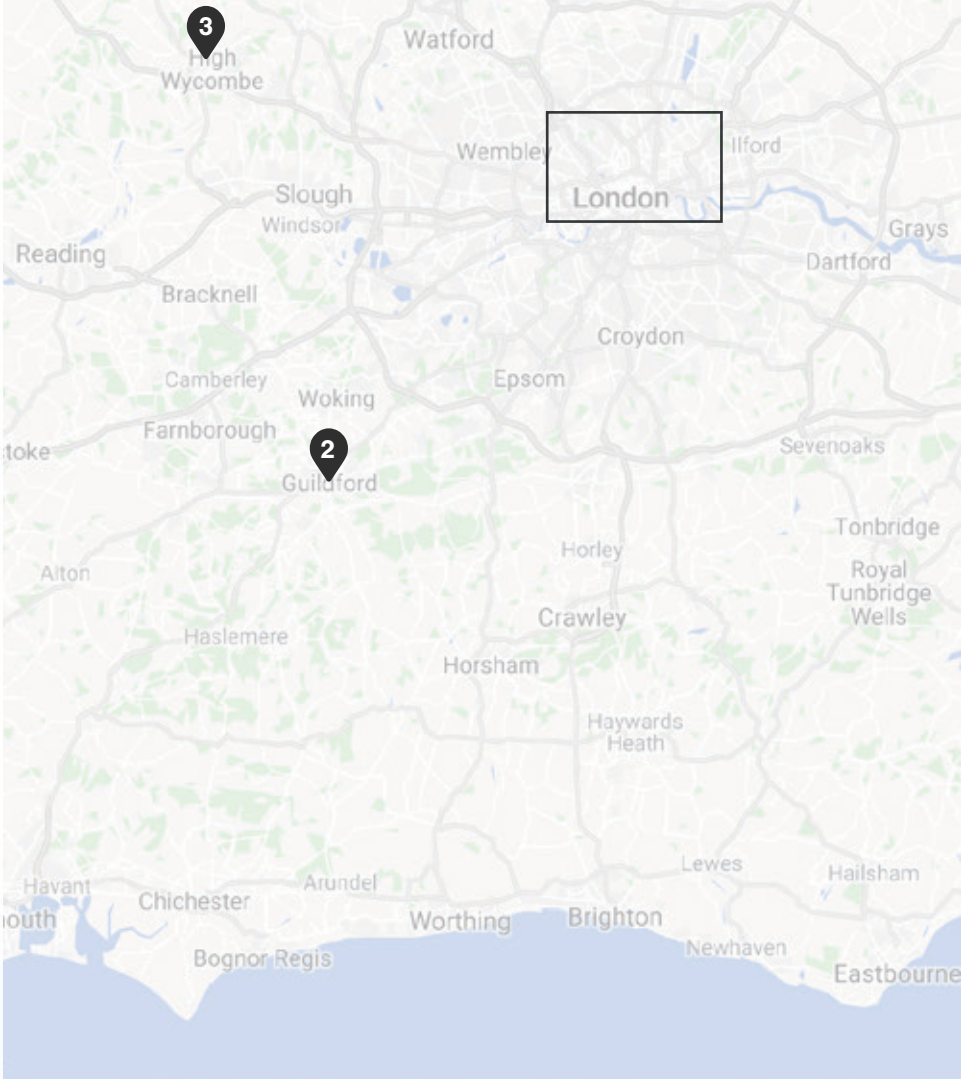


# Member Firms in England

IR Global members in England are predominantly location in and around the city of London and consist of leading legal, accountancy and financial advisers. They are recommended exclusively by practice area thus ensuring that our members have the highest quality niche expertise available to them.

Whether it's an incorporation of a company, immigration developments, looking beyond Brexit or how you will deal with the recent changes to data privacy and security, our English representatives are on hand to provide you with a high-quality service that suits your every business need.

Member firms featured here retain a global support network across 155+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivaled results. Please see the full list of English member firms below and on the IR Global website via bit.ly/2tgVa6L.

## Acuity Legal Limited
acuitylegal.co.uk

## 1 Ashfords LLP
ashfords.co.uk

## 2 Barlow Robbins
barlowrobbins.com

## 3 Blaser Mills Law
blasermills.co.uk

## Blick Rothenberg
blickrothenberg.com

## Colman Coyle
colmancoyle.com

## 4 Fitzgerald & Law (F&L)
fitzandlaw.com

## 5 Gannons
gannons.co.uk

## Goodman Derrick LLP
gdlaw.co.uk

## 6 Gross & Co Solicitors
gross.co.uk

## 7 gunnercooke llp
gunnercooke.com

## 8 Herrington Carmichael LLP
herrington-carmichael.com

## Inspire Professional Services Ltd
inspireaccountants.co.uk

## King & King Chartered Accountants
kingandkingaccountants.com

## 9 Mirkwood Evans Vincent
mirkwoodevansvincent.com

## Mishcon De Reya
mishcon.com

## 10 Paul Beare Ltd
paulbeare.com

## Peters & Peters Solicitors LLP
petersandpeters.com

## Price Bailey Chartered Accountants
pricebailey.co.uk

## Raworths LLP Solicitors
raworths.co.uk

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LONDON, CAMBERLEY AND WOKINGHAM

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Having worked for Herrington Carmichael's Corporate and Commercial team since 2010, Alex specialises in co-ordinating, structuring and advising on corporate transactions and regularly advises clients based in both the United Kingdom and internationally on mergers and acquisitions, joint ventures, restructurings and corporate re-organisations.

A solicitor admitted to the Supreme Court of England & Wales, Alex offers pragmatic and commercial solutions to clients both looking to invest in the United Kingdom or to export their services or expand into new territories around the globe.

*Herrington Carmichael LLP is a leading commercial law firm based in the United Kingdom; its clients ranging from individuals to international businesses; offering advice on corporate and banking services, property and real estate matters, tax and estate planning, employment law and dispute resolution / litigation.*

*Herrington Carmichael LLP aims to establish and build long-term relationships with its clients, taking the time to understand their business, long-term objectives and concerns.*

*With experience of working with clients looking to invest or expand into the United Kingdom, the firm offers high-quality and commercially astute advice to both private individuals and businesses alike.*

*The Corporate and Commercial Team is highly experienced, working with clients across a range of industry sectors. Expertise includes mergers and acquisitions, banking and finance, corporate structuring, commercial contracts and intellectual property. The team also offers a range of due diligence and legal audit solutions.*

CORPORATE LAW

# Funding for Growth: securing mezzanine finance in the UK

The term mezzanine finance as used within the UK is a description given to a combination of debt and/or preferred equity financing. Whether you are an investor seeking to place an investment, or a borrower seeking to maximise investment into a business, mezzanine finance is a popular and attractive solution.

Mezzanine finance is a sum lent or invested into a business on a junior basis that ranks in priority behind senior debt, but ahead of standard equity. By virtue of being subordinated to senior debt, which in itself often secures the main banking facility, the returns reflecting the risk are likely to be higher, proving the old adage: 'a greater return for greater risk.'

What the funds raised are used for are largely immaterial, but dedicated mezzanine providers would typically expect to see it used for capital expansion and growth. They are often used in leveraged finance transactions, in conjunction with other sources of capital, to fund the purchase price for the target company being acquired. In those circumstances mezzanine finance will typically be used to fill a funding gap between what the senior lenders can lend and what the private equity sponsor will itself invest.

In the UK, mezzanine finance can be made available through several different structures based on the specific objectives of the transaction. Mezzanine lenders look for a certain rate of return. This can come from cash or 'payment in kind' (PIK) interest, but also from an equity stake in the borrower.

Mezzanine finance is an appealing investment to lenders for a number of reasons. To compensate the lender for assuming greater risks, mezzanine lenders can expect to require interest rates in the region of 12 -20 per cent. While mezzanine finance can take the form of pure debt, it can also be taken as preference shares (preferred equity) or often a combination of both. Considerations by a provider are based upon its own model, market forces or the position a borrower can actually offer. It may also be attractive to the provider, who is looking to maximise returns on an investment, but it can have the impact of locking away an investment, so careful consideration should be given when looking at the rules surrounding it. A debt/equity solution can be attractive when considering a senior funders' financial covenant requirements. Rules surrounding equity would be set out in the constitution of a company and the articles of association and rules on interest payment and/or conversion to full equity would be governed by the mezzanine facility.

Mezzanine finance by nature is a complex arrangement and decisions as to what can be repaid and when, and what security is taken, needs to be considered. The senior lenders are likely to want to ensure that the mezzanine (and any other) debt is fully subordinated to theirs. The level of subordination is typically negotiated but it is usual for the mezzanine debt to be repaid only after all the senior debt has been repaid in full. However, payments, and/or interest payments during the term, can be negotiated.

Rules governing the ranking of debt and security will be governed by an intercreditor agreement. The inter-creditor agreement will typically act to protect the senior lender, agree any co-operation terms and restrict the circumstances in which mezzanine lenders can take enforcement action in respect of mezzanine debt.

In the UK, most mezzanine lenders are likely to take security. In international mezzanine finance arrangements, the type of security that can be taken and is enforceable would be subject to the laws of the jurisdiction governing the mezzanine facility and the jurisdiction in which the secured assets are located. In the UK there are four types of security interest under English law, mortgage, charge, pledge and lien. Most commonly in the UK you would see mezzanine lenders taking security over the assets of the borrower in the form of a debenture. If the borrower is a small company, or is incorporated as a special-purpose vehicle entity, mezzanine lenders should also consider obtaining additional security from any group company or parent company - this can be achieved by obtaining a corporate guarantee. If the mezzanine lender is looking for the investment to take the form of preferred equity they should also consider requiring additional security over shares in a group or parent company of the borrower.

Mezzanine lenders may also include covenants into the mezzanine facility. Covenants are conditions that the borrower undertakes to comply with under the terms of the facility. Restrictive covenants can prohibit the borrower from securing further debt and some covenants might require the borrower to meet certain financial ratios.

Mezzanine lending may be a high risk investment for lenders, but if careful consideration is taken, lenders can develop a strategy to maximise the long term value of their investment. Many of the risks associated with mezzanine lending can be mitigated through the appropriate use of security and the inclusion of the correct warrants and restrictive covenants.


LONDON

# Paul Beare

## Founder, Paul Beare Ltd

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Paul founded Paul Beare Ltd having worked in a previous accountancy firm, following his involvement in a successful merger and acquisition in 2014.

With an extensive support network of international providers that Paul has built up over the years, clients, and potential UK in-bound start-ups will regularly approach him for UK and international expansion support. He is referred by many clients as a their Trusted Advisor.

*Paul and his team support the needs of overseas companies setting up, and operating in the UK.*

*One element is overriding among every client – they all need support and expert guidance on setting up and operating in the UK. They advise around the appropriate legal entity, payroll, VAT, banking and Company Secretarial services; are a one-stop shop of support.*

*Clients range from publicly quoted companies through to owner-managed businesses. Paul travels frequently to Australia, New Zealand and the USA.*

*Paul has been heavily involved in IR for seven years: "We use IR Global as a support network for our clients when they are using their UK Company to expand further. Clients will use this as a foundation for further expansion into Europe and beyond. We have frequently reached out to counterpart members to support our client's growth plans".*

*Whether you, or your clients are deciding between a UK branch or a UK subsidiary (the two main options) we have particular expertise in this specialised field of helping overseas companies expand into the UK.*

COMPANY FORMATIONS

# Establishing a UK operation: the basics

Setting up a UK operation can be straightforward provided you have access to experienced advisors.

Companies with very well-established operations in their home jurisdiction, often struggle to enter the UK market due to an assumption that they are familiar with British culture.

Working closely with an advisor is crucial to make sure you aren't tripped up by the myriad of legislation that must be navigated. So, what do you need to know when looking to establish a presence in the UK?

## Choosing a legal structure

With a number of options available, it largely depends on the objectives and plans that the business has for the longer-term.

A branch, often referred to as a UK establishment, can work well for companies testing the marketplace, or those wishing to setup on a short-term basis. It can also be de-registered swiftly if no longer required. Depending on parent company jurisdiction law, it's full profit and loss statement may become a matter of public record.

A limited company, whether owned by a parent company (a subsidiary), or owned by individuals, is a very effective vehicle, governed under UK law, with all the panache and credibility of a British business.

Partnerships and joint ventures are also available.

## Company secretaries and permanent representatives

This is not a required role, but where there are no UK-based directors, then we strongly recommend this role is occupied. It is an officer of the company, but without binding power.

It allows the office-holder to communicate with Government Offices such as Companies House, or Her Majesty's Revenue and Customs (HMRC) – and can enter contractual obligations on instruction from a director of the UK company.

This role enables someone to be 'on-the-ground' in the UK, which could be part of the requirements with some UK banks when opening a real bank account.

We are usually appointed as Company Secretary or Authorised Representative to our clients' UK companies. Our address is also the Registered Office of the company, allowing for efficient handling of administrative documents from Companies House and HMRC.

## Bank account opening

Every company needs a bank account, but attempting to open one without guidance, support or the right documents will prove costly from a time and financial perspective. We advise this process can take up to three months.

Some jurisdictions, such as Australia and New Zealand, allow shares in the parent company to be held in a family or discretionary trust. Trusts in the UK are not common and selected UK banking partner will require the settlor, trustees and named beneficiaries within the trust to be formally identified as part of the bank account opening process.

Home address identification documents must be dated within the previous three months. The addresses must match, and photographic identification must be provided and notarised, either by an accountant or lawyer. An accompanying cover letter for each individual that has been identified will be required as part of the process.

Once we are satisfied as to our client's identity, we will operate a client trust account on their behalf. This is a designated client account for receiving payment and processing of supplier invoices, payroll and taxes etc. This is used until the real bank account is operational.

## Understanding VAT

VAT is an amount charged on most goods and services that are purchased in the UK and Europe. It is very similar to GST (Goods and Sales Tax), but not the same.

A business registered for VAT will charge it on to other businesses and consumers that it trades with in the UK. The good thing is that VAT registered business are able to recharge the amount of VAT that has been charged to them. The negative is that non-VAT registered business and consumers are not able to claim back the VAT. Effectively it is a 'sale of goods' tax to consumers at a standard rate of 20 per cent.

A business can register voluntarily for VAT, which may give rise to a cash flow benefit, as well as giving perceived comfort to your customers. The reporting requirements to HMRC must be adhered to, usually quarterly.

If you need any support to establish a UK presence then please contact us directly - info@paulbeare.com.


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Stuart is a partner in the Corporate Team advising on public and private company mergers and acquisitions, IPO's, secondary fundraisings and other transactions undertaken by quoted companies.

Stuart advises clients across a range of different industries and jurisdictions, including companies in the insurance and financial sector as well as defence, technology, pharmaceutical, food and energy sectors. His experience includes handling cross-border as well as domestic UK transactions.

Prior to joining Ashfords, Stuart was a partner in the London office of a US law firm where he worked on a range of domestic and cross-border transactions for international clients.

*Ashfords is a national provider of legal, professional and regulatory services.*

*The firm works with many different kinds of clients - business owners, public sector, large corporates, private individuals and not-for-profit organisations - to help them make the most of their opportunities, while effectively managing risk.*

*Ashfords provides legal advice that is not just technically sound, but is rooted in a wider appreciation of the real world in which we all exist. A world that is constantly changing, frequently surprising and invariably hard to navigate.*

*While the firm recognises that no two clients' legal issues are the same, we aim always to provide straightforward, timely advice, delivered in clear and simple language.*

*Above all, every client should expect and receive value for time and value for money. Which means working with lawyers who make your life easier, share your values and are good to work with. Lawyers who deliver advice grounded in your world.*

FINANCIAL REGULATION

# Financial Promotion: things to consider when making an offer of shares or securities in the UK

In the global economy there are a number of reasons why international companies may wish to extend offers of their shares or securities in the UK, whether as part of a fundraising, acquisition or arrangements for the participation of UK employees in an international employee share plan. Set out below is a broad overview of the common issues raised by such actions under UK financial services and securities laws.

## Financial promotion

An international company wishing to make an offer or invitation to subscribe for its shares or securities in the UK, will need to comply with the financial promotion regime under the Financial Services and Markets Act 2000 (FSMA). This contains a restriction on any person in the course of business, communicating an invitation or inducement to engage in investment activity unless that person is an authorised person under FSMA, the contents of the communication have been approved by an authorised person for the purposes of section 21 of FSMA or the communication is covered by an exemption contained in the relevant statutory instrument (FPO).

The term 'financial promotion' is likely to capture all kinds of written, electronic and oral communications relating to an offering of shares or securities including, for example, those made in the context of a meeting, conference or telephone conversation. Unless the communication is to be issued or approved by an authorised person, it will be important to ensure wherever possible, that the communication falls within one of the exemptions under the FPO.

Under the FPO, the principal issue for consideration will be the identity of the recipient. So, for example, financial promotions communicated to persons considered to have sufficient expertise to understand the risks involved, such as professional investors, investment managers and stockbrokers, would be exempt, provided certain conditions are met. Other exemptions include an exemption (subject to certain conditions) for any communication made in connection with the sale of a body corporate where the transaction consists of or includes 50 per cent or more of the voting shares of that body corporate and any communication made for the purposes of an 'employee share scheme', which means any arrangement by the company (or a member of the same corporate group) to facilitate transactions in specified investments in that company between or for the benefit of employees or former employees of the company or of another member of its group or the holding of such investments by or for the benefit of such people.

A financial promotion relating to securities to be issued as consideration for the acquisition of the shares or securities of another body corporate will need to be approved for the purposes of section 21 of FSMA unless there is an applicable exemption under the FPO. However, approval of the financial promotion will not be necessary where it is included in a prospectus or supplementary prospectus approved by the Financial Conduct Authority under FSMA.

## Prospectus

In line with other jurisdictions in the European Union, whenever a company makes an offer of its transferable securities in the UK, or seeks admission of its transferable securities to an EU-regulated market in the UK, it will need to publish a prospectus which must be compliant with the requirements under Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (Prospectus Regulation) repealing the Prospectus Directive.

Preparation of a prospectus usually involves a significant amount of time and cost for the issuing company. For this reason, it is common when structuring an offer of shares or securities to consider whether there is any exemption available, so that a prospectus is not required.

An approved prospectus will not be required if an offer of transferable securities falls within one of the applicable exemptions, such as where the offer is made to, or directed at, 'qualified investors' only, is made to or directed at, fewer than 150 natural or legal persons (other than qualified investors) in the UK or the total consideration for the transferable securities being offered in the EEA States does not exceed EUR 8 million (calculated over 12 months).

Also, when the Prospectus Regulation enters into full force in 21 July 2019, the current exemption from the requirement to publish a prospectus in relation to an offer of transferable securities to existing or former directors or employees by their employer or an affiliated undertaking applies. This is the case where the company has its head office or registered office in the EU or is established outside the EU, but has transferable securities admitted to trading in the EU. It will be extended to offers by all companies, regardless of whether they are registered or headquartered in the EU and/or have securities admitted to trading in the EU (provided they make available a simple disclosure document).

The position in the UK following 29 March 2019 (when the UK is currently due to leave the EU) remains unclear. However, the UK Government has published a draft statutory instrument containing proposed amendments to retained EU law related to the Prospectus, Transparency and Consolidated Admissions and Reporting Directives to ensure that they continue to operate effectively once the UK leaves the EU, in any scenario.

## Breach of UK regulations

A breach of the UK financial promotion, prospectuses and the conduct of business regulations carry both civil and criminal sanctions. Compliance is therefore essential. Additionally, any agreement made pursuant to an unlawful financial promotion or by a person lacking the necessary FCA authorisation, may be unenforceable.

GUILDFORD

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Jo Farr is head of the Commercial Property team in Barlow Robbins' Guildford office.

She has worked as a property lawyer for more than 15 years, building up technical know-how and wide connections with property professionals both locally and further afield. Her work usually involves one or more of the following: sales and acquisitions, commercial leases; development work and property finance.

She deals with a wide client base from local independent retailers to investment landlords and from property developers to banks, which means she is able to see transactions from various perspectives.

Jo takes the time to get to know her clients and their businesses, so that she can understand their priorities and concerns. She has always found that a no nonsense approach gets the best results.

*Barlow Robbins LLP was formed by the merger of the two well regarded and long established legal practices of Barlows and Robbins Olivey in 2004. The firm now have a thriving portfolio of private and commercial clients, and 20 partners (this term is used, even though the firm is an LLP, to refer to the members of the LLP and employees or consultants of equivalent standing and qualifications) and approximately 180 staff. Barlow Robbins LLP is recognised as an Investor in People and belongs to the UK200 Group, a national association of accountants and lawyers as well as being a member of Law South, a group of nine prominent law firms in the South.*

REAL ESTATE

# The Price of Property: charting the evolution of Stamp Duty land tax

Tax on land transactions has been around for many years. However, what started as a simple tax affecting a minority of the population, has become a complex subject area, affecting most people acquiring an interest in land and having a huge impact on the housing market.

## Background

For the most part of the 1990s, Stamp Duty was only charged on transactions over GBP 60,000 at a rate of 1 per cent. The average house price in England at this time was GBP 53,203, and so most people looking to purchase property were unaffected.

In 1997, the Government introduced additional tax bands and the rate charged for each band has continually crept up throughout the years. In 2003 the Stamp Duty regime was replaced with Stamp Duty Land Tax (SDLT), which is a form of self-assessed tax charged on land transactions.

In the years that followed, demand for housing increased and so did property prices. SDLT started to affect more and more people and it was seen as a big expense to anyone looking to move or to purchase their first home. There were also big differences in the amount of tax payable for similarly priced properties, depending on which tax band applied to the transaction. For example, someone purchasing a house for GBP 250,000 would have a tax bill of GBP 2,500, but if the same house was purchased for GBP 250,001 the tax bill would be significantly more at GBP 7,500.

The differences in the amount of tax payable led buyers to limit how much they were prepared to spend on a property, and stopped some from moving altogether. As prices continued to rise, it also became increasingly harder for first time buyers to enter the market.

## Improving the system?

In an attempt to improve the SDLT system and rejuvenate the housing market, in 2014, the government introduced the 'slice' system, whereby SDLT is payable on the portion of value falling within each banding e.g. 0 per cent on the first GBP 125,000, 2 per cent on the value over GBP 125,000, but under GBP 250,000 and so on. Higher bands were also introduced for properties over GBP 925,000.

The change meant most purchasers would now be paying less SDLT. The Government hoped this would encourage people to move, as well as making housing more affordable for first time buyers. This would in turn create movement in the housing stock allowing properties to be used in a more effective way. While this was a step in the right direction and largely welcomed by the population, it didn't have the desired effect. People continue to see SDLT as a significant expense and as such are less inclined to move. Families looking for more space tend to extend their existing home and the elderly, who might be ready to downsize, are instead remaining in their family home. The result is the housing shortages experienced in recent years.

## Complex rules

It is not only the way in which SDLT is charged that has become more complex, the legislation around SDLT has become a minefield for professionals advising clients on such matters.

The basic rule appears to be simple - SDLT is charged on the consideration (money or money's worth) provided for a land transaction. However, as you look closer at the legislation you soon discover the many complexities, exceptions and exemptions which may or may not apply to any given transaction.

For starters, different rates apply across residential, commercial and mixed-use properties, and the way in which SDLT on rent and non-rent consideration is calculated differs substantially. Different rules apply for connected companies and partnership transactions. Those purchasing additional residential property are also subject to a higher rate of tax.

There are also various types of relief available: multiple dwelling relief, shared ownership relief, first time buyer's relief, group relief, reconstruction and acquisition relief, sale and leaseback relief, etc.; the list goes on. Each relief comes with its own set of, sometimes, very complex rules and restrictions.

Certain transactions are exempt, including, to name a few, the grant of leases by registered social landlords, transactions in connection with divorces or dissolution of civil partnerships, the grant of a licence to occupy land and tenancies at will. For the two latter examples, special care must be taken to ensure the documentation reflects the actual position of the parties. If a licence or tenancy at will gives the tenant exclusive possession of the property, it may be seen as a lease and the exemption will not apply.

Finally, in some instances, an SDLT return must be filled with HMRC, even though no SDLT is payable and in other instances there is no need to file a return at all.

## A specialist area

Through recent decades we have seen a transformation in land transaction tax. From a simple tax most of the population was unaffected by, to a complex area of law affecting most of the population and with a powerful effect on the housing market.

Given the intricacies mentioned above, it is no surprise SDLT has become a specialist area in its own right; and with no signs of further reform, people are encouraged to seek expert advice whenever land transactions are involved.


HIGH WYCOMBE

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James is a partner and head of the Employment team. James also heads our BM data service, acting as an EU representative for non-EU businesses in accordance with the General Data Protection Regulations (GDPR).

He has over 20 years of experience advising clients on employment and HR matters and his practice covers non-contentious work including the drafting of employment-related agreements, documents and policies. He also works on the employment aspects of restructurings and transactions, including cross-border work, normally within the European, Middle East and Asia regions (EMEA).

His clients are typically multi-jurisdictional businesses, SMEs and entrepreneurs, where he can bring his experience to help them manage risk, grow and expand their business interests. James has vast experience in advising clients in the IT, pharma, transport and high-end jewellery sectors.

James is recognised as a leading practitioner by both Chambers & Partners UK and The Legal 500, UK and is a member of the Employment Lawyers Association.

*Blaser Mills Law is a leading law firm based in South East England, UK with 22 partners and over 70 lawyers. It is a full-service firm, offering a comprehensive range of legal services to businesses and private individuals including Corporate & Commercial, Employment, GDPR Data Services, Dispute Resolution, Business Crime and Real Estate & Development.*

*Blaser Mills advises a wide range of blue-chip and SME businesses, as well as non-for-profit organisations with an international reach. The firm has been recognised in The Legal 500, UK and Chambers & Partners UK legal guides and accredited by Lexcel, the UK Law Society's legal practice quality mark for excellence in legal practice management and client care.*

DATA PROTECTION REGULATIONS

# The New Gold: data protection and employees

Increasingly comprehensive and punitive regulations around personal data have turned it into the new gold. Businesses see great value in data, but loss of it can be very expensive!

As more and more personal data is collected and used, in new and different ways, data protection rules around the globe have had to adapt and evolve. In the EU, the General Data Protection Regulations (GDPR) came into force in May 2018, upgrading the protections for EU individuals and giving them more control over data usage, transfer and storage. Other countries have equally tightened their data protection rules and in many cases the legislation applies across borders. For example, with the GDPR, non-EU businesses and organisations are required to comply if they process the data of EU citizens or residents, even if this occurs outside the EU. This captures many online businesses operating outside the EU.

For this reason, many businesses and organisations have had to audit their data, understand their data flows and implement technical measures, policies and procedures to ensure the lawful use of data and to protect it. Much of the focus has been on IT security, to prevent hacking and written notices, policies and procedures for everyone to digest and follow. However, compliance is also about culture and employee behaviour. A business can have wonderful policies and procedures in place but they are worthless if employees do not understand them or ignore them.

One recent example of this in the UK, highlights the UK Court of Appeal's consideration of the impact of a rogue employee's actions.

In WM Morrisons Supermarkets PLC v Various Claimants [Oct 2018] the Court heard that a disgruntled employee had posted the payroll data of around 100,000 of his colleagues on an open file sharing website. He had received the information in his capacity as a senior internal IT auditor and had used the data properly for his job, even transferring it to a legitimate third party in an encrypted format. However, he also copied it to a personal USB stick and this was how he managed to post it illegitimately on the file sharing site. He then anonymously tipped off local newspapers about the data on the site in the hope that the 'data breach' would have severe consequences for his employer. At trial, it appeared that he was motivated to do this because he was unhappy with the way the business had treated him in a disciplinary issue and a subsequent grievance that he had lodged.

At first view, a reasonable person would question whether the employer should be responsible in this situation. It had polices and procedures in place and the employee demonstrably understood the importance of maintaining data security. He also needed to use it as a direct part of his role. As such, it would be understandable for Morrisons to say that he was acting on a 'frolic' of his own and therefore he should be solely and personally responsible for his actions. He was actually convicted and jailed for eight years for breach of the Computer Misuse Act 1990 and the Data Protection Act (the precursor to the GDPR).

However, despite this personal criminal liability, the Court of Appeal decided that Morrisons should also be liable to 5,518 of his colleagues who brought a group action against it for this misuse of their data. Damages for this type of case can vary, but taking a modest sum of GBP 100, the financial exposure is GBP 551,880. If that is scaled to the full 100,000, the full financial exposure to the affected employees becomes GBP 10,000,000.

And it does not end there. The Court found that Morrisons had breached its duty to have appropriate technical and organisational measures in place to protect the data. This duty is one of the key principals of GDPR and, if breached, the relevant supervisory authority can penalise the organisation with a fine that can be as much as 4 per cent of global turnover. In the year ended February 2018, the annual turnover of Morrisons was GBP 17.23 billion – 4 per cent of this equals, well you get the idea!

As can be seen, the actions of one rogue employee in a low risk role can result in colossal financial liabilities. And, there is no escape by simply being outside the EU.

What does this mean?

Well, as the big social media companies are finding out, if you use personal data, you have to take responsibility for it and that means doing more than just implementing policies and procedures. Instead, businesses need to educate and train staff to foster the right culture and environment and place data protection on the same level as protecting the health and safety of others.


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David trained as a Chartered Accountant with Price Waterhouse before moving into commerce, working in manufacturing and distribution.

As well as working in finance, he has vast experience in management roles for international listed companies, overseeing different disciplines including sales, HR, payroll, finance, tax and legal counsel.

David joined Fitzgerald & Law as a Partner in 2008 and is currently responsible for helping companies with their global expansion strategy and execution, sourcing and managing local service provider channels and global service delivery to help companies succeed internationally.

*Founded in 1992 in Central London, F&L started life as a 'traditional' accounting practice. Over 25 years, it has evolved into an FDI-driven full service advisory firm. F&L is a uniquely valuable resource for international companies, providing advice when they set up in the UK and continuing to support them as their EMEA operations grow. F&L sets itself apart from other firms by employing the best people in the industry and through the range of services provided, including tax, accounting, audit, financial advice, employee benefits, payroll, legal, HR, IT and communications.*

*Specialist teams, including a San Francisco office and a worldwide network of local service providers, work together on a global scale to help clients meet their obligations and solve their problems. F&L is dedicated yet flexible in its approach, and strives to build lasting relationships with clients.*

FOREIGN DIRECT INVESTMENT

# Beyond Brexit: the UK is very much open for business

It is difficult to write an article about the UK which doesn't mention Brexit. I should disclose that I personally voted to stay within the EU and for the UK to push harder to change some of the things we don't like. More accountability and openness surrounding the EU's own accounts, expenditure and budgets would be high on the list. I also voted to remain because of a lack of clarity on the consequences of the UK leaving.

## Attracting FDI

Ever since Article 50 was triggered in March 2017 following the vote to leave, the UK has continued to develop its already successful infrastructure for attracting Foreign Direct Investment (FDI). The UK offers an ever improving environment for research and development (R&D) projects which goes hand-in-hand with a large pool of highly skilled and experienced workers. R&D incentives are available for all company sizes, provided that certain relevant criteria are met. The UK is also following a policy of reducing corporate tax rates (from 23 per cent in 2013, to 19 per cent today, with plans to reduce further) and to simplify tax regulatory requirements - particularly for overseas businesses. There are also more opportunities than ever for foreign investors to raise capital through the UK markets. The UK remains one of the world's preeminent global financial centres.

Expenditure on new transport links within the UK continues to reach record levels, and there are also plans in place to further enhance transport links with the rest of the world. The UK's central time zone position, means it is ideally placed between east and west. Putting these factors into the mix with the UK's reputation for providing a solid, reliable and well established structure where companies can build a business, means it should be no surprise that the UK is still an attractive option for FDI and is very much open for business.

Despite the uncertainty brought on by Brexit, the UK has not seen any decline in foreign investment, with double digit growth continuing each year since 2015. Investment levels from Asia are growing rapidly and the US is weighing in with its highest levels ever. The UK has been named as the best country for business for the second year running (Forbes). The publication ranks how hospitable 161 nations are to investment based on 15 factors, including workforce strength, innovation, lack of red tape, political risk, infrastructure, taxes and property rights. The UK was the only one in the top 30 for each factor.

## Financial services

The financial services sector has seen an influx of more FDI than any other industry, attracting GBP 385 billion into the UK. This is an increase of 19.5 per cent on the previous year. The UK's technology sector outperformed the rest of Europe in 2018, attracting USD 7.9 billion (GBP 6.3 billion) in venture capital investment. The UK is home to 13 of Europe's 34 tech unicorns (private companies valued at USD1 billion or more), making it the continent's premier location for fast growing technology firms. The UK remains the fifth largest economy in the world and it doesn't look like FDI and funding into UK companies will slow down any time soon.

All this long term investment has continued to flow into the UK even with the knowledge that Brexit, in whatever form it takes, is on the horizon.

## What if there is a 'No Deal' Brexit?

I remain optimistic. The UK is a large and dynamic marketplace in its own right and an attractive option for overseas investors. I am hopeful that the business leaders, entrepreneurial influencers and hardworking employees across Europe and the UK will adjust and do what is best in the new market conditions.

The UK will continue to be an important trading partner for the EU because the UK has the second largest economy of the current EU members. The top six economic powers within the Union account for 75 per cent of total EU GDP.

Of the other five, the UK is:

- the 4th largest export market for Germany;
- 6th for France;
- 5th for Italy and for Spain; and
- 3rd for The Netherlands.

So, in all cases, the UK is a significant trading partner and none of the top six, or indeed any of the other EU member states, will want to see a prolonged reduction in trade.

## What next?

At the time of writing there is still no agreement in place for the UK's exit from the EU, which is currently scheduled for 11:00pm (GMT) on 29th March 2019. The UK's Prime Minister has been asked to go back to the EU and renegotiate the backstop clauses relating to the Northern Ireland border with the Republic of Ireland.

I hope I'm right in being optimistic. The irony that the first working day after 29th March is April Fool's Day has not passed me by!

No matter what shape Brexit eventually takes, it is going to be a challenge and I, for one, am up for that challenge.


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John is a partner at Gannons Commercial Law Limited leading the commercial team which includes data protection and security. He has an established presence in the technology and media industries. He is forward thinking in his approach and analysis and will aim to provide practical workable solutions.

John's corporate team are up-to-date on the latest data protection requirements and have advised businesses in a variety of industries on their compliance requirements. Data protection is a key part of any commercial agreement and the team incorporates these considerations into their work.

John has also advised individuals in sectors such as the financial services, and the professions including law, health, energy & utilities on their individual professional duties and liabilities.

*Gannons is a boutique London commercial law firm focused on solving business problems commercially. We work primarily with private companies and partnerships and their shareholders, investors, partners and directors across a range of businesses.*

*The firm's philosophy is to facilitate the commercial objectives of clients by offering specialist services at competitive rates in a format they can understand. The firm's fee earners are highly knowledgeable about the industries in which they practice and have wide-ranging experience. On the corporate side there is a focus on private companies and on the personal side there is a focus on directors, investors and high net worth individuals.*

DATA PROTECTION AND SECURITY LAW

# Personal Data: changes to data privacy and security law

The United Kingdom is currently covered by the world's strongest data protection and cybersecurity rules with the implementation of the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA 2018) and the Network and Information Security Directive (NIS Directive).

## GDPR and Data Protection Act

The GDPR regulates the processing carried out by organisations operating with the EU. It focuses on protection of personal data and seeks to ensure transparency, lawful bases for processing, accountability principles and the requirement to record processing activities. It extends the territorial scope of data protection to capture companies that are not domiciled in the EU but who process EU citizens' data.

In order to avoid the large fines that can be imposed (up to 4 per cent of annual turnover in some cases), businesses need to ensure that they are compliant. Companies must analyse their business structure and implement the correct policies and protections when processing data. These policies will need to be amended and updated regularly. The definition of personal data is widely drafted to include any information that can identify an individual, for example, their ISP address. The law continues to change and privacy and security cases are increasing rapidly, with the Information Commission Officers (ICO) (the regulatory board governing the above legislations) already using their power against large corporations. This can be a challenge particularly when cyberattacks are becoming more sophisticated.

## NIS Directive

The NIS Directive is a cybersecurity directive that focuses on the security of IT systems. It applies to operators of essential services in the energy, transport, health, water and digital infrastructure sectors (OES) and also to digital service providers such as digital businesses, online marketplaces, cloud computing services and search engines (DSPs) that offer services to persons within the EU and meet qualifying thresholds.

Under this directive, OES and DSPs are required to take appropriate technical and organisational measures to ensure that network and information systems used by them are secure from leaks and cyber-attacks and to ensure service continuity. There are no set rules for what this means and so companies need to consider how many people have access to their systems, password protections, whether third parties have access and if so, whether it is necessary. The legislation has also implemented reporting obligations, such that if a breach does occur the ICO must be notified within 72 hours.

The ICO's top priority is cybersecurity. The rise in cyber-attacks has already seen the imposition of sanctions and fines in relation to security breaches and the failure to have appropriate measures in place.

The ICO has already demonstrated that if a security breach takes place, even if it is by a disgruntled employee deliberately releasing employees personal data, they will hold the company vicariously liable (a position that is currently being appealed in the court).

## Data sharing

Businesses will often disclose data to other businesses and this can lead to many complex information chains involving:

1. Joint Controllers – where parties share data but jointly determine the purposes and means for processing data;
2. Controllers in Common – where parties share data but need to decide individually the purpose and means for processing data; and
3. Processor/ sub-processor – where parties share data but the processors only act on instructions from the data controller.

It is important for a company to identify what role they play in the supply chain and ensure that they only process and keep the data for the purpose for which it was collected.

The GDPR increased the obligations on both data controllers and processors and sets certain restrictions and conditions when companies share personal data. This is to ensure that the personal data of individuals are protected adequately and handled properly by others.

By imposing fines and sanctions on Facebook, the ICO has demonstrated that it is prepared to take action against companies that are not domiciled in the EU but process and share data of EU citizens. So although a company may not deal with EU citizens directly, it could still process their data (or a member of its supply chain could do so).

Any international company who is investing in, merging with or acquiring an EU company needs to ensure data protection compliance when conducting their due diligence. If a breach occurs a company can face a fine of up to 4 per cent of their annual turnover.


BURY ST. EDMUNDS

# Graeme Kirk

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Graeme Kirk is the senior partner and Head of Immigration at Gross & Co Solicitors. He has specialised in business immigration law since 1981 founding and developing the immigration practice at the firm through recommendations from clients and other professionals, including UK solicitors and overseas lawyers. His clients include international banks, substantial British and foreign corporations, as well as smaller companies and entrepreneurs, and private individuals.

His immigration expertise covers all aspects of immigration from companies wishing to obtain a Sponsors Licence to employ foreign nationals, the Points-Based System Tiers 1-5, applications for entrepreneurs and investors, sole representatives and related family applications to foreign businesses opening operations in the UK.

A prolific speaker at conferences and seminars worldwide, Graeme is co-chairman of the IBA Global Immigration Conference in London held every two years since 2003. He practices at the head office in Bury St Edmunds, Suffolk, and the office in London W1.

*Established in 1848, Gross & Co Solicitors provides high-quality legal advice to a broad spectrum of local, UK and International businesses and individuals. Based in Bury St Edmunds, Suffolk and London, W1, the teams offer legal advice and services in the following areas: Family and Matrimonial Law; Wills, Trusts, Probate; Property – residential & commercial conveyancing; Immigration & Nationality Law; Business Services – including employment law; Charity Law.*

*Ranked as a leading individual in Legal 500 2019, Chambers and Partners and Who's Who Legal, the firm's senior partner Graeme Kirk is widely recommended for his market leading immigration advice to businesses and individuals. Colleague, Sohan Sidhu is also commended in both Who's Who Legal and the Legal 500 directory as always going 'the extra yard' for his clients.*

*The firm seeks to deliver practical, cost-effective solutions to all clients, offering the best available independent legal advice.*

IMMIGRATION LAW

# UK Immigration: the situation post-Brexit

A no-deal Brexit is likely to affect the immigration position of European Economic Area (EEA) nationals arriving in the UK after Brexit.

Despite this, the UK Government has confirmed that all EEA nationals living and exercising Treaty rights in the UK on the 29th March 2019 will be able to apply under the EU Settlement Schemes to continue living in the UK.

If an applicant can prove that he/she has lived in the UK exercising EEA Treaty rights for at least five years, the applicant will be granted settled status as a permanent resident. If not, the applicant will be granted pre-settlement status with the right to apply for settled status after completing five years of qualifying residence, including time before the making of the pre-settlement application. These schemes are due to come into effect by the 30th March 2019.

Currently it is still possible to apply for an old style EEA Permanent Residence Card or Residence Card. However, in most cases, it will be sensible to wait for the new schemes to come into effect, unless the applicant is wishing to pursue an application for British citizenship as soon as possible. In such cases an application for an EEA Permanent Residence Card may still be advisable.

At the same time as clarifying the position of EEA nationals in the UK, the Government has set out its proposals for a new UK immigration system from 2021. The proposals have a number of advantages and disadvantages compared to the current system. The most fundamental proposal is that all EEA nationals will be subject to the same rules as any other foreign national.

Looking at the positive aspect of the proposals, the current Tier 2 scheme for sponsored workers will be expanded and refined in two important ways. Firstly, it will be possible for Tier 2 visas to be obtained for positions coming within the ambit of the Regulated Qualifications Framework (RQF) Level 3 positions upwards. Currently the minimum level other than for shortage occupations is RQF Level 6. This means that a substantially increased number of occupations will be potentially eligible for Tier 2 sponsorship. In addition, the Government is proposing that the current resident labour test which applies to many Tier 2 applications will be removed.

On the negative side, it is believed that the Prime Minister wishes to introduce a minimum annual salary figure for Tier 2 visas of £30,000, meaning that many positions, including nurses, would be unlikely to qualify. However, as a result of what we understand was a Cabinet disagreement, the minimum salary level for Tier 2 applications has been put out to consultation.

The Government also proposes to bring in a scheme of temporary one year visas for low skilled workers, from certain countries which are described as low-risk immigration countries. The intention therefore is that many of the positions currently held by Europeans in the hospitality industry, will be filled by the new low-skilled worker category, which is almost certain to cover all EEA countries, but also cover other countries such as the USA, Canada, Australia and New Zealand, among others. However, such a temporary worker will have to leave the UK at the end of one year and cannot return under this visa category for at least a year. It is going to be very interesting to see how attractive this visa category is to UK employers wishing to employ staff on a long term basis in low-skilled positions, and also how attractive the scheme will be for foreign nationals.

Industry has reacted positively to some of the changes, but with particular concerns expressed about the possible minimum £30,000 per year salary threshold for Tier 2 certificates, and also the possible restrictions of the low-skilled workers scheme. It is also clear that these proposals are likely to be altered over the next two years, particularly if there is a change in Prime Minister.

Graeme Kirk, the senior partner of Gross & Co and Head of its Immigration Department, has specialised in UK immigration law for 38 years and he and his team will be pleased to help UK and foreign businesses and individuals with all advice and assistance.


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Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high-value commercial dispute resolution and contentious corporate matters, often involving an international element. He has conducted a number of reported cases and cross-border disputes.

Shilpen also advises and represents employers, employees and professional clients in all aspects of employment law. He has particular expertise in acting for senior executives, self-employed professionals and company directors in connection with their entire employment needs, including claims in the Employment Tribunal and the High Court.

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Sacha specialises in employment law and has a background in litigation. She approaches legal advice in both contentious and non-contentious matters from a commercial and practical perspective. Sacha has experience in acting for a range of clients from senior executives to SMEs. She has successfully represented individuals in the Employment Tribunal and provides pragmatic solutions for employers in all aspects of employment law.

*gunnercooke is an award-winning law firm, established to challenge, improve and evolve the way legal services are delivered to businesses. We are one of the fastest growing corporate and commercial legal firms in the UK, comprising more than 180 experienced partners. We operate nationally and internationally via offices in London and Manchester.*

*They comprise solely senior, expert lawyers and each of our partners has a minimum of 10,000 hours' practicing experience. They advise with authority, guiding clients through even the most challenging of legal matters.*

EMPLOYMENT

# The New Employment Paradigm: a landscape of change, challenge and opportunity

Employment in the UK has long been a changing landscape, but it is arguably now facing the most significant technology-driven upheaval since the Industrial Revolution of the early 19th Century.

The rapidly advancing technologies of our time have permanently altered the way in which people communicate with each other and this has dramatically impacted the traditional workspace. The digital era has made the static office an obsolete concept, it has created entirely new industries controlled via smartphone apps, and it is increasingly posing questions about the very nature of work and how this is to be valued in a world that is poised for the onslaught of artificial intelligence.

From our perspective as specialist employment advisers, we are seeing a gradual splintering of the country's workforce due to the erosion of the conventional legal relationship between employer and employee. It is an area of law that is straining to keep up with the sheer scale of economic change.

All of this means that employers must stay abreast of developments and acknowledge the inexorable shifts that are happening. Those that do so will survive and thrive, those that do not will increasingly find themselves left behind.

Social media encourages users to interact behind the safety of a screen, with many becoming keyboard warriors airing their grievances in what they perceive to be a private and informal space. However, what of the detrimental effect to companies' reputations? In *Creighton v Together Housing Association Ltd*, an employee with nearly 30 years' service was dismissed for gross misconduct when his employer discovered that he had made a series of offensive 'tweets' concerning the company three years previously. Mr Creighton's unfair dismissal claim, arguing that his tweets were private, was unsurprisingly unsuccessful. How to handle, and in some cases restrict, the use of social media is an issue facing many UK and international companies. The main issue being the inability to police the uniquely open, endless space that the online world has become. Companies are seeking to include social media into their existing disciplinary policies, with many taking the decision to create a separate social media policy altogether.

The prevalence of smartphones has meant that it is now entirely common for employees to record investigatory meetings, or less formal conversations, and then later seek to rely on these recordings at an employment tribunal. Companies cannot be expected to (and indeed shouldn't) search employees before they commence a meeting. Whether these recordings can be admissible as evidence has been the subject of recent discussion. In *Punjab National Bank (International) Ltd v Gosain*, the employee's covert recording of an investigatory meeting, recorded during breaks when the employer representative was absent from the room, was found to be admissible. Tribunals have a wide discretion as to whether they admit covert recordings as evidence, and often will if the recordings are relevant to the case. Such covert recordings are likely to constitute personal data for the purposes of the General Data Protection Regulation (GDPR) and individuals need to consider carefully how they handle and use such data. In addition, the individual being recorded may find that their Right to a Private Life under Article 8 of the Human Rights Act has been infringed.

Artificial intelligence has caused many to be concerned about the replacement of manual labour jobs. Robotic vehicles are being brought in to do the job of a warehouse worker efficiently and for a fraction of the cost. We have already seen a decline in demand for customer service jobs to make way for the implementation of nation-wide self-service checkouts. Companies will need to consider investment in training for staff who carry out manual jobs with a view to transferring their skills, if they are to be retained. The end goal for companies is to be more efficient in how they deliver products and services to the consumer and if that is by way of artificial intelligence replacing human capital then it poses very serious questions.

Black cab drivers have lobbied intensely over the past few years against the emergence of gig-economy platforms such as Uber. The Licensed Taxi Drivers' Association estimates that the 25,000 black cab drivers in London have, on average, suffered lost earnings of £10,000 a year due to the emergence of Uber and similar platforms. The UK has seen a flood of litigation in recent years, specifically challenging the status of the gig-economy worker. As a result of the recent Uber litigation, Uber's drivers were found to be workers, giving them rights such as minimum wage and holiday entitlements under the Working Time Regulations. Uber appealed this decision all the way to the Court of Appeal but was unsuccessful. At the time of writing, the subsequent appeal to the Supreme Court remains pending, however many will be surprised if the Supreme Court departs from earlier decisions. While the majority of consumers may welcome a modern and cost-effective method of travel against a more traditional model, issues such as worker status and health and safety concerns over excessive hours worked continue to generate challenges and negative publicity for these innovative models.

What does all of this mean for the modern employer and employee? The answers are rarely simple. But what is clear is that employers must recognise the intensity of the economic changes and be prepared to continually review and adapt their business practices to retain relevance and a competitive edge within uniquely challenging market conditions. Employees, meanwhile, must also learn to embrace change and ensure that their skills evolve alongside advancing technology to ensure that they remain employable in today's fast-paced and increasingly transitional workspace.


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After graduating from the University of Cambridge, Katherine initially pursued a career in marketing and business development, before re-training to become a lawyer in her mid-twenties. After completing articles with Eversheds, she joined specialist shipping and international trade practice, Mills & Co. where she remained until joining the international law group of the US telecommunications giant, AT&T in 1997.

Katherine held a number of positions within the AT&T international legal group, including as lead lawyer for AT&T's international outsourcing business, before leaving to form Legal Hobbit at the end of 2006, the predecessor practice to Mirkwood Evans Vincent.

*Founded in 2007, Mirkwood Evans Vincent is a UK law firm specialising in Corporate and Commercial Law, with particular emphasis on Technology Law, and Property and Construction Law.*

*The firm advises clients in the telecommunications and business technology sectors both in the UK and worldwide. Expertise in telecommunications and business technology law allows the firm to tackle complex legal cases that are beyond the scope of most other law firms.*

*In addition to specialist departments focusing on business technology and commercial property/construction law, Mirkwood Evans Vincent also advises clients operating internationally across a wide range of industries, in a full range of commercial and corporate transactions, from company formations, shareholder, investment and corporate finance agreements, through the creation of standard terms of business and employment contracts; reviewing and negotiating complex multi-jurisdictional customer and supplier agreements; and providing sound business centric advice on corporate restructuring options.*

TECHNOLOGY

# Playing By the Rules: establishing effective DLT communities

## What is a distributed ledger?

Distributed ledger technology (DLT) continues to enable the explosion of crypto-currencies, that we have seen over the last few years. As well as being the driving force behind Bitcoin, it has many other applications that make it useful and relevant to businesses in a range of industries.

A distributed ledger is an asset database that can be shared across a network of multiple sites, geographies or institutions. Distributed ledgers are decentralised to eliminate the need for a central authority (or intermediary) to process or authorise transactions.

All participants within a network have access to their own identical copy of the ledger, which is subsequently timestamped and given a unique cryptographic signature. Any changes made to the ledger are reflected in all copies almost immediately. Entries may be updated by one, some or all of the participants, subject to rules agreed by the network. Distributed ledgers provide a verifiable and auditable history of all information stored on any particular dataset.

DLT is being used today to verify the provenance of commodities, ensuring for instance that conflict diamonds do not find their way into the legitimate jewellery trade. Every transaction between members of this DLT community is logged, so that each participant in the community can track diamonds from the date they are mined to the date they are sold in their cut form as an item of jewellery.

In a business-to-business context, ledgers are only accessible to agreed participants with the secure login details required to access the DLT database. DLT is a more secure solution than a traditional database, because each participant has a copy of the entire ledger (thereby meaning that a fraudster would need to alter various independent copies of the database held by multiple separate individuals). It is also more secure because the numerical (or cryptographic) value of each line in the database is dependent on the previous line, which is dependent on the line before that and so on. The logic which supports the hype around DLT security is not that a distributed ledger is incapable of being manipulated or falsified, but rather that it only becomes worth mobilising the kind of processing power required to falsify a distributed ledger if the potential value to the criminal is significantly greater than the cost of marshalling the processing power required to break the underlying cryptographic code.

Creating a DLT and setting up the rules of the DLT community is an expensive business, in terms of expenditure on a technology platform provider and on legal support to draft and negotiate the rules applicable to the DLT community. On the upside, it can help clients to market their goods and services in new ways, by providing verifiable quality assurances not easily available using other methodologies. It is not the right solution for all businesses, but in the right context, it can be game-changing for some.

## Data privacy implications of DLT

Distributed ledgers pass data (including potentially commercially sensitive and personal data) only to those participants who are party to a deal and reasonably require access to such information.

Businesses need to understand that parties with access to personal data would be required to enter into contractual agreements with respect to the use, processing and cross-border transfers of the respective data to comply with national data privacy laws, including the European General Data Protection Directive incorporated into English law as the Data Protection Act 2018.

## Due diligence

Companies should make sure that their lawyers and accountants are involved in due diligence on their chosen technology provider, to make sure that changes in tax rules and the addition of new jurisdictions can be easily supported without major (and expensive) software re-writes. Good legal advice can help draft, review or amend the applicable technology provider agreement to ensure that interests are properly protected.

Mirkwood Evans Vincent is a leading technology law firm in the UK. With our IR Global connections to specialist colleagues in the technology legal sector all over the world, we can help you to ensure that you get the right agreements in place in a cost-effective way, first time, every time.

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