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The Legal 500 Country Comparative Guides

United Kingdom

INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in United Kingdom.

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UNITED KINGDOM
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Foreign direct investment (FDI) refers to direct investment equity flows in the reporting economy.

During the 2022 to 2023 financial year, 1,654 FDI projects landed in the UK.

Between 2021 to 2022 and 2022 to 2023, the number of FDI projects in the UK increased by 4%.

More granularly, statistics over the last three years show:

- UK foreign direct investment for 2022 was **$44.13B**, a **645.1% increase** from 2021.
- UK foreign direct investment for 2021 was **$5.92B**, a **95.53% decline** from 2020.
- U.K. foreign direct investment for 2020 was **$132.48B**, a **569.38% increase** from 2019.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

New sustainable investments tend to be the most common form of FDI in the UK. This is closely followed by FDI as expansion capital (including retentions) and M&A (including joint ventures).

The UK has led the world in attracting renewable sector FDI based on both capital expenditure and job creation.

In October 2023, the UK Government announced that 100 regeneration projects will support thousands of new jobs and boost communities. £60m was committed to transform brownfield land and build 6,000 homes.

The UK has attracted the third highest amount of greenfield FDI over the last 20 years, behind only China and the United States.

Companies with FDI links accounted for more than half of the reported capital acquisitions totals in every year between 2015 and 2021. Just over half of reported capital acquisitions in 2021 were from companies with FDI links.

For capital acquisitions by asset, the highest UK total values were found in new construction projects, machinery and equipment, and vehicles. The lowest were in mineral exploration and purchased databases.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Generally foreign investors are allowed to own 100% of a domestic company.

There are some restrictions imposed in sensitive sectors including telecommunications and those sectors covered by the National Security and Investment Act 2021 (NSIA).

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Generally foreign investors are allowed to invest and hold the same class of stock or other equity securities as domestic shareholders.

As noted in 3 above, there are some restrictions imposed by the NSIA.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

The vast majority of UK companies are private companies limited by shares (suffix is "Ltd") which is the most popular legal form for commercial enterprises.

Key characteristics of a private company limited by shares include:

- Legal personality separate from that of its shareholders and directors.
- Unlimited capacity; can do anything that a natural person can do, including entering into contracts and holding assets and property in its own name.
- Shareholders' participation in profits limited to receiving dividends paid by the company or, on a winding up, the distribution of surplus assets.
- No general obligation of shareholder to contribute to the company's losses.
- Company liable for its own debts and obligations.
- Shareholders not liable beyond their unpaid capital contribution as shareholders.
- Shareholder actions do not bind the company, though those of directors may do.
- Limited liability protection is lost where directors/ shareholders are required to give personal guarantees. Directors have some potential personal liability to third parties e.g. in the case of wrongful trading by an insolvent company.
- Responsibility for managing the company generally delegated to directors. Certain decisions are reserved to shareholders by statute and this may also be provided for in the articles of association and/or a shareholders' agreement.
- Directors' duties and some corporate governance requirements prescribed by statute.

Other forms of corporate body include:

- Public companies limited by shares (suffix is "PLC"), which typically although not always have publicly traded shares.
- private companies limited by guarantee, which have no share capital, which is the popular form for not-for-profit enterprises.
- Limited liability partnerships.
- Other forms such as unlimited companies and unregistered companies such as companies incorporated under Royal Charter.

The main difference between a public and a private company is that public companies are able to offer shares to the public.

A PLC must have a minimum allotted share capital of at least £50,000.

There are stricter disclosure requirements for public companies than private companies and requirements relating to matters such as retaining a company secretary, holding annual general meetings and passing all shareholder resolutions at general meetings.

The capital maintenance rules are stricter for public companies than private companies. PLCs will be subject to the UK Takeover Code.

Members of a private company limited by guarantee are not liable beyond any amount that they have agreed to contribute in the event that the company is wound up.

It is common for a company limited by guarantee to have a no distribution restriction meaning that any profits will not be distributed to members.

A limited liability partnership (LLP) has a separate legal personality but is taxed as a partnership and has the organisational flexibility of a general partnership.

There is no limit on the liability of members of an unlimited company and the rules on capital maintenance therefore do not apply to the same extent.

Unlimited companies are rare in practice but are used in situations where limiting liability is not an issue but non-disclosure of information is.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

The predominant form of company is a private company limited by shares representing 92.7% of corporate bodies registered with the UK Registrar of Companies for

FY23.

Most foreign investors will invest in private companies limited by shares as that is the most prevalent form of corporate body in the UK.

However, preferences may be informed by other factors such as disclosure requirements and tax. An unlimited company does not have to file its annual accounts with the UK Registrar of Companies ("Companies House") and a limited liability partnership has a separate legal personality but is taxed as a partnership and has the organisational flexibility of a general partnership.

These characteristics may in some circumstances be attractive to foreign shareholders.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

A company is registered by filing the necessary documents and paying the required fee at Companies House.

The company is brought into existence when the Registrar of Companies issues the certificate of incorporation.

The prospective owners of the company can either:

- Register a new company with documents that are specifically tailored to their requirements, although these may follow the form of one of the sets of model articles prescribed by statute; or
- Buy a company that has already been incorporated but has not yet traded (a shelf company).

Companies House is the executive government agency which approves incorporation applications.

If sensitive words are proposed to be used as part of the proposed company name other government departments may be required to give approvals. Companies House maintains a list of "sensitive words" that can be consulted.

A company is incorporated and registered at Companies House with articles of association (either prescribed model articles or bespoke articles), Form IN01 and registration fee.

Form IN01 must include details of at least one shareholder and at least one director (who may be the same person as the shareholder).

A private company limited by shares may be incorporated with 1 share typically of £1.

There is no minimum share capital requirement, but there must be at least one allotted and issued share that is fully paid up.

A public company must have a minimum allotted share capital of at least £50,000.

Certain forms of corporate body do not have share capital for example a private company limited by guarantee and an unlimited company.

A company can generally be incorporated within 24 hours.

At least one shareholder or member is required.

For a private company limited by shares, a list of subscribers is provided at incorporation and then through an annual confirmation statement which is available online via the Companies House website.

Private companies limited by guarantee are only required to provide a list of members of incorporation.

Information about persons with significant control is also publicly available.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

The NSIA creates a stand-alone statutory regime for government scrutiny of corporate acquisitions and investments for the purposes of protecting national security in the UK.

A key aspect of the NSIA is the imposition of a compulsory obligation on proposed acquirers of shares or voting rights (exceeding defined thresholds) in companies and other entities that are active in the UK in one or more 17 key sectors to notify and obtain government clearance for their transaction before it proceeds.

The 17 key sectors are:

- Advanced Materials;
- Advanced Robotics;
- Artificial Intelligence;
- Civil Nuclear; Communications;
- Computing Hardware;
- Critical Suppliers to Government;
- Cryptographic Authentication;
- Data Infrastructure; Defence;
- Energy;
- Military and Dual-Use Technologies;
- Quantum Technologies;
- Satellite and Space Technology;
- Suppliers to Emergency Services;
- Synthetic Biology; and
- Transport

A failure to comply with the mandatory notification regime will result in the non-notified transaction being automatically void and could also lead to severe civil and criminal penalties.

The mandatory notification regime does not apply to acquisitions of control over assets, irrespective of sector.

However, asset acquisitions can be notified under the voluntary notification regime if the parties consider that their transaction could raise national security issues.

The government also has powers to 'call in' for review any in-scope transaction (whether or not notified) where there is a reasonable suspicion that it could give rise to a risk to national security.

Although the NSIA applies in principle to domestic as well as foreign bidders, the focus of the regime is clearly foreign investment.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

No prior approval is required to acquire shares in a public company, either on the market or privately.

If the company is subject to the Disclosure Guidance and Transparency Rules the investor will need to notify the company of the percentage of voting rights that it holds as a shareholder if, as a result of the acquisition, the percentage of voting rights reaches, exceeds or falls below certain thresholds being 3% and each 1% threshold above 3%.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

If an investor (together with anyone acting in concert) acquires an interest in shares carrying 30% or more of the voting rights in a company to which the Takeover Code applies, that person must make a mandatory offer in cash (or including a cash alternative) at no less than the highest price paid by the bidder during 12 months prior to the announcement of the offer. This does not extend to shares held in treasury.

The Takeover Code applies to:

(i) companies which have their registered offices in the UK, the Channel Islands or the Isle of Man, if any of their securities are admitted to trading on a UK regulated market or a UK multilateral trading facility or on any stock exchange in the Channel Islands or the Isle of Man; or

(ii) all offers for public or certain private companies (and, where appropriate, companies created by charter or under statute and UK Societas), which have their registered offices in the UK, the Channel Islands or the Isle of Man and which are considered by the Panel on Takeovers and Mergers to have their central place of management and control in the UK, the Channel Islands or the Isle of Man.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The consenting regime for a new facility will be an application for planning permission made to the Local Planning Authority. This is usually the local municipal authority.

The process is principally governed by the Town and Country Planning Act 1990.

The application will set out the details of the facility, including floorspace, plans and drawings, the types of uses (such as offices/storage/distribution and parking) and details of environmental mitigation measures.

The application will be accompanied by various planning, environmental and highways reports.

To obtain consent, the proposed facility should be in accordance with Local Development Plan, which sets out the approved land use classes/zoning for the site.

The same process applies for greenfield and brownfield land.

The consenting process generally requires specialist technical and legal advice from consultants and can take between six months and a year from submission of the application before planning permission is granted.

The planning permission will be subject to conditions which will need to be discharged before construction can take place.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

An investor can do a transaction in the country in any currency.

(a) No.

(b) No.

(c) No.

(a) No (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

(b) No (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

(c) Yes (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

An investor can do a transaction in the country in any currency.

(a) No.

(b) No.

(c) No.

(a) No (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

(b) No (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

(c) Yes (as a matter of the law in the UK and subject to any restrictions applicable in the other territory)

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

N/A

N/A

No (as a matter of the law in the UK and subject to any restrictions applicable in the other territory) except that there are limits on the ability for an individual person to take physical cash (banknotes) out of the country

N/A

14. Is there a tax or duty on foreign currency conversion?

There is no tax or duty on foreign currency conversion per se. However, profits made from a currency speculation or conversion activity may be subject to tax in the same way as other trade/business profits.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

No.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

An acquisition of shares in a UK-incorporated company will typically attract UK stamp duty at a rate of 0.5%.

An acquisition of assets other than shares will not typically attract UK stamp duty. Certain asset classes may attract a separate form of transfer tax (e.g., acquisitions of UK land are generally subject to tax at rates which vary according to the type of property and its location within the UK. For non-residential property the headline rates are typically around 5%).

UK VAT is not normally payable in relation to an acquisition of shares but may be payable in relation to an acquisition of other assets.

17. When is a stamp duty required to be paid?

Interest and penalties typically become payable if stamp duty is not paid within thirty (30) days of execution of the relevant share transfer instrument.

The register of members of the company cannot be updated to reflect the transfer until stamp duty has been paid and the UK revenue authority has processed the transaction.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Shares in private domestic companies are easily transferable via an instrument of transfer called a stock transfer form. The transfer is required to be approved by the directors of the company.

The articles of association of a company on the public record or any shareholders' agreement which is a private document may impose restrictions on transfer including a right of first refusal to existing shareholders.

Private companies limited by guarantee have membership interests rather than shares and the transferability of these interests will depend on the constitutional documents of the company. It is possible for these interests not to be transferable.

Shares can be held by persons registered or resident outside the home jurisdiction subject to points made above on the NSIA.

The approval of the directors of the company will be required to register a transfer of shares. Other approval requirements may be included in the articles of association or any shareholders' agreement applicable to the company.

For a private company limited by shares information is provided on shareholders and their shareholdings on an annual basis in a confirmation statement, which is available on public record at Companies House.

Event driven filings are required to be made at Companies House on allotments of shares and changes to share capital although these are not required to include shareholder names.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes. A key aspect of the NSIA is a mandatory pre-notification system requiring proposed acquirers of shares or voting rights (exceeding defined thresholds) in companies and other entities undertaking specified activities in the UK in one or more 17 key sectors to notify and obtain the UK government's clearance for their transaction before it proceeds.

Notifications under the NSIA must be made to the Investment Security Unit (ISU), which sits within the Cabinet Office.

After a notification has been submitted, the ISU will confirm whether the notification has been accepted or rejected "as soon as is reasonably practicable" after receiving it.

Once a notification form has been accepted, the ISU will decide within an initial 30 working day 'review period' (starting on the date the notification is accepted) either to:

(a) clear the transaction; or

(b) exercise its 'call-in' power to initiate a full national security assessment of the transaction.

If the ISU decides to clear the transaction at this initial stage, notice will be given to the parties before the end of the review period, confirming that no further action will be taken under the NSIA.

If the ISU decides to 'call in' the transaction to investigate further, it will have a second 30 working day 'assessment period' in which to carry out a full national security assessment.

During this period, the ISU will carry out a detailed assessment of the potential national security risks and decide what, if any, action it considers necessary and proportionate to address any of these risks.

The ISU may extend the assessment period for an additional period of 45 working days.

This means that the statutory timetable for review is potentially up to 105 working days, although the overall assessment period could also be longer than this in practice if, for example, requests for further information are issued (which will have the effect of pausing the statutory timetable), or if the ISU and the parties agree a voluntary period for further scrutiny after the additional 45 working day period ends.

A transaction will be subject to mandatory notification under the NSIA if both of the following criteria are met:

Gaining control. As a result of the acquisition, the acquirer must gain control of a 'qualifying entity' by either:

a. increasing the percentage of shares that it holds in the entity to more than 25%, more than 50% or at least 75%;

b. increasing the percentage of voting rights that it holds in the entity to more than 25%, more than 50% or at least 75%; or

c. acquiring voting rights in the entity that enable it to secure or prevent the passage of any class of resolution governing the entity's affairs.

2. Sector requirement: the subject of the acquisition must be a 'qualifying entity' that undertakes specified activities in the UK within one of 17 sensitive areas of the economy, namely:

- Advanced Materials;
- Advanced Robotics;
- Artificial Intelligence;
- Civil Nuclear;
- Communications;
- Computing Hardware;
- Critical Suppliers to Government;
- Cryptographic Authentication;
- Data Infrastructure;
- Defence;
- Energy;
- Military and Dual-Use Technologies;
- Quantum Technologies;
- Satellite and Space Technology;
- Suppliers to Emergency Services; and
- Synthetic Biology; and Transport.

A qualifying entity is any entity (other than an individual), whether or not a legal person.

A qualifying entity therefore includes (but is not limited to) the following UK companies:

- Limited liability partnerships;
- Partnerships;
- Unincorporated associations; and
- Trusts.

An entity that is formed or recognised outside the UK will also constitute a qualifying entity if it either carries on activities in the UK or supplies goods or services to persons in the UK.

Yes. The UK government also has powers to "call in" for review any in-scope transaction in relation to a qualifying entity (whether or not notified) where there is a reasonable suspicion that it has given, or could give rise, to a risk to national security.

A call-in notice may be issued at any time while the transaction is in progress or contemplation, or within a specified period following its completion.

If a national security risk has been found, the UK government can make a final order to block a transaction (or require a transaction to be unwound).

Yes. Indirect acquisitions of local subsidiaries are capable of falling within the scope of the mandatory notification regime under the NSIA.

An entity that is formed or recognised outside the UK will constitute a 'qualifying entity' for the purposes of the NSIA if it either carries on activities in the UK or supplies goods or services to persons in the UK (see response to question 19.3).

(a) Yes. The UK government can use the powers described in the response to question 19.4 and block a transaction.

20. What are typical exit transactions for foreign companies?

The same range of exit transactions are available for both foreign-owned and UK-owned companies.

Typical exit transactions are largely the same in all European jurisdictions and would include:

- IPO
- Sale to Private Equity or financial, trade or strategic buyer
- Management Buy Out or third party funded transfer of ownership to employees using an Employee Ownership Trust (EOT) structure

Share sales are more common than asset/business sales, and auction processes are regularly used.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

ii. A private company is not able to list on the domestic stock market, and would need to be re-registered as a public company .

The preferred location for an IPO will depend on where a company operates and its sector amongst other factors.

London is still considered one of the main stock markets for IPOs.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

M&A / Investment / JV Agreements can provide for resolution in domestic courts or through international arbitration.

The latter may be agreed where buyers, sellers and/or investors are incorporated outside the UK.

This is very much on a case-by-case basis, though anecdotally we have seen an increase in arbitration clauses being used with English law as governing law, but arbitration with either ICC or LCIA rules applying and a seat being stated somewhere independent such as Geneva.

This may be a post Brexit stance particularly with EU counterparties.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The Civil Procedure Rules set out time periods for many of the steps in proceedings.

However, the Court has a wide discretion under the Civil Procedure Rules to fix a trial timetable and deadlines for the various stages of the civil litigation process.

The Court determines trial windows based on the urgency of the matter, the likely length of trial and the court's availability.

It is common for a commercial dispute on the fast or multi track (a claim above £10,000) to reach trial in one to two years from the date of issue of proceedings.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

The UK is renowned for having an independent and impartial judicial system.

The court system is effective and there is an appeals process based on factual and legal grounds.

London is regarded as a global hub for arbitration and has a well-developed legal framework governing arbitration by way of the Arbitration Act 1996.

Arbitral awards made in England and Wales can be enforced through the courts in the same way as court judgments.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Generally, the UK is free from instances of abuse of foreign investors.

While there are many strict rules and regulations that might apply to and scrutinise foreign investment transactions (e.g. in relation to money laundering and compliance in general), these are there to protect and maintain the integrity of the UK as a secure and stable place for foreign investors.

The level of “red tape” may depend on the sectors being invested in.

26. Are international arbitral awards recognized and enforced in your country?

The UK is a signatory of the New York Convention and has enacted it into domestic legislation.

Therefore, international arbitral awards given in other signatory states are recognisable and enforceable in the UK.

Recognition

The overwhelming majority of arbitral awards are complied with. Surveys have shown that compliance reaches up to 90%

Enforcement

In keeping with a generally pro-arbitration approach, the English court will only rarely refuse to enforce arbitral awards.

Section 66 of the Arbitration Act 1996 provides a summary procedure for the enforcement of arbitral awards.

The only mandatory ground for refusing permission to enforce an award under section 66 is where the tribunal lacked substantive jurisdiction to make the award.

Enforcement may also be refused as a matter of discretion, including where enforcement would be contrary to public policy.

Sections 101 to 104 Arbitration Act 1996 specifically provide for the enforcement of New York Convention awards.

Section 103 contains the same grounds for refusing enforcement of an award as article V New York Convention.

The court has no discretion to refuse enforcement of a New York Convention award unless one of these grounds is made out.

27. Are there foreign investment protection treaties in place between your country and major other countries?

The UK is currently party to 2,221 Bilateral Investment Treaties.

The UK is also a signatory to 370 Treaties with Investment Provision with major countries such as Australia, New Zealand, Singapore, Japan and the European Union.

The UK recently joined the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

The CPTPP includes investor protections and a mechanism to settle investor state disputes. It is expected to come into force in the second half of 2024.

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