

## Expanding Your Business Horizons

Contact us with any Company Commercial enquiries

Changes in the legal, economic and political landscapes mean that both businesses and individuals must keep abreast of developments in order to remain competitive within the market place.

Magrath LLP act for a variety of clients in every field of commercial activity. We provide corporate and commercial advice to start-ups, SME's, privately owned and publically owned companies, partnerships, sole proprietors and not-for-profit organisations.

We work with other departments across the firm to provide clients with straightforward advice, based on detailed knowledge of market conditions and current legislation.

The Company Commercial team at Magrath LLP are very happy to take enquiries from clients, both new and existing, and from our business partners on any aspect of this briefing sheet, or any aspect of Company Commercial Law in general.

### How can we help your business?

The Company Commercial team would be happy to assist you and your business with any of the following matters:

- Mergers, acquisitions and disposals
- Commercial Law including advising on

### Summer Briefing Sheet Topics:

- How can we help your business?
- Doing Business In The UK; maintaining control from overseas
- Company Names; is your proposed company name suitable?
- Junior Trading Markets; is it time to consider listing your company on the PLUS market?

and drafting agency, distribution, franchise, shareholder, licence and joint venture agreements

- Raising funds (both on the public market and by private methods)
- Data Protection
- UK Company Secretarial, including company formation, registered office facilities, secretarial services, preparation of minutes, resolutions and statutory forms
- Standard terms of business
- Venture capital and private equity arrangements
- Banking and related security documentation
- Regulatory matters including advising on the rules of the various regulatory markets and corporate governance issues.

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# Doing Business in the UK

Increasingly we are being approached by overseas companies who want to take advantage of the opportunities for business development and future growth that establishing a business in the UK offers. Typically these clients have two main goals:

1. to establish a business presence suitable for the type of business they wish to engage in and the clients they will be looking to attract; and
2. to ensure the necessary safeguards are in place so that despite the distance between the UK and the overseas entity, the overseas entity still maintains control.

## Which business structure?

The decision as to which business structure to adopt will be led by:

- the type of business you wish to carry out;
- your intended growth; and
- the preference of your clients.

In our experience we find that most suppliers and customers wish to do business with a known UK entity i.e. one with a strong legal presence in the UK, typically as a registered company.

The purpose of these briefing sheets is to discuss areas that are of interest to our clients and as such we shall discuss doing business in the UK through a limited company. It is worth noting that there are several different business structures that could be used, most notably through the appointment of an agent in the UK or by registering your overseas company with Companies House. If you would like any information regarding the various options available to you then please do contact a member of the Company Commercial team.

Doing business through a limited company will provide certainty for your suppliers and customers as they will be contracting directly through a publicly registered legal entity which is required to adhere to a strict set of rules and regulations when carrying out its business.

For the overseas business, **operating through a limited company will assist in building a brand**, offers a **level of protection for the company name**, and may provide tax advantages. Should the company look to expand, then it will provide a **platform from which to raise capital** through the sale of shares, or a **base from which to obtain bank funding**. Due to the limited liability status of

## The key features of a limited company

- Limited liability
- Quick to incorporate
- Low annual fees to maintain the company
- Can tailor the company constitution to suit the needs of the company
- No need for UK based shareholders
- Shareholders can be corporate bodies or individuals
- No need for a UK based Director
- No legal requirement to have a Company Secretary
- Must have a UK registered office

the company a shareholder's liability is capped at the value of their shareholding and they will not be liable beyond this for any loss caused by the company to another, or in the event that the company goes into administration or is otherwise dissolved. This structure therefore provides protection against financial exposure.

## Do the company officers or shareholders need to be in the UK?

No. **The company directors and shareholders can all be based overseas** and do not need to have any place of residence in the UK. A company is no longer required to have a company secretary, but if it chooses to have one, they also do not need to reside in the UK.

We advise that overseas companies consider appointing a company secretary to ensure that the company's statutory filing requirements are met. Whilst the directors can carry out this task, it is often found that having one person dedicated to secretarial duties ensures that responsibility for this is managed efficiently.

The only UK based element to establishing a company is that **the company must have a UK registered office** where official documents can be sent. This does not have to be the actual office where the company does business, but an address where documents can be received and forwarded to the company. The Company Commercial department are pleased to make available Magrath LLP's address as a registered office for your company and our company secretarial company to act as your company secretary.



## Maintaining control of your UK business from overseas

All companies, whether wholly owned by an overseas parent company or owned by UK based shareholders, will want to ensure that they maintain control over the actions of their directors. This is most apparent where a company is owned by an overseas parent company. Often the overseas parent appoints employee directors in the UK and needs to be reassured that the people they have recruited to manage the day to day affairs are always acting in the company's best interests despite the parent company being some distance from the day to day running of the company.

### There are several mechanisms that can be utilised to maintain the parent company's control:

- Consider promoting the use of conference calls and ensuring the company's constitution states that all meetings can be held in this way.
- Put in place a schedule of reserved matters. This is a document detailing what decisions a director would not be allowed to make without obtaining the prior permission from the parent company. This would often include the entering into of substantial contracts, disposing of assets, taking a legal interest in property, or other significant matters not directly related to the day to day running of the business.
- Ensure that you have comprehensive contracts in place with the directors that detail the remit of their duties and responsibilities. In addition you may wish to consider making any breach of their duties to the company or of the schedule of reserved matters a

material breach of contract which would justify dismissal.

- Have clear reporting procedures in place to ensure that managers keep in consistent contact with the directors and that directors are periodically reminded of their duties and the limits on them.

## New Companies House Online Service; is your proposed company name suitable?

Companies House has introduced a new online search facility whereby those people looking to set up a new company can enter their proposed company name to see whether it will be accepted by Companies House. The Companies Act 2006 ("CA06") has led to significant changes to the way a company name is classified and whether it is deemed to be 'the same as' another registered business name.

Under the CA06, restrictions are now placed on all individuals and business entities which carry on business in the UK with the exception of individuals or partnerships trading under their own names. Key amendments include the extension of existing restrictions to encompass any partnership with corporate members and all overseas companies that carry on business in the UK as well as those with a place of business here. The CA06 also extends an existing prohibition banning names which are misleading and publically harmful to all business names.

Until very recently, the business name search facility available on the Companies House website only displayed similarly spelt names in an alphabetical order and would not automatically include names deemed to be the same as another. This limitation resulted in the refusal of many



applications for incorporation or change of business name on the basis that the chosen name was deemed the 'same as' another business entity already registered. Taking an example from the Companies House website, the following would be deemed 'the same as' each other, highlighting how challenging it could be prior to this new facility to choose an appropriate name

'Hands Limited' is 'the same as':

- Hand-S Limited or Ltd;
- H and S Public Limited Company (or PLC);
- H & S Services Limited (or Ltd);

- @H & S Limited (or Ltd);
- Hands: Limited (or Ltd);
- # H & S Limited (or Ltd);

In light of the increased regulation over this area together with the difficulty in ascertaining how a name is assessed, this facility helpfully lists names which are deemed to be the 'same as' other registered names in light of the CA06 requirements. In the event that no conflicting names are found, the company may proceed with reassurance that their application will not be delayed through business name implications.

## Junior Trading Markets – Is now the right time for your company to consider an admission to trading on the PLUS market?

Whether you are a small and ambitious company venturing into the public markets for the first time, a large fund seeking a gateway to a wider pool of capital or a specialist trader with products aimed at sophisticated clients, Magrath LLP is able to assist your company achieve its business goals via the PLUS market.

The PLUS market is a UK stock market suited to small, emerging or expanding companies which are looking to raise equity finance and enhance their corporate profile. Formerly known as OFEX, PLUS has positioned itself as a real alternative to the AIM market (the junior market to the London Stock Exchange for small and mid-sized companies) and has gained increasing credibility since the award of "Recognised Exchange Status" by the FSA in 2007. Although smaller in size than AIM, the PLUS market currently holds an impressive 173 quoted companies which collectively capitalise at approximately £2.3bn.

### PLUS Quoted Companies

PLUS provides many of the same advantages to companies as the AIM market, such as the ability to raise funds, increase a company's profile and offer tax advantages for investors. In addition, PLUS also offers lower costs and a greater degree of flexibility in terms of its regulatory regime.

Companies may join the PLUS-quoted market via the following routes:

- Introduction onto PLUS  
Companies can seek admission to PLUS to raise their

### The main advantages of listing on PLUS are:

- The opportunity to raise the company's profile and status;
- Access to a market specifically focused on the needs of smaller companies;
- An increased ability to raise equity-based finance from both institutional and private investors, particularly if you are a young company;
- A means of establishing improved financial controls, an improved system of management reporting, and timely production of management accounts.

profile and gain an independent valuation of their company, rather than for fundraising purposes. In such situations, the company's securities are 'introduced' to PLUS and the company may opt to raise funds at a later date. To do so thereafter, the company will need to make an admission announcement, serve an application form and enclose a comparatively small amount of supporting literature.

- Private Placement  
Companies applying to PLUS are usually small in nature and seek a capital injection to grow and develop. Companies wishing to approach a limited number of potential investors may do so via PLUS without requiring a full prospectus (provided that the company's

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securities are offered to less than 100 people). In this instance, the company's PLUS corporate adviser is required to file a private placement memorandum with PLUS. This memorandum is not for public circulation and therefore does not have to go into the detail encapsulated by a full prospectus or admission document. This therefore reduces the cost and speed of a placement.

#### ■ IPO

A company wishing to raise money from a wide pool of potential investors through an IPO will need to produce a prospectus unless the offering is for less than EUR 2.5m, in which case an admission document will be required.

The prospectus/admission document will represent the main source of information for potential investors and for PLUS, and is also used for marketing purposes. An

IPO is the most expensive way of joining any public market due to the level of detailed verification required to produce the prospectus/admission document.

### PLUS Listed Companies

As well as providing a market for young companies to raise funds cost-effectively, PLUS also operates a trading system upon which shares in any public company can be traded. Companies of all types and domiciles which already hold a primary quotation on other markets may apply for admittance to PLUS thereby becoming 'PLUS-traded'. There is also no additional admission fee for this listing.

This PLUS admission allows companies to maximise the benefit of their listing by trading on two different platforms, increasing market exposure and potential liquidity.

### The main advantages for your company of choosing PLUS over AIM:

- A cost-effective admission process - the cost of entering PLUS can be less than £100,000 if no prospectus is required, compared to a cost of between £350,000 – £1m for an AIM listing.
- Fewer appointments are necessary for a PLUS admission - although a Corporate Advisor, Accountant and Solicitor will be necessary, there is no requirement to retain a Broker.
- A flexible regulatory framework is offered which balances the needs of investors and growing companies i.e. no Internal Financial Reporting Standards imposed, no minimum trading record, free float or market capitalisation value.
- The PLUS trading platform is quote-driven and is supported by competing market-makers, which leads to less price volatility.
- PLUS is fully transparent and interacts with the leading data vendors such as Bloomberg, Reuters and Fidessa.
- The PLUS market offers real-time surveillance of price movements and ensures a high level of data integrity.
- Various tax planning benefits and reliefs are available to the individual investor in PLUS traded shares via CGT Taper Relief, CGT Gift Relief, Inheritance Tax Business Property Relief, and through the Enterprise Investment Scheme and Venture Capital Trusts. Corporate investors may also be able to benefit from the Corporate Venture Scheme and Substantial Shareholding Exemption.

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