Implantation in the UK: Thoughts & procedures

By Gautam Khurana, India Law Offices and Ian Baker, Miller Rosenfalck LLP

India Law Offices

D - 19 (GF) & D - 31, South Extension - I
New Delhi - 110 049
Tel: +91 11 2462 2216, 2462218
Fax : +91 11 2465 4364
Email: g.khurana@indialawoffices.com

The UK is Europe's No. 1 destination for foreign direct investment and, given the historical and cultural links between the UK and India, it is not surprising that Indian companies and individuals have been active in investing in the UK. Such investment ranges from setting up representative offices to acquiring some of the UK's largest and most historic industrial concerns.

A brief overview of some key issues to think about when contemplating setting up in the UK is provided below.

An open economy

The UK has no exchange controls or currency regulations and the repatriation of income or capital back to the investor's country of origin is unrestricted. UK Trade and Investment provides potential investors with information on how to obtain market research, financial support and so on.

Business structures

When an Indian company decides to make a move towards implantation within the UK, it will need to think about the appropriate corporate structure.

The limited company is by far the most common form of business structure in the UK. A private limited company needs only £1 in share capital and a minimum of one director, while for public limited companies the minimum capital requirement is £50,000. The directors of UK companies must provide adequate evidence of their identity, but do not have to be resident in the UK.

A branch office is not a separate legal entity from its parent organization, but rather simply represents that organization. All dealings are entered into directly by the parent organization.

The limited liability partnership (LLP) under UK law is treated as a corporate entity and therefore can limit its liability to third parties. It does not have share capital, and ownership is in the proportions agreed in the partnership deed. When it comes to taxation, the partners are personally liable for their proportion of the LLP's profits (even if not drawn out in cash), as opposed to a company, where corporation tax is payable by the entity and shareholders are only taxed on income received as dividends.

Process for setting up in the UK

Any branch office or corporate entity must be registered with the UK companies registrar (Companies House). It is very quick to register a company in the UK once the promoters have made the basic decisions about the structure of the entity.

For a private limited company, at least one director needs to be appointed; there has to be at least one shareholder holding one share of any value; and the company needs to have a registered office within England. The office does not have to be a trading address, and could for example be maintained at the premises of the company's lawyers.

For the subsidiary of an Indian company, the shareholder will likely be the parent company in India, which can limit its capital contribution to a nominal amount, perhaps funding the set-up costs and initial expenses by way of an intra-group loan.

UK companies have an obligation to file their articles of association, which form the company's formal constitution, and to file annual accounts. They must notify Companies House on an ongoing basis of any changes to the company's directors, any changes in share ownership (on an annual basis) or any issue of new shares, and must keep their own statutory registers of such changes, along with the minutes of meetings of the board of directors and of the shareholders.

Companies must also register with the tax authorities (HMRC) for direct taxation (corporation tax on the company's profits, employment-related taxes and national insurance contributions in respect of employees' earnings) and indirect taxes (value-added tax, which is chargeable on most goods and services rendered in the UK and for which calculations must be submitted at least every quarter).

Having established the company on a formal basis, the directors will want to open a bank account to provide the basis for future trading. Although from a practical point of view banks have the ability to open an account quickly, new businesses in the UK should allow sufficient time for the necessary background checks and information gathering.

Legislation in the UK, as now in many other jurisdictions around the world, aimed at combating fraud or the movement of funds for the purposes of crime or terrorism, places a heavy responsibility on banks (and on other professionals such as lawyers and accountants) to ensure that they adequately verify the identity of the ultimate beneficial owners of any business set up in the UK, and that the purposes for which the business is set up are legitimate and its sources of financing equally so.

Gautam Khurana is the managing partner at India Law Offices in New Delhi. Ian Baker is a partner at Miller Rosenfalck LLP in London. The firms are members of the Warwick Legal Network and collaborate for UK entry and other legal assistance for Indian companies.