UNITED KINGDOM

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Geography

The United Kingdom located in Northern Europe consists of England, Scotland, Wales and Northern Ireland, whereby Britain is the largest island in Europe. Business activity is characterised by international trade with London as an important financial centre. A good transport and communication infrastructure also make the United Kingdom an attractive location. The dependent territories of the Isle of Man and the Channel Islands are accountable to the British crown. However, as independent areas these are technically not part of the United Kingdom. The office for national statistics estimated that in 2010 the population of the United Kingdom was 62,262,000. The UK is well-known for its multicultural community.

Law

The British legal system depends on the country, whereby Scottish law applies in Scotland and English law applies in England and Wales. In contrast to Germany there is no constitution. The laws comprise statute law, case law and common law. All companies in the UK must adjust to the legal conditions of the respective country. As a member of the European Union, the respective countries of the UK are obliged to adapt their domestic laws to European law and enforce this.

Number of German companies in the UK

There are approx. 2,500 German companies with a domicile in the UK. Of these 350 alone are located in the region of the West Midlands which also includes Birmingham. Birmingham has a population of approx. 3.68 million residents and is the second largest city in England after London.

Legal forms of business and founding companies

In the UK, differentiation is made as in Germany between partnerships and joint stock companies. Business partnerships include a partnership which is similar to the German OHG or BGB structure. Furthermore, a limited partnership (LP) and the limited liability partnership (LLP) exist. The first can be compared to the German KG. The latter has no comparable form in Germany.

Business partnerships

Limited partnership

The limited partnership consists of a general partner and the limited partners together. The number of shareholders of a limited partnership is limited to 20. The company has to have at least one general partner. This can be a natural person. It is, however, also possible for the general partner to be a partnership or joint stock company according to English or German law. The general partner is exclusively authorised to manage and to represent the company. He is personally liable for the obligations of the company without limitation. Limited partners, as the description implies, are limited in their liability. They are only liable to the extent of their investment. They are excluded from the company management and representation of the company. Should they take on these, however, they are treated as the general partner and accordingly subject to unlimited liability. Regarding the choice of the company name of the LP there are no basic restrictions.

However, certain principles should be observed. In order to avoid mix-ups, the name should not be identical to the name of an existing company. There are also restrictions with regard to names which constitute a criminal offence, are deemed to be objectionable or are confusing and also such names which imply a connection to governmental offices or other public institutions including names which include certain judicial expressions such as insurance or trust which further require approval from the British department of trade and industry. In addition, the name must include the affix LP to indicate that it is a limited partnership. The company pays no taxes, i.e. it is not a taxable entity. The income of the shareholders is taxed. The company is therefore transparent for tax purposes. The profit is determined at the company level and then allocated to the shareholders in proportion to their participating interest.

Limited liability partnership (LLP)

This form of company is a combination of a partnership and a joint stock company. It has its own legal personality and is independent of its shareholders. The advantages are its own legal personality, taxation as a partnership and the organisational flexibility of a normal partnership as also here the regulations regarding the partnership apply and founding the company is therefore very simple. Two or more shareholders are required for the founding. The shareholders are not limited to natural persons. It is also possible to use a partnership or joint stock company as a shareholder.

The LLP is exclusively liable for the actions of the shareholders, whereby the shareholders are not mutually liable. The LLP itself is firstly liable for debts and obligations. The liability

of all the shareholders is limited to the value of their respective interest in the company. A written contract to found the company is not required. In contrast to the LP, at the end of each financial year the LLP must submit an annual return and the commercial balance sheet to Companies House. The obligation to submit must be observed punctually as a failure to meet the deadline will automatically lead to fines. Concerning the name of the company reference can be made to our comments regarding the LP. It is also possible to recognise here that the company is a limited liability partnership and must include the corresponding affix of LLP. The LLP is treated fiscally as a normal partnership and therefore does not have the same status as a joint stock company. The LLP is not subject to corporation tax.

Joint stock companies

With joint stock companies a differentiation is made between a private limited company by shares (Ltd.) which is comparable to a German company with limited liability and the public limited company (plc), comparable to the joint stock company.

Private limited company by shares

The company requires articles of association. The state secretary for economic affairs has drafted a sample articles of association for the private limited company by shares as far as the company does not wish to draw up its own articles of association. The memorandum of association which previously contained information about the company name, commercial objects, headquarters of the company, amount of the share capital, name and address of the shareholders is no longer a part of the articles of association. This information is now included in the articles. In the memorandum of association only the type of the company must be clearly stated and together with a declaration that this is the type of company the founders wish to create. Therefore although it is necessary to submit the memorandum with the founding, this only serves as a formality. It is possible to found a limited company with just one natural person who is then at the same time the managing director (director) of the private limited company. This is comparable to the sole trader GmbH company in Germany. It is usual for the articles of association to foresee more than only one managing director.

At least one of the managing directors must be a natural person older than 16 years of age. It is not necessary that this person is a British citizen. Furthermore, the managing director cannot due to a court decision be disqualified from such an activity. The appointment of a company secretary is no longer compulsory as a result of the revision to the companies act of 2006, but this can be regulated on a voluntary basis in the articles of association. The company secretary is the recording clerk of the company who ensures that the most important company regulations are observed by the company. A limited company can be founded with just £1. The

capital can be specified in any currency, i.e. also in euros, and may also consist of a number of currencies. The contribution can be made in cash and also in the form of goods or services. As regards the name, reference can be made to LP/LLP. Furthermore, it is a requirement that the name of the company ends with the word "Limited" or the abbreviation "Ltd" unless a special exception has been granted, whereby this is only possible for non-commercial purposes. The company must have an official address in the UK to receive official documents and correspondence. It is not necessary for this address, however, to be the same as the address of the headquarters. Therefore preferred addresses are the addresses of the respective law firm or auditing firm. The registered office must hold ready the documents of the company such as balance sheets, annual financial statements and information about the directors for inspection. The start of the financial year can be freely chosen, but always lasts for 12 months and Companies House must be informed.

Unless otherwise specified, the financial year begins with the founding of the company and ends with the last day of the month which is the anniversary of the founding of the company. At the end of each financial year the annual return and the commercial balance sheet must be submitted to Companies House. The obligation to submit should be carried out punctually as a failure to meet the deadline automatically leads to fines. If the submission is not made in the long term, the company can be removed from the commercial register and is then no longer considered to exist.

The private limited company is subject to corporation tax. Since 2012 the corporation tax rate has been 24 %. An exception here is for small companies whose profit is not more than Ł 300,000 in the year. These companies currently pay a rate of 20 %.

Public limited company (plc)

The public limited company (plc) is a joint stock company whose shares can be purchased by the public and which must have a minimum share capital of Ł 50,000. The share capital must be subscribed in pounds sterling or in euros, but may not consist of a combination of the two currencies. A quarter of the share capital must be paid in when the company is founded, which corresponds to Ł 12,500. The public limited company can be listed on the stock exchange. However, this is not compulsory. The public limited company must have at least two managing directors. At the same time these can also be the shareholders of the public limited company. The condition is that at least one director is a natural person older than 16 years of age.

If the directors are not shareholders, the public limited company must have at least one further shareholder in order to found the company according to the regulations. The company secretary has to be appointed. The shareholders are liable in principle only to the extent of

their contribution. The liability of the company itself is limited to the share capital. In the same way as the limited company, the public limited company has to have a registered office. As regards the name, the same is valid as mentioned above. It must be observed that also here the company name must end with the words "public limited company" or the abbreviation "plc".

Registration for tax

In the UK, subsidiaries in the form of a company with limited liability and branch office must be registered before the start of business operations. A branch office is in principle not an independent company, but is only a business extension of the activities of which are subject to the legal regulations of the other country. The registration for tax for the purpose of corporation tax must be made within three months after the start of business operations in the UK. If this deadline is not met, the company may be required to pay fines.

The registration is always made such that after registration at Companies House a few days later the tax office sends a form (CT41G) to the company. This form must then be filled in and returned within three months after the start of business operations. If the new company has not yet started business operations, the tax office must be notified within three months that the company is dormant and when the start of the business operations can be expected. A subsidiary which is subject to corporation tax is subject to tax in the UK for its complete income worldwide. For branch offices only the part of the income is subject to English corporation tax which was generated in the UK. If subsidiaries in the form of an LLP or an LP are founded, it is not necessary to register these for the purpose of corporation tax. These business partnerships are transparent for the purpose of tax. Only the shareholders behind the companies are liable to pay tax.

Real estate and the acquisition of land

In England and Wales there are two systems to transfer ownership of title. These are the registered system and the unregistered system. The difference between these two systems is the verification of ownership of the property to be sold which the seller has to provide to the purchaser. If an unregistered property is offered for sale, the seller has to verify his ownership through undisturbed possession over a time period of at least 15 years.

The registered system was introduced in order to avoid fraud and to simplify the process of buying and selling real estate. The registered system includes records in the register maintained by the land registry of transactions with regard to real estate. Plans are drawn up to verify the exact borders of the properties. The register also includes, for example, entries regarding rights of way through a neighbouring property and also mortgages. In principle, when making

a purchase a search of the register is made online to find information on the property to be acquired. When purchasing a property, particular note should be made of the legal principle "caveat emptor" or also information such as "buyer beware". The purchaser must then ensure that the property offered for sale is free of material defects and defects in title. The purchaser should initiate an investigation to this purpose which is usually carried out for the purchaser by a law firm or real estate agent prior to the contract phase and carried out a second time before the completion of the purchase. Such an investigation would include a structural survey to ascertain if there are any construction defects or other defects immediately at the beginning of the real estate transaction.

A seller of real estate in England and Wales is not obliged to disclose defects to property owned by him or any other problems. This is also valid for landlords. In England the purchase contract is called a transfer deed and must be signed by both parties and witnesses. The transfer deed is then sent together with other relevant documents to the land registry and then entered in the registry provided the documents are without objection.

Since 6 April, 2008 the acquisition and renting of commercial premises with an area of at least 500 m_{ϵ} requires an energy performance certificate. Since October 2008 this is also true for other buildings. In this respect, there are exceptions such as for buildings which are in a state ready for demolition. The responsibility to present such a certificate is with the seller or party renting out.

Labour law and dismissal protection

The labour law in the UK is similar to that in Germany. However, there are also variations here depending on the country which must be observed in connection with the hiring of local personnel. Codes of practice play an important role for labour law in the UK. If the regulations are observed by the employer and introduced in the company, the employer will have a relatively secure position in court. In legal proceedings, the courts always examine the observance of these codes of practice. Time-limited employment contracts are possible in principle. Time limitations or a chain of time limitations are possible up to a period of four years. If this time period is exceeded and there is no objective reason for the previous limitations, then the time-limited contract relationship is converted into an unlimited contract.

If such a case exists, the employee can demand a statement from the employer to confirm that the employment contract is now permanent or if this is not the case to explain why a time-limited contract is still to be assumed. The number of working hours per week is a maximum of 48 hours. Employees have a right to eleven consecutive hours without work in one period of 24 hours, to one day per week free of work and to a break of at least 20 minutes when

the working day is longer than six hours. For employees on night shift there is an additional restriction that the working time is limited to eight hours in a period of 24 hours. In the UK there is no legal regulation for treatment of overtime hours. A contractual regulation can be respectively concluded, but this is unusual in practice. A trial period of up to six months can be agreed in the contract. In practice three months are mostly agreed with the provision that depending on the contract performance of the employee the trial period can be extended by a further three months. During the trial period the period of notice for cancellation is one week, whereby here in practice also one to three months are usual. The contract parties are free to negotiate the amount of remuneration.

However, the remuneration must be at least the value of the statutory minimum wage. The statutory minimum wage for an employee older than 21 years of age is currently Ł 6.19 per hour. For employees between 16 and 17 years of age the remuneration must at the minimum be Ł 3.68 per hour and for employees between 18 and 20 the minimum is Ł 4.98 per hour. For trainees under the age of 19 or above 19 in the first year of the apprenticeship the wage must at least correspond to the statutory minimum of Ł 2.65 per hour. An employee has a legal right to holidays of 5.6 weeks per year, which amounts to 28 days. In this respect it is not required to observe a legal waiting period. It should be noted that the claim to holidays in the first year of employment only grows in proportion to the time worked. In the UK, statutory public holidays are added to the 28 days of paid holiday.

The employment relationship can be terminated by different means. This can be by means of a settlement agreement, through expiry of the contact, through grounds of frustration, dismissal by the employer and through notice of termination by the employee. A certain method to cancel the employment contract is not prescribed in the UK. Each termination is effective regardless of its legality. In the UK the illegality of notice to terminate the employment contract only has a bearing on possible existing rights to compensation.

During the notice period the employee has no right to continued employment. If the employment contract does not include a regulation regarding notice period, then the statutory minimum notice period is valid. Instead of observing the period of notice, the employer can also make a payment in lieu of notice (PILON). In the contract the employer can reserve the right to make a single payment to the employee for the remuneration due in the notice period.

In the UK differentiation is also made between different types of termination of the employment contract:

- wrongful dismissal: the worker is laid off without observance of the notice period
- unfair dismissal: non-observance of the statutory regulations regarding worker protection

- redundancy: dismissal due to operational reasons
- constructive dismissal: employee can hand in his notice if the employer has significantly neglected his contractual obligations. The termination is then deemed to have been made by the employer.

A termination of employment made without reasonable cause and resulting in the violation of the correct termination procedure is illegal. Permissible reasons are reasons due to the behaviour of the employee, operational reasons and reasons which are related to the ability and qualifications of the employee to carry out the activity for which he is employed, etc. A case of illegal dismissal can lead to different consequences. The employee has a right to further employment. If the employer rejects this, this can lead to a settlement to the amount of between 26 and 52 weekly wages. The employee also has the right to reinstatement. He is entitled to claim a settlement. If the dismissal is due to discrimination or whistleblowing, the claim to a settlement has no upper limit.

Practical examples

Auditing

Background facts:

The German automotive supplier X founds a sales company in the UK in the form of a limited company. The founding is executed by a local consulting company. In this respect, it is worth mentioning that the founding of a company with the legal form of a limited company can in principle also be managed by a small local firm of tax consultants. In the first financial year turnover amounts to 1 million GBP. In the following year turnover rises to 1.8 million GBP and in the third year turnover reaches 2.3 million GBP. In total, turnover in the first three years lies below the threshold value for a statutory audit of the annual financial statement in the UK for a turnover of 6.5 million GBP, a balance sheet total of 3.9 million GBP and 50 employees.

As far as two of the three criteria are satisfied in two consecutive balance sheet dates, in the UK a joint stock company (Ltd, plc) is subject to a statutory audit. These are criteria which are also valid in Germany and are derived from the fourth European directive. The shareholders were therefore under the impression that the company was not subject to a statutory audit requirement in the UK because the conditions for this were not fulfilled at any time. When the managing director of X Ltd. presented the annual financial statements of the last three years to the bank in the UK, the credit lines were terminated. In addition, the bank advised the authorities that the annual financial statements of the previous years had not been audited. As a result, the British Companies House thereupon initiated the cancelation of X Ltd.

On request the managing director and the shareholders learn that since its founding the company in the UK was subject to a statutory audit requirement. As well as the three named criteria, turnover, balance sheet total and number of employees a company in the UK is also subject to a statutory audit requirement as far as it is part of a company group and the group has exceeded the threshold values. The statutory audit requirement, however, could have been avoided provided the parent company had in the past given a guarantee for all obligations including financial and legal obligations.

What can be done now?

In order to prevent the cancellation of the company, Rödl & Partner is assigned to audit the annual financial statements of the last three years and to submit the audited annual financial statements to the British commercial register. At the same time Rödl & Partner is commissioned to prevent the cancelation of the company and to reregister the company again at Companies House.

What should one have done differently from the beginning?

When the company was founded the shareholders should have been informed that under certain conditions the company as a group subsidiary in the UK is subject to the statutory audit requirement and that with the observance of some conditions this statutory audit requirement could have been avoided. Given the facts, the choice of a supposedly inexpensive local consultant who was not familiar with the statutory audit requirement of group companies was a mistake which afterwards proved to be expensive. In addition to the audit fees, the company had to pay fines in the five-figure range as the annual financial statements submitted to the British commercial register were declared to be invalid.

Taxes

Background facts:

In England a waste-to-energy plant is set up by a limited company. In the plant various types of municipal waste are thermally recycled and disposed of. The resulting heat is used to drive a steam turbine.

The English limited company commissions a German company to build the facility. This company in turn commissions a German subcontractor with a system for the water treatment for the power plant. The system serves to provide drinking water and return condensates. Certain components have to be fitted by the German subcontractor at a certain time. In addition, the building first of all has to be completed. Only after that is it possible for the subcontractor to start fitting the components. The subcontractor has to be present for a week for the erection of the building. The fitting of the other components should take place at a time estimated to be two months later. The subcontractor continues to assume that the installation work will be completed in only nine months. For the installation process employees are sent from Germany to the building site in the UK.

Having reviewed section 5 par. 3 of the double taxation treaty between the UK and Germany on his own accord, the subcontractor assumes that the time allowed for the installation amounting to twelve months will not be exceeded and therefore a tax-relevant branch office will not exist in the UK. In this process, the subcontractor, however, only calculates the nine months for the installation work. The employees are paid from Germany and continue to pay income tax in Germany. A registration with the HM Revenue & Custom is not made for the employees or the building site as it is merely a branch office.

After the first week where the subcontractor was present at the building site there are delays and further work can only begin three months later. The installation work also lasts not for nine months but for ten months. In total it has therefore taken the subcontractor 13 months to realise the project.

What can be done now?

The time period of twelve months stipulated in section 5 par. 3 of the double taxation agreement was exceeded. The project of the German company has to be retrospectively registered as a tax presence at the British tax office. Furthermore, if the exemption limit is exceeded a registration for the purpose of corporation tax and sales tax (VAT) is necessary. In addition, the German company must have itself registered as an employer in the UK and the employees have to retrospectively pay tax on their income in the UK.

What should one have done differently from the beginning?

Prior to the start of the activity in the UK, the subcontractor should have obtained an expert opinion. Then the company would have been better able to assess the risk and have access to the following information.

According to section 5 par. 3 of the double taxation agreement between the UK and Germany, a construction site or installation project is only a branch office when the activity exceeds the duration of twelve months. If the duration exceeds twelve months, then this provision is retrospectively valid to the beginning of the installation work and not only after the time period has been exceeded. The twelve month period begins with the start of the construction work and also already with preparation measures.

The time period is deemed to be finished when the work has actually been concluded. In practice, this is frequently the acceptance date. If, however, there are defects which have to be subsequently removed, then this time period is also added to the installation period. Repair or other similar work which becomes known or takes place after the acceptance of the plant need not be calculated as far as it is carried out separately from the originally agreed work. Temporary interruptions, regardless of their cause and duration, are included in this time period. If a subcontractor is active for the principal contractor in such time periods, this time is included as well. It cannot be argued that the performance by a different person has caused an interruption to the work. Delays in the schedule by other trades are therefore not reason enough to put the twelve month time period on hold or lengthen the time period.

The 183 day regulation is only valid for the employees sent out when a branch office is not founded by execution of the installation work. Only then is this number of days to be taken into account. If a branch office is founded, income tax in England must be paid immediately and the subcontractor must be registered as an employer in England.

Law

Background facts:

Employer A, a subsidiary of a German GmbH, would like to part with its long-serving managing director X in the UK because he is not satisfied with the way he treats colleagues. Furthermore, X as managing director did not meet the agreed annual targets for two years in succession. A is also of the opinion that X at the age of 63 is too old for the young and dynamic company. X is a managing director registered at Companies House.

Employer A informs managing director X about this and offers to conclude a cancellation agreement with him. If X fails to agree, employer A notes in addition that he will be dismissed anyway due to the above-mentioned reasons. After this statement X agrees and A drafts a contract consisting of a single page which immediately ends the employment relationship.

After two weeks X has second thoughts and would now like to work for the company again or at least receive a settlement because he is of the opinion that the cancellation agreement is not effective and that the employment relationship was ended illegally. X files a legal action for wrongful and unfair dismissal. In addition, the lawyer commissioned by X advises that X is still the managing director of the company and that the termination does not influence this relationship.

What can be done now?

Employer A now has to quickly employ the services of a lawyer in the UK who will manage the defence.

What should one have done differently from the beginning?

If a company does not have sound knowledge of the laws of the respective country relating to employment contracts and termination of employment, it is advisable to obtain the advice of an expert before generally ending an employment relationship with a managing director or an employee.

It should be observed here that the employment status as managing director and the position under company law as managing director registered in the commercial register must be treated as strictly separate. A notice of termination or a cancelation agreement has no influence on the position as registered managing director.

Furthermore it should be noted that a cancelation agreement in England is an extensive document which rejects the right to file legal action and where other post-contractual obligations are regulated. Furthermore, the cancelation agreement makes statements about settlements, outstanding payments and holidays not yet taken. Under English law a cancelation agreement is only effective when the employee was advised by an independent lawyer with regard to the contract. After the consultation, this lawyer must issue a certificate which confirms the consultation has taken place.

In addition, it should be observed the termination procedure in the UK is extremely formal and in the case of legal action the employee may receive a high level of compensation if the employment is terminated for reasons of age as this constitutes age discrimination. Right from the beginning this sensitive and explosive topic could have been avoided. In compliance with the termination procedure one could have included the failure to meet the targets as a reason for termination. Dissatisfaction with the treatment of colleagues is not valid as a reason to terminate the employment relationship and age can never be given as reason.

Furthermore, after the termination of the employment relationship, X is still the registered managing director. Here it is necessary in advance to check how he can be dismissed or how he can be persuaded to resign his position. The articles of association of the company should be examined to this end and note should also be made if other managing directors are registered in the commercial register.