



McGILL & CO

# DOING BUSINESS IN THE UK - VISA ROUTES

Many foreign nationals identify the UK as a lucrative place to do business; whether that is setting up a new business from scratch, expanding an overseas business in to the UK, investing in an existing UK business, or merging with or acquiring a UK business.

If you would like to live and work in the UK, you will require a visa. The visas available for each scenario outlined above are very different.

## Setting up a business

There are two visa categories to consider if you would like to start a business in the UK: the Start-up visa, which is for people seeking to establish a business in the UK for the first time; and the Innovator visa, which is for more experienced businesspeople.

Under both categories you must pass an approved English language test including reading, writing, speaking, and listening at level B2, unless you are a national of a majority English speaking country or have a degree taught in English. You will also need to show that you have access to at least £945 to demonstrate that you can maintain and accommodate yourself adequately in the UK without recourse to public funds.

Both the Start-up and Innovator visa require an innovative, viable and scalable business idea which is supported by a Home Office endorsing body. The scope of these endorsing bodies is currently very limited – most being accelerator or incubator programmes for tech start ups. Many require a share in the business. Very few have a bespoke process for endorsing foreign nationals, instead requiring applicants to compete with UK based entrepreneurs for a place in one of their programmes. The endorsing body will monitor progress of your business throughout the duration of your visa.

The Start-up visa is valid for 2 years and cannot be extended. Within 2 years an applicant is expected to make an application under the Innovator route. The Innovator visa is valid for 3 years and generally requires an investment of at least £50,000 in to the business in addition to the requirements outlined above. If the business is successful, it is possible to apply to stay in the UK permanently after 3 years. If the

criteria for remaining in the UK permanently, for instance because your business is not as successful as anticipated and you decide to start a new business, you can apply for a further 3 year visa (providing the new business plan has been endorsed by an endorsing body).

## Expanding an overseas business in to the UK

If you work for a business outside the UK, and wish to set up a UK branch or subsidiary, you may wish to consider making an application for a visa as the sole representative of an overseas business. You must be a senior employee of the overseas business, with full authority to take operational decisions, however you must not be a majority shareholder in the overseas business. The business must not have any active branch or subsidiary in the UK already.

You must pass an approved English language test including speaking and listening at level A1, unless you are a national of a majority English speaking country or have a degree taught in English.

This type of visa is granted for a period of 3 years. It can be extended for a further 2 years, providing you continue to be employed as the sole representative of an overseas business. After 5 years you can apply to stay in the UK permanently.

## Investing in an existing UK business

Up until 30 March 2019 it was possible to obtain an entrepreneur visa in order to join or take over an existing UK business. However the entrepreneur visa has now been replaced with the Innovator visa is aimed at those seeking to establish a new business in the UK. It is likely to be difficult to obtain endorsement for a business plan which primarily concerns acquisition of an existing UK company.

As an alternative, consideration may be given to a Tier 2 (General) application. This requires the UK business to have a Tier 2 sponsor licence, carry out a Resident Labour Market Test to demonstrate that

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there are no suitable settled UK workers who could take the job, and to comply with strict salary thresholds. This is a complex and lengthy process. However, given the terms of the new Innovator visa, in many cases Tier 2 will be the only way for a foreign national to join an established UK business.

A Tier 2 (General) visa is generally valid for an initial period of 3 years, and can be extended for a further 2 years. After 5 years an application can be made to stay in the UK permanently.

### Cross border merger or acquisition

In the context of a cross border merger or acquisition (where a company overseas acquires or merges with a UK company) a Tier 2 (Intra Company Transfer) application provides an effective way of transferring overseas staff to the UK. The purpose of this route is to

enable multinational employers to transfer their existing employees from outside the EEA to their UK branch.

The UK branch would need a Tier 2 sponsor licence, the staff member(s) coming to the UK must have been employed by the company overseas for at least 12 months (unless they earn over £73,900), and a salary of at least £41,500 must be paid (this can sometimes be higher, depending on the job). There is no Resident Labour Market Test; the staff member(s) can be transferred without any UK recruitment exercise taking place.

A Tier 2 (Intra Company Transfer) visa is valid for the duration of the overseas posting. The maximum period a person can spend in the UK with this type of visa is 5 years (unless they earn over £120,000 per annum in which case the maximum period is 9 years). It is not possible to remain in the UK permanently with this type of visa.



### Grace McGill

An experienced practitioner in immigration, nationality and refugee law who has specialised in this area since 1995, Grace McGill established McGill & Co in April 2008. She has extensive experience in all aspects of UK immigration law, focusing on family migration and commercial immigration, with a particular specialism in Tier 1 Investor applications. She is also uniquely skilled in inter-country adoption work.

Grace manages large corporate clients within the UK and worldwide and is adept at the successful progression of complex immigration matters for individuals, providing skilled representation at all levels of the process.

In recent years Grace has become increasingly involved in high level foreign investment and corporate work. She has been instrumental in a number of multi-million pound foreign investments into UK companies. Her role continues to develop in respect of overseas strategic investment work which has seen recent emphasis for corporate clients on

strategic development relationships in Cyprus, UAE and the USA. She maintains a strong association with corporate entities in the development of this role and has formed associated companies in Cyprus and Houston USA.

She holds a Master's degree in International Human Rights Law from the University of Strathclyde and is a member of the International Bar Association, Commonwealth Lawyers Association, and British Association for Sport & Law. She is an appointed member of the Society of Writers to Her Majesty's Signet (WS) and has been appointed to the WS Society Council. She is the present author of the 2nd Reissue of the Immigration Law Chapter of the Stair Memorial Encyclopaedia, published in 2016. She is a contributor of published articles for Lexis Nexis and for the International Bar Association

She has been commended for her work by the Legal 500 for the last 6 years, the last 4 of which she has been elevated as Leading Individual in Scotland.

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### Iain Halliday

Iain Halliday joined McGill & Co in 2014 after graduating from the University of Glasgow with First-class honours and completing the Diploma in Professional Legal Practice at the University of Aberdeen. He first studied immigration and asylum law during the third year of his law degree, which he spent studying abroad at the University of Helsinki, completing further studies in this area of law in the final year of his degree.

During his time at the firm, Iain has been involved with the preparation and submission of many immigration and nationality applications to the Home Office, conducted numerous appeal hearings at the First-tier Tribunal (Immigration

& Asylum Chamber) and he regularly represents clients with complex legal issues ranging from the posting of international workers to family migration problems.

Iain frequently assists clients with applications to enable them to come to the UK to work or start a business, providing invaluable advice and guidance on the requirements and necessary documents in relation to: Tier 1 (Entrepreneur) applications and, more recently, applications under the new Start Up & Innovator route; Tier 2 applications; and applications to come to the UK as the sole representative of an overseas business.

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