

Destination UK 2011 – Retail

Key features of the UK legal environment for retailers



N A B A R R O

CLARITY MATTERS



Contents

Establishing a UK business	4
Acquiring premises	5
Protecting your brand names	8
Employing staff – getting the right people	10
Future considerations	12

NABARRO LLP

Nabarro is a major UK corporate law firm renowned for our positive, practical approach. We operate in a number of industry sectors and legal disciplines with a single aim: to deliver the highest quality advice as clearly and concisely as possible no matter how complex the situation.

The most important benefit we can offer our clients is the provision of plain, unequivocal advice, not pages of jargon. Above all else, we aim to provide a service that is user-friendly in every way.

We are an ambitious partnership. We have 125 partners leading approximately 400 lawyers offering a broad range of corporate legal services to major national and international clients. The firm's headquarters are in central London. We also have offices in Sheffield and Brussels.

Introduction

The retail market is a tough one, especially in recent years. To keep pace you need to stay competitive and think ahead. So what is next for established, well known brands from North America?

You may have considered moving into other jurisdictions. You may have opened overseas already. These sorts of strategic moves can present a variety of new challenges including:

- Understanding the relevant laws of that jurisdiction
- Knowing the market and practices there
- Dealing with new and different cultures
- Brand penetration in a new market

When opening in the UK, we can help you steer through these obstacles. We have already done so with a number of overseas retailers moving to the UK including Whole Foods, Diesel, Costco and Krispy Kreme.

Nabarro is a major UK corporate law firm and to help get you started in the UK, we have set out some ideas and suggestions to deal with your initial concerns.

- Establishing a UK business
- Acquiring premises
- Taking on staff
- Protecting your brand name



Establishing a UK business

Expansion into the UK will present important financial considerations for overseas retailers including how best to fit a UK entity within current group and fiscal structures and how to limit exposure for liabilities arising from UK operations.

We can assist you to plan an effective business structure for expansion into the UK and our corporate specialists can help simplify each stage.

NABARRO CONTACT



Caroline Newsholme
Partner
T +44 (0)20 7524 6686
c.newsholme@nabarro.com

DID YOU KNOW?

- For overseas investors, the most usual routes to establishing a business in the UK include:
 - setting up a new UK company;
 - acquiring or taking an interest in an existing UK company or business;
 - registering a branch presence;
 - collaboration with one or more business partners.
- There are a variety of business structures available in the UK giving the flexibility you may need. We can advise on those that best reflect the commercial objectives and profile of your organisation.
- The process of setting up a new UK company or registering a branch presence is generally straightforward and quick, with minimal capital requirements

OTHER THINGS TO CONSIDER

- **Acquisitions** - acquiring an interest in an existing business organisation or entering into business in the UK with a partner will require agreement around commercial terms, an understanding of the commercial aims and of the extent of the assets and liabilities of the target business.
- **Operational matters** - having in place commercial and competitive terms for the supply of goods and services will be critical to the successful operation of a retail business in the UK.

HOW WE CAN HELP?

- We can guide you through the negotiation of the commercial and legal terms for expansion to the UK, including by way of acquisition or collaboration with one or more partners or investors. We can undertake comprehensive legal due diligence and provide clear and practical advice on any issues that are identified.
- If a new company is required, we offer incorporation and registration services including a same day service.
- Our commercial lawyers advise on the incorporation of market standard legal protections in supply contracts.

CASE STUDY

ADDING VALUE FOR NEW BUSINESSES

Haldanes represents one of the first mid-size supermarket chains to open in the UK for nearly 30 years and we were pleased to represent such a significant new entrant to the retail sector. Throughout the process, we worked closely with Haldanes and helped them with the initial acquisition of 18 food store businesses and then a subsequent eight further stores throughout England and Scotland from The Co-Operative Group. Breaking into the supermarket sector required a multi-disciplinary team of legal specialists at Nabarro to provide guidance and advice on a wide range of commercial and legal matters including OFT approval, corporate and real estate matters.

“Haldanes have been very reliant on Nabarro and have never been let down. Their confidence, professionalism, skills and helpfulness have been exceptional but above all we have made full use of many of their different specialist departments and that has made a huge difference... and even better when it's dealt with in such a friendly, no-fuss way.”

Arthur Harris, Haldanes

Acquiring premises

The UK has a huge and thriving retail environment. Whether you are a large or small retailer, every major town and city has a street, shopping centre or retail park to suit your needs and your brand. We know you'll have a deadline for the store opening and we won't ever lose sight of that primary goal.

NABARRO CONTACT



Belinda Solomon
Partner
T +44 (0)20 7524 6291
b.solomon@nabarro.com

THINGS TO CONSIDER

To acquire premises, you will most probably acquire or negotiate the grant of a lease of a shop or unit. In considering the terms of that lease you need to think about the following:

- A retail lease will be for a fixed term of years. If you are newly established, make sure you can take on that level of commitment. If you need a more flexible arrangement we can help with options such as concessions within department stores or options to break.
- If you go down the lease route and you are a newly established UK company you will almost certainly need to provide the landlord with some comfort by way of security. This could take the form of a strong corporate guarantee or a rent deposit or bank guarantee.
- You may be offered a fitting out contribution or rent-free period from the landlord. You need to speak to your tax advisers about which is best for you.

OTHER OPTIONS

- Do you need flexibility in being able to get more out of the premises during the term of the lease? If so, are you prepared to pay for that? A break clause will increase the amount of rent you pay and a widely drafted clause allowing assignment or subletting of the lease may have an adverse effect on the level of rent, usually reviewed every five years.
- In this country, the standard lease includes an obligation to pay rent quarterly in advance. Are you prepared to pay slightly more for a concession allowing you to pay monthly to help your cashflow?
- What are your requirements for signage and alterations during the lease term?
- If you are buying an existing lease you will be unable to change the existing terms. Are they suitable for your proposed use?
- In a multi-let retail park, shopping centre or building, the landlord will require payments for service charge and insurance as well as the rent. You should be sure you have budgeted for these amounts before making an offer for any space.
- Have you identified any physical problems with the building which may end up increasing the service charge during the term?

HOW WE CAN HELP?

We can advise on all aspects of your occupation including real estate, tax, fitting out and planning.

CASE STUDY

FLAGSHIP STORES FOR NORTH AMERICAN BRANDS

Retailers need their lawyers to deal with the legals quickly allowing them to open for trade as soon as possible. Our approach and understanding of the commercial drivers for retailers has attracted a number of overseas retailers setting up in the UK. We have undertaken all the real estate work required for the London flagships of a number of US retailers including Whole Foods, Diesel and Krispy Kreme.

"Property, planning, construction - that was the support that we got on Kensington and I found it to be tremendous. They also matched our speed, acting quickly and effectively. They moved the lease along in a way that we're used to, in more of an American style. We like to move a project along!"

Chris Pine, Whole Foods.

Protecting your brand names

Before entering the UK market, you will need to think about how to protect your brand in the UK. If a conflict with an existing UK trademark seems likely, you will also need to be prepared to clear the way so that your mark can progress smoothly to registration.

So how can we help? We can file UK and Community trademark applications, run and advise on preliminary clearance searches, and handle trademark protection/enforcement programmes.

NABARRO CONTACT



Guy Heath
Partner
T +44 (0)20 7524 6213
g.heath@nabarro.com

DID YOU KNOW?

- **Registration options.** Trademark protection in the UK can be obtained at national level, at the UK IPO, or by filing a Community trademark application.
 - If you want the strongest possible national protection in the UK market then you may find a UK national trademark attractive.
 - If you are looking to expand into other EU markets then you may be interested in applying for a Community trademark, which will apply across the whole EU.
- **Registering for retail services.** It is possible to use either the UK or Community trademark systems to obtain trademark protection for retail services. If you want to register your mark for retail services you will need to specify the nature of the retail service (i.e. the kind of goods sold in the store).

OTHER THINGS TO CONSIDER

- **Existing registered rights.** Before using your brand in the UK you should check that there are no conflicts with existing rights-owners. In the UK this includes possible conflict with existing trademarks on the UK or Community trademark registers. For a Community trademark there can be a conflict even if there is no use of the mark in the UK, e.g. if use of the mark is presently confined to Spain.
- **Unregistered rights.** We will also need to check for you that you won't run into conflict with unregistered trademark rights. Existing UK retailers may have built up rights in a name similar to yours even if they operate on a fairly local basis.

We can help to identify and resolve any issues before a trademark application is filed by carrying out preliminary clearance searches covering trademark registers and possible conflict with unregistered marks already in use.

CASE STUDY

COSTCO BRAND PROTECTION

Nabarro has handled the UK and wider European brand protection work for Costco Wholesale since the Seattle-based company first came to the UK in 1992. Over the two decades of our involvement, EU trademark law has undergone a sea-change in the way it applies to retailers and wholesalers. Nabarro's counsel has kept Costco Wholesale at the forefront of these developments. The work involves maintaining up-to-date registrations at both UK national and European Union level for the company's corporate and own-label brands, dealing with infringements and keeping the trademark registries clear of conflicting trademarks.

“They are a great bunch of people and superb at choosing the right team to meet one's requirements, both in terms of personality and skillset”

Nick Deeks, Costco Wholesale UK Limited

Employing staff – getting the right people

Best selling products deserve best selling people. Your employees are 'the face of the business' and it is in your interest to ensure that you hire, train and retain the best people for the job. The UK's labour market and UK labour laws are unlike most others. We can help you understand your rights and duties and make sure you have the right people.

NABARRO CONTACT



Julie Quinn
Partner
T +44 (0)20 7524 6115
j.quinn@nabarro.com

HIRING STAFF – YOUR OPTIONS

- **Acquiring somebody else's staff.** If you acquire an existing UK business interest or enter into a joint venture, you are likely to inherit at least some staff. You will be bound by their terms of employment and will have limited say in matters such as pay, notice and post-employment competition. To make changes to their terms involves complex information and consultation obligations.
- **Hiring your own employees.** If you set up independently you are likely to hire your own employees. You will have greater autonomy in deciding terms of employment, subject to minimum legal obligations, e.g. in relation to working hours, holidays, pay and termination.
- **Using agency staff and other workers.** You have the option of taking on staff who are not 'employees'. They will have fewer legal protections and rights and you will have less control over how and when they work. We are experienced in advising employers on the pros and cons of various alternative employment models.

UK LABOUR LAWS – 3 THINGS TO BEAR IN MIND

- **Workers have certain minimum rights.** The law regulates working hours, holidays, pay, sickness and other absences. For example, all full-time workers are entitled to at least 28 days annual leave each year and the parents of a new born child are entitled to paid leave. We frequently draft service agreements and company employment policies to ensure you are complying with UK law.
- **All workers must be treated equally.** Discrimination and harassment are outlawed if they are based on sex, race, disability, religion or belief, sexual orientation and age. There is also legislation on equal pay between men and women.
- **Employment may only be terminated for a good reason.** As a result you cannot normally dismiss an employee 'at will', and you will need to comply with certain procedural requirements. You are also required to give an employee a minimum period of notice to end the relationship, roughly equal to one week for every year of employment. We frequently advise employers on how best to end the employment, any post-termination restrictions which may help protect their business and the fall outs which may come from any termination, including compromise packages and legal actions.

CASE STUDY

SETTING UP AND HIRING EMPLOYEES IN THE UK

Nabarro acted for a globally renowned technology brand when it opened for business in the UK. We helped them navigate through the complexities of English law relevant to setting up business and employing employees in the UK. We advised on employment status, the legislation and practice applicable to the hiring process and drafting contracts for employees at all levels of seniority as well as assisting them to prepare a pack of policies and procedures appropriate for working in the UK, tailored to their way of doing business. We continue to assist them on a day to day basis to support their HR advisors with employee queries, disputes and claims.

“When McArthurGlen set up business in the UK we were fully supported by Nabarro in all aspects of employment - through the whole employment cycle from recruitment to retirement and all stage in between. Fifteen years later and we are still working together.”

Claire Tiney, McArthurGlen UK Limited

Future considerations

This guide deals only with the essentials, but Nabarro can also help with legal briefings or detailed forward-planning in any of the following areas:

TAX

Michael Cant
m.cant@nabarro.com
020 7524 6307

STOCK OPTION SCHEMES

Graham Muir
g.muir@nabarro.com
020 7524 6917

PENSIONS

Kate Richards
k.richards@nabarro.com
020 7524 6655

ENVIRONMENTAL (INC. PACKAGING AND PRODUCT DISPOSAL) REGULATIONS

Clare Deanesly
c.deanesly@nabarro.com
020 7524 6208

HEALTH & SAFETY REGULATION

Lukas Rootman
l.rootman@nabarro.com
0114 279 4022

PLANNING (ZONING)

Joshua Risso-Gill
j.risso-gill@nabarro.com
020 7524 6124

FRANCHISING

Guy Heath
g.heath@nabarro.com
020 7524 6213

INFORMATION TECHNOLOGY

Geoff Mendelsohn
g.mendelsohn@nabarro.com
020 7524 6393

GENERAL COMMERCIAL AGREEMENTS

Brian Sher
b.sher@nabarro.com
020 7524 6453

DISPUTE RESOLUTION

Nick Lloyd
n.lloyd@nabarro.com
020 7524 6155



Working for Big Brands

We act for some of the UK's leading retailers: some niche operators, some well-known high street names. For each of them, we provide clear, expert and no-nonsense advice tailored to suit their individual needs.

- Apple
- Avon
- Costco
- Diesel
- Fresh & Wild
- Hackett
- Harrods
- HMV
- Hoss
- Inchcape
- Krispy Kreme
- La Maison Coloniale
- Linley
- Mercedes-Benz
- Pepe Jeans
- River Island
- Ryman
- Salvatore Ferragamo
- Waterstone's
- Whole Foods Market
- Yamaha





N A B A R R O
CLARITY MATTERS

London

Lacon House 84 Theobald's Road
London WC1X 8RW
T +44 (0)20 7524 6000
F +44 (0)20 7524 6524

Sheffield

1 South Quay Victoria Quays
Sheffield S2 5SY
T +44 (0)114 279 4000
F +44 (0)114 278 6123

Brussels

209A Avenue Louise 1050 Brussels
Belgium
T +32 2 626 0740
F +32 2 626 0749

For further information about our services
and news updates on legal issues,
visit our website at www.nabarro.com
or email info@nabarro.com

Alliance firms:

France August & Debouzy
Gilles August
T +33 (0)1 45 61 51 80
www.august-debouzy.com

Germany GSK Stockmann + Kollegen
Rainer Stockmann
T +49 (30) 20 39 07 - 0
www.gsk.de

Italy Nunziante Magrone
Gianmatteo Nunziante
T +39 06 695181
www.nunziantemagrone.it

Nabarro LLP
Registered office: Lacon House, 84 Theobald's Road, London, WC1X 8RW.

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