

MACFARLANES

REPRESENTATIVE OF AN OVERSEAS BUSINESS

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AGENDA

- **Criteria**
- **Challenges**
- **Question: How do you forestall the impediments to using the sole representatives category, such as complicated shareholding arrangements with family members?**
- **Examples of different types of ownership structures**
- **Principles**

CRITERIA

- **Be recruited and employed outside the UK by a company whose headquarters and principal place of business are outside the UK**
- **Have extensive related industry experience and knowledge**
- **Hold a senior position within the company (but not be a major shareholder) and have full authority to make decisions on its behalf**
- **Intend to establish the company's first commercial presence in the UK, e.g. a registered branch or a wholly owned subsidiary**
- **Intend to work full time for the company for the duration of their stay and not carry out any other work**
- **Have knowledge of English language at the required level**
- **Have sufficient funds to support themselves and any dependents in the UK**

CHALLENGES

- **Must be establishing the company's first commercial presence in the UK**
- **Must be a senior employee of the overseas company**
- **Must not be a majority shareholder**
- **Company's headquarters and principal place of business must remain outside the UK**

QUESTION

- **How do you forestall the impediments to using the sole representatives category, such as complicated shareholding arrangements with family members?**

QUESTION

- **Modernised Guidance**

- *“This page explains how to deal with sole representatives who are shareholders and apply as a representative of an overseas business.*

Majority shareholders in the parent company are not eligible for entry as sole representatives.

You must refuse an application when an applicant’s shareholding is over 50 per cent.”

- *“The company must intend to keep its main centre of business abroad.”*

QUESTION

- **Entry clearance guidance**

- *Sole representative is a major shareholder in the parent company*
 - *arrangement not devised to circumvent business rules*
 - *shareholdings in excess of 30 per cent should be scrutinised*
 - *applicant must not be the driving force behind the parent company such that moving to the UK would shift its centre of operations*
- *Factors to be considered include:*
 - *size of the applicant's shareholding*
 - *their position within the firm*
 - *number of senior employees who will remain abroad*
 - *the extent to which the company's success seems linked to the applicant's specific talents and performance*

EXAMPLES OF DIFFERENT TYPES OF OWNERSHIP STRUCTURE

- Life interest (usufruct) / remainderman
- Shares held in trust
- “Loan control”
- “Alphabet shares”

EXAMPLES OF DIFFERENT TYPES OF OWNERSHIP STRUCTURE

- **Life interest (usufruct) / remainderman**
 - Civil law jurisdictions
 - Parents hold the life interest in the company / shares
 - Paid dividends
 - Legal title held by child
 - Holds voting rights
 - Structure would be set out in company records

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EXAMPLES OF DIFFERENT TYPES OF OWNERSHIP STRUCTURE

- **Shares held in trust**
 - Trustee would exercise voting rights
 - Different types of trust
 - Discretionary trust
 - Bare trust / nominee company

EXAMPLES OF DIFFERENT TYPES OF OWNERSHIP STRUCTURE

- **“Loan control”**
 - Total shares valued at £100
 - Father holds 48%
 - Son holds 52%
 - Father has invested £1 million in the business

EXAMPLES OF DIFFERENT TYPES OF OWNERSHIP STRUCTURE

- **“Alphabet shares”**
 - Category A – income, no capital
 - Category B – capital, no income
 - Category C – voting rights

PRINCIPLES

- **Main centre of business must remain overseas**
 - Voting rights
 - Ultimate ownership
- **Genuineness?**

QUESTIONS?

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