UK200Group
technical advisers

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UK200Group technical advisers

UK200Group specialist panels and forum comprises of skilled technical advisers who work independently or as part of a multi-disciplinary business team to achieve the best possible solution for members and their clients. Each adviser brings experience from the different disciplines of business strategy, corporate finance, insolvency & business recovery, forensic accounting & dispute resolution and taxation.

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UK200Group tax

Time is of the essence for properties over £2 million

March 2012 saw the introduction of the 15% rate of Stamp Duty Land Tax on residential property worth over £2 million owned by "non natural persons". A non-natural person is, broadly, a company, a partnership with at least one corporate member or a collective investment scheme.

As well as the extension of the scope of Capital Gains Tax to include the disposal of residential property by non-resident non-natural persons, from April 2013 we shall also see the introduction of an "annual charge" on residential properties valued at more than £2 million held by non-natural persons. The consultation document covering both proposals was issued in May 2012.

None of us are fooled. The annual charge is a "Mansion Tax" levying a charge based purely on the value the property rather than on any income derived from ownership or profit achieved on its disposal.

Clients who are affected have until April 2013 to decide what action, if any, to take. Some are not even aware of the proposed changes. Others regard the charge as minimal compared to the value of the property. This may be a fair point at the lower end of the scale where the property is valued between £2 million and £5 million and the charge is £15,000 but at the top end where the charge is £140,000 per annum, it is a different matter. Although the charge may be small in comparison to the value of the property, is there cash to fund it?

To add insult to injury, it is proposed that the amount of the annual charge will be increased each April in line with the Consumer Price Index, but the rate bands themselves will remain the same. The rate of CGT to be charged on disposal of qualifying properties by non resident companies is yet to be announced.

For those who feel that the annual charge and the extension of the scope of CGT are a step too far, the answer has to be the extraction of the property from the corporate "envelope" before April. This can be done tax efficiently but time is of the essence…

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Optimising tax relief on property

For many years businesses have missed the opportunity for tax relief on capital allowances in buildings, and in particular second-hand buildings. Without detailed purchase invoices, accountants are not best placed to be able to value items of plant that may be acquired when a property is purchased.

In recent years we have seen a number of specialist capital allowance firms offering building surveys so that qualifying items can be valued and a claim submitted. In practice, this has led to a significant increase in claims relating to properties purchased several years ago. HMRC have taken issue with this because of the difficulty they have in proving that there is no duplication of allowances claimed between the current & previous owners of a building. To combat this issue HMRC issued a consultation document in 2011 which has now resulted in the provisions of Finance Act 2012 Schedule 10.

Following a series of discussions with a team of specialist capital allowance advisors, the new legislation introduces an element of mandatory pooling and the need for detailed elections as part of the sale process. The new rules require HMRC to be notified of expenditure on plant by being included on a tax return by the vendor prior to their subsequent sale. This is known as the "Pooling Requirement". In addition, both the vendor and purchaser must agree a CAA 2001 s198 or s199 election within two years of the transaction. In some cases this can be referred to the First Tier Tribunal for determination. This is known as the "Fixed Value Requirement". There are transitional rules for property transactions between April 2012 and April 2014, with the legislation applying in full to all transactions after April 2014.

Taking the above into account, there is now a risk to professional advisors whereby a client could lose the ability to claim allowances following unsatisfactory preparation of the elections. In this instance we could see an increase in litigation against advisors. Accountants and other professionals advising on property transactions need to be familiar with these changes so that they optimise the tax relief available to their clients.

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UK200Group tax

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KEY

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UK200Group
corporate finance

Cross Border deals – finding the key to success in international markets

For European Capital Markets, last year proved to be a bit of a false dawn – the Eur16.3bn raised in the first 6 months, trailed away to only Eur10.2bn in the second half. The Sovereign Debt Crisis was a major factor. But there was a 13% increase in IPOs to 430 over 2010 with over 50% of the money raised out of London.

Despite the relative low level of economic activity across the whole of Europe – there are still cross-border deals to be done. Businesses continue the globalisation agenda – following their customers in a consolidating economy with an unprecedented surge in cross border mergers.

And in prosecuting those deals, there a number of simple rules to be born in mind.

Many cross border deals aren't successful. Let's consider why. There are a lot of factors that must harmonise to make a successful 'same country' deal – agreement over products or services; the potential for synergies and cost savings, successful management of the post deal integration, resolution of the legal issues, solving the funding issues and ensuring the deal is structured correctly from the off.

For multinational deals add to that list the need to resolve country differences on issues such as governance, company culture and employment and managing communications across different territories and distances. There may also be very real differences in management style. And on top of this are the international issues as effecting for example IFRS.

Two fundamentals underpin what will make the deal successful:

1. Is the strategic logic for the acquisition well founded? How & when will it create value, what can be leveraged *after* the deal.

2. How will the two companies be integrated – this is where most mergers fail. Having a meticulous plan with an Integration team identified and primed before the deal is complete. And a critical part of this is taking the workers – on both sides of the deal – with you and engaging & retaining key staff.

Experience tells us actively managing the process is vital – work the details on both sides (regulation laws, accounting, tax) and don't skimp on professional advice!

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Maximising transaction value in the current climate

It is safe to say that selling a business in this economic climate remains at best, challenging with buyers remaining cautious and seemingly very reluctant to part with their cash. There is a distinct lack of confidence in the M&A market and we are experiencing a recurring response from interested buyers of *"we love this opportunity and have the resources, but until Europe settles down we cannot commit to any acquisition"*.

That said, for the right businesses, transactions are happening and valuations do seem to be holding up. But with funding lines still being difficult the vast majority of transactions are funded to varying degrees by the Vendor (in the form of deferred consideration, earn outs or retained equity). Whilst officially there is little prospect of an immediate recovery from the double-dip recession, there is possibly a silver lining to all the doom and gloom.

The 'press' are reporting a significant cash pile that is building up within corporate Britain (large corporates and PLC's), this 'pile' in some papers is reputed as being as much as £750bn (however the detail behind this sort of number is sketchy at best). On this evidence, once confidence starts to return can we expect a flurry of M&A activity? Who knows, but my advice to any client remains as it always has been 'be prepared' as some sensible pre-exit planning can not only maximise transaction value but also minimise the prospects of deal creep (price chipping by the buyer).

In our experience the common themes that drive a successful transaction (in any market) are:

- An ability to demonstrate independence of business (from the Vendors)
- The quality of a second tier management team
- A low exposure to any one customer or supplier

- Evidence of recurring revenue streams or order books that underpin forecasts
- A strong balance sheet with a well managed working capital cycle
- Timely and accurate management accounts
- A willingness to take some form of deferred consideration, particularly when growth is forecast
- A well-planned due diligence process that pre-empts where issues might materialise.

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UK200Group forensic accounting & dispute resolution

Are expert witnesses ready for the hot-tub?

In Australia, it is common place for expert witnesses to find themselves in a hot–tub - not in their back garden, but in a court! This practise is also known as providing concurrent expert evidence in court.

The practise may be introduced to the UK as part of Lord Justice Jackson's civil justice reforms, as a way of reducing the cost and length of proceedings.

A pilot scheme has explored whether it was worthwhile introducing hot-tubbing to the UK. The interim results, published in January 2012 showed there were time and quality benefits, but the results were mixed. The sample size, however, was small (only three cases reached court out of a possible 15) and it was recognised that a larger evidence base was needed. The results concluded that it would be appropriate to amend the Part 35 Practice Direction to permit concurrent evidence. This would be optional, and adopted only if the judge so directs. So here is what an expert needs to know before they get in the hot-tub:

1. Pre-trial: It is likely that expert reports and a joint statement would be prepared as normal.

2. Preparation for trial: the parties would then prepare an agreed agenda for the concurrent evidence which is based upon the matters not agreed in the joint statement.

3. Experts' day in court: the experts are sworn in together and take their place together on the witness stand (or hot-tub).

    a) Role of the judge: he chairs a discussion based on the agreed agenda. At the end of the discussion the judge is likely to then ask a general question to ensure all the experts have had the opportunity to fully explain their positions.
    b) Role of the experts: it is likely they will be able to ask and answer questions of one another, so experts will need to be able to engage in live debates.
    c) Role of the advocates: they can ask questions to ensure the experts' opinions are fully articulated and tested against contrary opinion.

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Shareholders' agreements

I imagine that one of the first actions we take, if we receive instruction in a Shareholders' dispute, is to check whether there is a Shareholders' Agreement in place and then go over it in fine print to determine the valuation procedures for any shareholding.

I have been called into a couple of disputes recently to help minority shareholders where the Shareholders' Agreement has weakened their case. It was clear that the controlling shareholders had structured the Agreement to strengthen their own position and facilitate the exit of other parties. The exiting minority shareholders were consequently disappointed that they were receiving only a heavily discounted price for their shares with no ability to resist and stand their ground. In one case, a successful company had fallen on difficult times in the current challenging climate and the controlling shareholder was looking to rationalise costs. In the second case, the controlling shareholder wanted to clear out the other players so that he could secure new inward investment. The departing minority shareholders then sought professional advice but it was too late because they had signed the Shareholders' Agreement at the outset.

I anticipate that we may see an increase in Shareholder disputes over the next few years. Government has enhanced the incentives for investment in start-up companies. A qualifying Seed EIS investment could offer tax relief of up to 78%, providing the investor controls less than 30% of the share capital.

There will be entrepreneurs seeking to defer capital gains, tempted to inject funds and get involved in new businesses with apparent high potential. If the business goes south rather than north and the owners start to squabble and decide that some will have to exit if the business is to become viable, this may herald a rush of dispute resolution cases.

The advice for any in-coming investor would be to ensure that a robust Shareholders' Agreement is in place at the outset and to take independent advice. I suspect that old practises will prevail, even with savvy investors, and the advice is sought after the dispute has started. We may be busy.

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Business success(ion) is all about getting the best from everyone involved

To survive and prosper in these troubled times businesses need to be operating at peak effectiveness. An essential ingredient in any successful business is a positive culture. Without it, change and continuous improvement is not sustainable.

It is certainly true to say that every business is just a collection of people and they are the most valuable resource a business has, regardless of whether the business is buying and selling (with or without added value) or providing a service. It follows that to achieve successful outcomes to any appropriate strategy there has to be buy-in by everyone involved. This means from owner/manager through every operational level in the business.

One of these strategies may of course be business succession. This is a topic possibly in greater focus than ever before simply because of the lack of activity in the merger and acquisition market but one that has significant consequences if ignored. Significant increases in perceived value of any SME seem to be achieved when the business operates effectively without continuous involvement of the owner/manager. The success of MBOs can only be improved in this context.

Mentoring is not a difficult process to understand, or for us provide, and gives short and medium to long term support within a structured framework. The initial questions are always the same (where are we now? where are we going? how do we get there?) and it is essential to involve everyone in a process that will pull out the important issues and clearly demonstrate how they contribute to the "big picture". This will empower people to make the decisions that are needed. Responsibility and authority only work together and working life is more effective, easier and rewarding if everyone knows what is important to their job, the business and what is expected of them. The process takes time but then quick fixes never seem to last.

There are numerous other issues flowing from consideration of these fundamentals not the least of which is "family business" dynamics. There are also invariably lots of reasons to procrastinate... but time moves on!

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Can you bank on your values?

It has been interesting to see the discussions around culture and values that seem to follow every new bank scandal. There has also been a flurry of Values statements appearing on financial institutions' websites and corporate literature; the words 'stability' and 'confidence' have become very popular.

There is no doubt that it is incredibly important for any organisation to have nailed this down if the teams are all going to pull in the same direction. However, a list of values as long as your arm can in many cases be counterproductive, and may be the result of trying to be too inclusive.

The problem with values is that they will conflict. No doubt we could all think of scenarios where Honesty and Client Relationship don't go hand in hand. The longer the list, the more likely it will be that your values will contradict in any given situation. How will your people decide the right course of action when this happens? Our professional Ethics should guide us when we are faced with these challenges.

This is where less is more – generally core values should be limited to 4 or 5 in number. Even then conflicts will occur, so it is important to ensure the order of your values – which takes priority – is determined.

I cannot imagine any UK Bank not having Integrity as a Core Value; but no doubt Success is a value too. The problem arises when Success takes precedence over Integrity. That is a whole different bank game!

The final thing to remember is to make sure this is planned, communicated and bought into as part of the culture, as judgements may be blurred in times of stress. Where Values are concerned, clarity before crisis is the key.

That clarity should drive adherence to the values, but they must then be lived. The organisation's leaders must be seen to 'walk the talk' on values every minute of every day. Without this example the Values are just words on a website. Values can be a tremendous asset to a business but they must never be perceived as optional.

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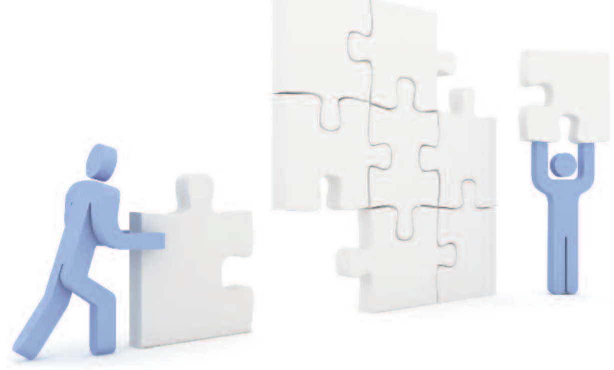

Tenant insolvency – who pays the landlord's rent

The case of Goldacre (Offices) Limited v Nortel Networks UK Limited [2010] held that if a leasehold property was being occupied by an administrator and rent was due during his or her occupation, the rent due (monthly or quarterly) would be an expense of the administration. This is even if the administrator occupies only part of the property or vacates the property before the next rent payment date. However, the recent case of Leisure (Norwich) II Limited and Others v Luminar Lava Ignite Limited [2012] ("Luminar") dealt with the question of payment of rent prior to the administrator's appointment.

Facts

Luminar went into administration in October 2011. The leases held by Luminar provided that rent was payable quarterly in advance. Luminar had already fallen into arrears at the time of the administrator's appointment. Luminar continued to occupy and trade from the premises after going into administration while the administrator marketed its business and assets for sale. The landlord of the property sought payment of the rent as an administration expense.

Outcome

The Court rejected the landlord's application and held that expenses of the insolvency process were obligations incurred after the commencement of an insolvency process and more specifically that:

- Where rent falls due prior to the commencement of the administration, those existing arrears are not payable as an expense of the administration.

- Instead the landlord can prove for the unpaid rent as an unsecured creditor. This is the case even where the administrator/liquidator uses the property for the purposes of the administration/liquidation during the period for which these amounts were payable.

- Where rent falls due during the period when the administrator uses the property for the purpose of the administration, the whole of the sums falling due in that period is payable as an expense of the administration. It makes no difference whether the administrator uses the property for the whole period for which a payment in advance is due or any part of it.

It was held that there was no scope for liability for debt due for payment before the start of the insolvency process to become an expense. The administrators of Luminar were therefore not liable to pay the quarter rent.

What should Landlords do?

In order to limit their exposure, Landlords may wish to negotiate leases with monthly rents in order to minimise rental loss if an administrator is appointed after the day on which rent is due.

The timing of an insolvency appointment will remain a major concern for an administrator. However it becomes less critical where rent is payable monthly in advance rather than quarterly in advance and arrears have accrued prior to any appointment.

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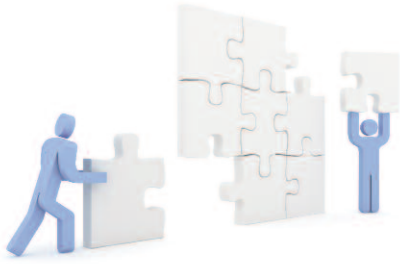

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UK200Group international

Changes to the UK audit exemptions – an international perspective

On 6 September 2012, the UK government announced key changes to company and LLP audit and reporting requirements. There are two main types of company and LLP affected by these changes:

- Companies and groups that currently qualify as "small" but that were not exempt from audit because of their turnover or balance sheet total

- Subsidiary companies that currently require an audit.

UK subsidiaries of foreign parents have been typically required to have an audit since the combined group exceeds the size criteria; however the new legislation now attempts to provide an alternative route for qualifying subsidiaries.

A subsidiary company will be able to claim audit exemption if it fulfils all of the following conditions:

- Its parent undertaking is established under the law of an EEA state

- All its members must agree to the exemption in respect of the financial year in question

- The company is not a quoted or another ineligible company

- The parent must give a statutory guarantee (which must be filed at Companies House) under section 479C of all the outstanding liabilities to which the subsidiary is subject at the end of the financial year

- The company must be included in suitable audited consolidated accounts drawn up by the parent and which must disclose the use of this exemption by the subsidiary. These consolidated accounts must be filed at Companies House.

The Department for Business, Innovation and Skills (BIS) estimates that this will enable 83,000 UK companies to no longer need an audit. Based on discussions with many of our international (and domestic) clients however, we consider the impact is likely to much less dramatic.

It has yet to be determined by the courts as to the nature or form of the parental guarantee, but in our view foreign parent companies are very unlikely to subscribe to it due to the significantly increased commercial risks. Equally unappetizing is the prospect of specifically preparing an English translation of the group accounts which will become publically available, possible for the first time, to its UK competitors, customers and suppliers.

One should also not forget that in most instances, under ISA 600 Audit of Group Financial Statements that many subsidiaries will continue to have a degree of audit fieldwork performed, irrespective of whether they meet all of the qualifying conditions.

For some time yet therefore, many subsidiary companies will continue to enjoy the substantial benefits of a UK statutory audit.

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A business abroad – UK or European control?

A client came to me explaining in some detail why he had decided to establish a company in another European country to own an African subsidiary, and to raise money for its development.

The particular country has an investment protection treaty with the European country, so that a company incorporated in that country got useful protection against expropriation by the local government.

The client saw a number of tax advantages as well: dividends from the overseas subsidiaries would be exempt from tax in the recipient country under the participation exemption, and there would be no withholding tax on the interest paid to foreign investors.

The downside of this strategy was that there is clearly a cost in establishing and running an overseas company, both in financial terms and management time. Significantly, there is

UK200Group international

an additional tax authority to deal with, the company would need to be managed and controlled in the relevant territory and it would be an additional tax authority and set of rules to consider on a regular basis.

We thought about this, and in fact the same advantages could be obtained with a company incorporated in the relevant jurisdiction, but managed and controlled, and hence resident for tax purposes, in the UK. Under the terms of the relevant double tax agreement, the company is treated as solely resident in the UK.

The dividends would be exempt from tax in the UK under the UK's rules for taxing dividends from overseas subsidiaries, as the UK has an "other income" article with the relevant country.

In addition, withholding tax could be avoided on the bonds by issuing them as Eurobonds: a much simpler process than it sounds. The bonds can either be quoted on the London or Channel Islands stock exchange.

The ongoing cost of the structure was much cheaper in this UK scenario, than the additional management costs of establishing in a separate European country, but still provide investor protection.

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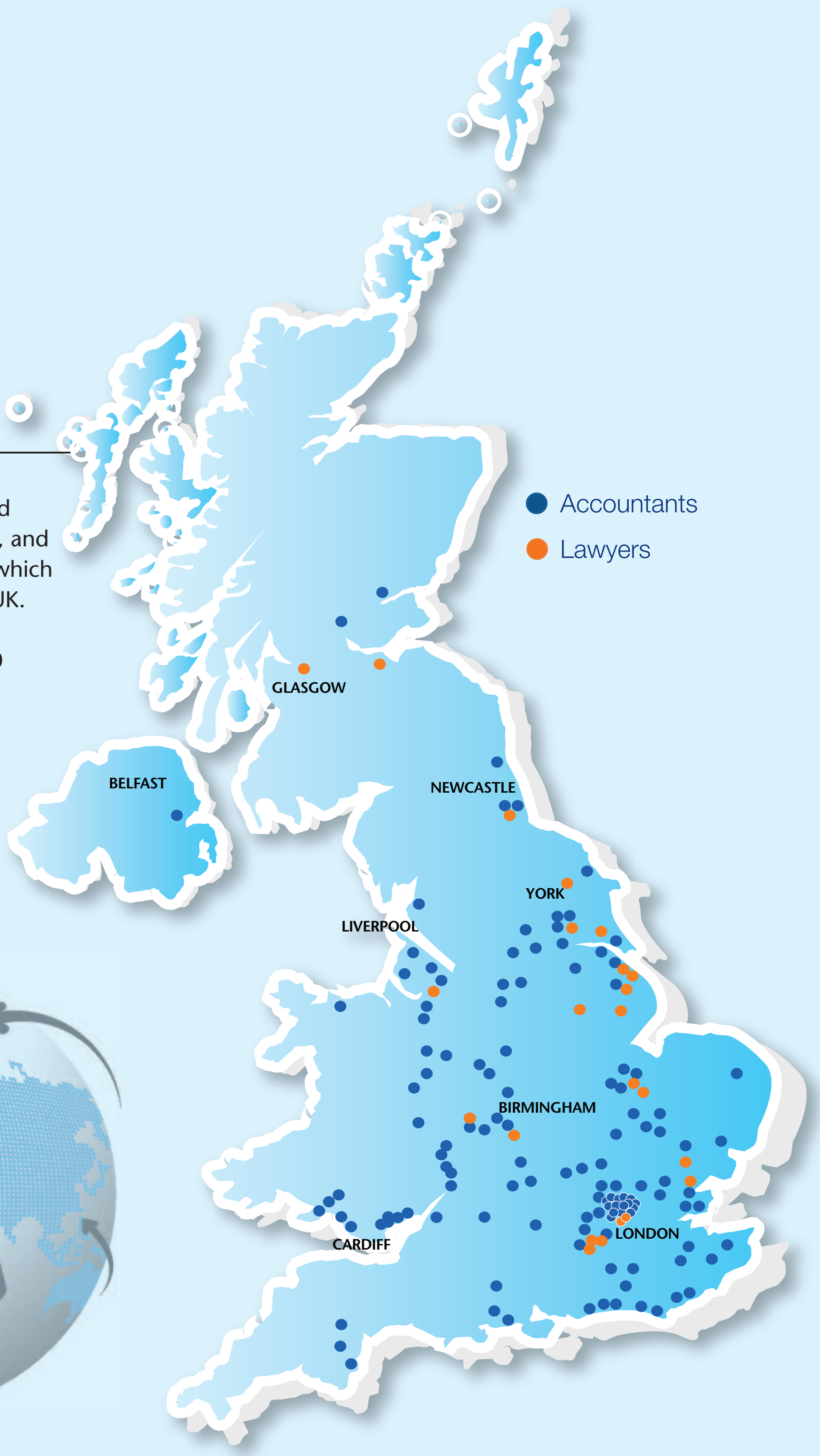
Geographic distribution of members

The geographic distribution of UK200Group chartered accountant and lawyer member firms has established, and is continuously building a strategic business support which can effectively service key industries throughout the UK.

This business support also extends globally to over 60 countries, through both UK200Group International Associates and access to IAPA, a global association of independent accounting firms and groups.



UK200Group

independent quality assured professionals

Established in 1986 UK200Group is the UK's leading mutual professional association of quality assured independent chartered accountants and lawyers in some 150 locations spread over the UK, together with international associates in over 50 locations across the world. UK200Group provides services and products that are designed to enhance the business performance of its members.

For a full list of members visit:
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