



Corporate & Commercial



MKB Law is an innovative and progressive law firm based in Belfast city centre. Since our inception in 2003 we have expanded and evolved to become one of the leading full-service law firms in the city, providing professional and practical legal guidance to commercial and individual clients alike.

Our legal services offering incorporates: corporate and commercial, property, insolvency and debt recovery, disputes, wills and estates, employment, and family/matrimonial matters.

14-18 Great Victoria Street, Belfast, Co.Antrim, BT2 7BA

Tel: +44 (0)28 9024 2450 Fax: +44 (0)28 9024 2448 Email: info@mkblaw.co.uk

mkblaw.co.uk

Welcome

Whether you are an entrepreneur with a unique idea, or an established business enterprise, the Corporate Law team at MKB Law will provide clear legal guidance and advice designed to complement your business structure.

With a diverse and discerning skillset, experience in a range of provincial and international matters, combined with a genuine enthusiasm for our discipline, ensures that our team provides a unrivalled service to all of our clients.

The sections within this brochure detail the growth and evolution of events that you will typically encounter, from business inception to attainment.

To discuss any of these areas in further detail with us please contact: info@mkblaw.co.uk / +44 (0)28 9024 2450

Contents

Getting Started.....	Pages 4-6
Companies, Shareholders & Investors; Joint Ventures; Partnerships; EIS/SEIS	
Moving On.....	Pages 6-7
Heads of Terms; Terms and Conditions	
Who Is In Charge.....	Pages 8-9
Directors Duties; Trusts and Trustees; Shareholder Rights; Company Secretarial and Corporate Governance	
Major Events.....	Pages 10-11
Mergers and Acquisitions; Shares or Assets; MBOs/MBIs	
Day to Day.....	Pages 12-17
Franchising Agreements; Service Agreements; Distrubution Agreements; Power Purchase Agreements; Agency Agreements; TM Registration; Licensing and Royalty Agreements; E-commerce; Confidentiality and Non-Disclosure Agreements; Put and Call Option Agreements; Cross-Option Agreements; Off Shore Trusts; Investment Agreements; EMI Schemes	
End of the Line.....	Pages 18-19
Succession Planning; Business Restructuring; Exits	



Testimonials

"MKB Law have been exclusive legal services providers to our Group for over 25 years. They have provided specialist advice in many areas including all legal services for the Merchant Hotel. Their practical approach and professionalism has been invaluable to us."

Bill Wolsey, Beannchor Group

"The services and experience in franchise law provided by MKB Law have been invaluable to our organisation, specifically with regard to our SEED Franchisor, Franchisee and Social Franchising Programmes."

Barry Kelly, The Ortus Group

"The clear and concise advice provided by the Corporate team at MKB Law has enabled us to complete on Share Purchases, Share Holder Agreements and several joint ventures. The level of service and professionalism has been what we need to meet the demands of our dynamic and fast moving business."

Sean McCann, Lagan Group

"MKB Law provides all legal services to our Little Wing Piza chain and have been extensively helpful in negotiating supplier terms and conditions. The Corporate team at MKB Law has the strength in depth and experience needed by a modern progressive business."

James Sinton, Little Wing Pizzeria

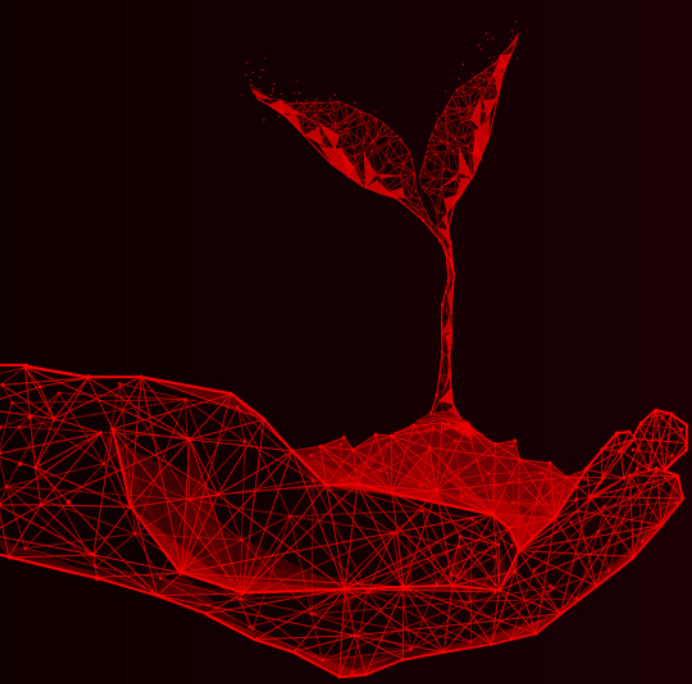
"It can be a real minefield when new legislation (such as GDPR) is announced or when we want to create a new commercial contract. These are the reasons why I continue to consult with MKB Law; the Corporate team has a wealth of knowledge and advised me on these matters to find a workable solution for all involved."

Paul Taylor, Lynas Food Service

"MKB Law recently acted on my behalf, providing Partnership Agreement advice. They understood what I wanted to acheive, and their advice was concise, focused and prompt. The team were understanding and courteous throughout."

Dr J McKelvey, Tullynvest Manor Residential

Getting Started



When planting the seed for your next venture, there are four main models that can be used for business:

- sole traders
- partnerships
- limited liability companies
- limited liability partnerships

Deciding which of these structures is most appropriate may have long-term benefits for the growth of your business or allowing you to exit in due course.

As the business grows and develops, you may need to change the structure by bringing in partners, incorporating a partnership into a company, or demerging parts of the business.

Companies, Shareholder Agreements and Investors

A private limited company is the most common vehicle for any business. Capital can be structured in a variety of different ways which makes it attractive to both Funders and Investors.

It is usually essential to supplement the formal articles of association with a Shareholders' Agreement. This is a private agreement between the shareholders which will regulate various matters.

An investor in the business will not only seek security for the investment, this should also be supplemented by protections that correspond to shareholder protection and, frequently, rights to convert debt into equity to give the investor control following default by the company.

Every case is different and requires special consideration. MKB Law has worked with many shareholders and investors over the years to ensure their interests are protected.

Joint Ventures

A joint venture provides the parties involved with a workable structure for combining their knowledge and resources in the development of new products and services for a shared profit.

The Corporate Team at MKB Law is only too aware that to work effectively, any joint ventures need focused planning and execution.

We work closely with clients to understand the nature of the collaboration, this then allows us to recommend the best approach to help reduce risks while optimising the potential profits.

Our team has advised businesses in virtually every sector operating in Northern Ireland about their corporate structures. As well as joint ventures, we will also assist with other esoteric vehicles such as property unit trusts, and Joint Agreement No Entity ("JANE").

Examples of joint venture deals that our team has been involved in can be viewed below.

Joint Venture Deals		
Project	Client	Description of Project & MKB Law Involvement
Housing development joint venture	Leading developer	Our team advised the client and negotiated a joint venture with a London based developer in relation to a multi-million pound residential housing development in Co.Antrim. We advised on all aspects of the building licence with the landowner, joint venture structure and the joint venture agreement.
Alternative fuel from animal and plant waste	Private equity holders	Our team were the lead advisor on the establishment of a joint venture company to a group of individuals who developed technologies to process waste to fuel, with the desire to exploit and licence the end products in Northern Ireland and China. This included drafting heads of terms, shareholders agreement for International private equity, shareholder allocations to comply with EIS rules, and supply and service agreements.

Partnerships

Sometimes a partnership or limited liability partnership may offer a more suitable structure for your business or limited company. Partnerships allow direct ownership of the business assets and may enable the partners to share profits more flexibly than from a company.

The Partnership Agreement should cover all the issues covered by the Shareholders' Agreement and deal with those issues that are specific to a partnership.

MKB Law provides partnership advice to both traditional and limited liability partnerships. We regularly draft, review and/or advise upon suitable partnership agreements, and carry out all the legal aspects of formation and registration of the partnership.

Our team will also provide advice and guidance to help you adapt your business structure where necessary.

Tax Relief Schemes

Enterprise Investment and Seed Enterprise Investment

The Enterprise Investment Scheme (EIS) and the Seed Enterprise Investment Scheme (SEIS) are Government tax relief schemes that are designed to help growing and start-up businesses respectively by offering potential investors generous tax breaks.

For both schemes, there are certain conditions which should be met before applying. The company must also carry out a trade that qualifies and have a permanent UK base.

Whether you are a potential investor, or a small/start-up company seeking investment, then an investment scheme option may be suitable for you. The team at MKB Law will provide sound advice and support to all relevant parties.

Moving On

Heads of Terms

The purpose of a Heads of Terms document (sometimes known as Memorandum of Understanding) is to ensure that everyone involved clearly understands the project before committing to any detailed legal agreements.

In most cases, the Heads of Terms do not create a contract and are not legally binding. Frequently, some of the clauses are intended to be legally binding (such as confidentiality, exclusivity and non-disclosure).

The inclusion of some legally binding clauses allows the parties to proceed with due diligence and contract negotiation knowing that they have limited their risk.

MKB Law will:

- settle which parts are to be binding
- set out the key issues and principles of the deal
- consider the main warranties and indemnities
- set out a transaction timetable
- specify who is responsible for which parts of the transaction
- identify which documents will be needed to finalise the transaction

Terms and Conditions

Speed of modern commerce requires that nearly every business should have standard terms and conditions for dealing with its customers and clients.

At MKB Law, we have helped clients across a range of industry sectors with their business terms and conditions. Examples where T's & C's have been valuable to clients include:

- sales staff can conclude contracts without requiring legal advice
- reducing costs or expenses in completing transactions
- standardising business terms

Expert assistance from MKB Law may be needed to avoid traps for the unwary. Timing the presentation of standard T's & C's may be essential particularly where there has been a history of trading between the parties.

Our specialist Corporate Lawyers at MKB Law can advise clients in respect of all forms of business to business, business to consumer and online/e-commerce business transactions.



Who's In Charge

Directors are responsible for the daily management and operation of the company (although they may delegate certain roles or tasks).

The Directors' primary duty is to promote the success of the company for the benefit of its members. In performing their duties, they are responsible for the company as a whole.

Director's Duties

In many cases it will be clear what a Director has to do to satisfy these duties. However, there will also be cases when that is not clear. At those times, the Directors should call upon legal advice from MKB Law.

The Directors must also monitor the financial status of the company. If a financial problem arises, the Directors must implement a plan of action to address this and if the company becomes insolvent, they must manage the company in the best interests of the creditors, rather than the shareholders.

Our Corporate and Insolvency lawyers will guide Directors through their responsibilities in difficult times. In the good times, Directors should comply with their duties and obligations to ensure positive relationships between the company, employees, customers/clients and suppliers.

Our expert Employment team will work with our Corporate team to ensure that the Directors can comply with their employment obligations.

Trusts and Trustees

It is often the case that assets, including business assets, are held in trust. MKB Law has a dedicated private client service dealing with trusts which frequently works in conjunction with our Corporate team to provide a complete trust service.

The strict and onerous demands imposed upon a Trustee make it essential that proper advice is obtained and that the terms of the trust are properly documented.

Shareholders Rights

A shareholder can be an individual or a group of people, or indeed another company or institution. Shareholders are not involved in the daily management of the company.

Shareholders collectively own the company, and as such, have a range of legal rights and powers available to them. Those with a certain percentage of the shares may have specific or limited rights available to them.

The Corporate lawyers at MKB Law will provide advise on such matters as:

- the rights attached to shares
- derivative actions against directors (on those occasions when shareholder, rather than the company, can hold a Director accountable)
- abuse of minority shareholders
- financial distributions from companies.

Company Secretarial & Corporate Governance

Corporate Governance covers the vast spectrum of practices and processes by which a company is controlled and directed. This should not be confused with the day to day management of the company, but rather focuses on the ethics and integrity of a company.

If a Company Secretary is in place, they undertake the relevant duties and responsibilities associated with Corporate Governance to ensure the company complies with relevant legislation.

At MKB Law, our Corporate Team will provide as much assistance as any client may need for its Corporate Governance purposes. We offer a full company secretarial service to advise on company formations, maintaining registers, annual returns and preparation of agenda and minutes of meetings.

Examples of deals that our team has been involved in below.

Duties & Responsibilities of Directors, Trustees & Shareholders

Project	Client	Description of Project & MKB Law Involvement
Structure of family trust	Multiple-outlet retail business	Providing structuring advice in respect of the trust arrangement and the operation of the business. We also provided ongoing support to the Directors and Trustees in respect of their legal duties and obligations, and in doing so, coordinated with the company's accountatns and tax advisors.
Removal of Director	Local property company	Providing advice on all steps to be taken to ensure the removal of the Director was robust and not subject to challenge under the Companies Act.
Shareholders Agreement	Manufacturing business	Our team were principal advisor to a Northern Irish manufacturer operating within various jurisdictions in respect of their shareholding structure to allow fresh, new multi-million pound equity investment.

Major Events

Mergers & Acquisitions

As an effective means for growth, mergers and acquisitions allow businesses to integrate the resources of other entities to complement and develop their own.

Working closely with our Property and Employment Law departments, together with a range of intermediaries, MKB Law's Corporate team provides made-to-measure mergers and acquisitions advice to large and small companies, regardless of the nature and size of the transaction involved.

We work hard to meet our client's objectives, to minimise risk and make the deal a smooth and speedy process. MKB Law has an enviable track record of acting in mergers and

acquisitions. We handled one of the largest sales of family-owned business in Northern Ireland operating from multiple outlets in a highly regulated industry. Among the transactions we have been involved in include:

- hotels, restaurants and bars
- solar and wind farms
- retailers
- veterinary practices
- residential homes
- manufacturing businesses

We will advise on the risks attached to the transaction and document in correct legal form the commercial solutions, ensuring the transaction fully implements our client's intentions.

Examples of deals that our team has been involved in below.

Mergers & Acquisitions		
Project	Client	Description of Project & MKB Law Involvement
Sale of shares in solar energy company	Irish solar photovoltaic developer	We represented the vendor, negotiated the transaction documentation and acted on completion of a multi-million pound sale of equity in a number of operating companies. This included reviewing requisite planning permissions, negotiating and securing requisite land rights pre-completion, negotiated consideration payment structure, and warranties taking in account the technical aspect of the operation.
Acquisition of a utility service provider by a leading utility supplier	NI utility service provider	We advised the vendor, negotiated and drafted shareholders' and sale agreements, and acted as a project manager coordinating with financial advisers and accountants in a purchase of a local utility service provider.
Purchase of a hotel business	Leading NI hospitality group	We assisted the purchaser in negotiating an asset purchase agreement with the administrators of the vendor.
Sale of machinery hire business	NI Plant & Tool hire company in operation for over 30 years	We assisted a group of vendors consisting of the founder and C growth shareholders in negotiating a phased transfer of shares in the company as well as negotiating a put and call option agreement and consultancy agreement for a vendor post-completion.
Sale of multiple-outlet bookmakers business	Business owner	We acted as lead advisor in the disposal of one of Northern Ireland's largest family owned businesses operating in a highly regulated sector.

Shares or Assets

When buying a business there is often a choice to make as to whether it is better to buy the assets making up the business, or buy the shares of the company that owns the business.

Often, the decision will be tax driven but there may also be strong legal reasons for choosing assets over shares or vice versa. Our Corporate team will provide the relevant advice and assistance to enable you to make commercially sound decisions.

Management Buy-Outs & Management Buy-Ins

Management Buy-Outs (MBO's) and Management Buy-Ins (MBI's) present profitable opportunities for any business owner, from raising entrepreneurial capital to providing an exit strategy.

MKB Law's Corporate team will provide guidance to both business owners and buyers in order to reduce risk and maximise profits. We will work thoroughly to ensure that the commercial objectives of all parties are achieved. From the outset, our team will liaise with the client and their third party advisors or finance providers.





Day-to-Day

The day-to-day running of the business will, almost every day, involve the beginning or the end of some form of legal relationship. Some of these are minor or brief, but in some circumstances it may be fundamental to the business and may also last for the entire lifetime of the business.

At MKB Law, our team has experience of working with commercial clients across a range of different sectors. This has given us an in-depth understanding of the legal issues arising from commercial relationships.

Franchising Agreements

A Franchise Agreement grants a Franchisee the right to operate a franchised business in accordance with the terms set out in the agreement with the Franchisor.

MKB Law provided the legal support to the franchise program run by **Ortus**, the business development agency on behalf of Invest NI. We advised both aspiring Franchise owners and Franchisees under new ventures; several of which have become successful businesses giving employment to many people.

MKB Law can also assist with other areas relating to a franchising business; our Property team will advise on business property transactions, and our Employment team offers specialist legal guidance in relation to staff employment contracts.

Service Agreements and Service Level Agreements

A **Service Agreement** is a general agreement between two parties that outlines the terms of services to be provided, this usually covers business-to-business transactions and arrangements. Frequently they can cover the provision of personnel by one business to another.

The agreement and should cover the services to be provided, e.g. payment terms and length of term.

A **Service Level Agreement** is a contract between a business and an external supplier that specifies the quality and level of service that is expected to be delivered. This typically refers to agreements between a business and their IT or telecoms provider, but may also cover services such as supply of staff or cleaning services.

Distribution Agreements

A Distribution Agreement details the terms whereby a distributor may buy goods from a supplier or vendor and resell them. Some Distribution Agreements may appear to look like types of franchise or agency agreements, and can be particularly complex were there are cross-border arrangements.

When a supplier appoints a Distributor, each purchase of goods by the Distributor from the supplier will constitute a separate contract. However that contract will ultimately be governed by the terms of the Distribution Agreement.

At MKB Law we have extensive experience and expertise in negotiating and drafting Distribution Agreements, both where parties are based in the UK, and where there is an international element.

Examples of deals that our team has been involved in below.

Franchise & Licensing Agreements

Project	Client	Description of Project & MKB Law Involvement
Franchise of leading NI fast food chains	Franchisor	Our team acted for the franchisor; drafting and negotiating franchise agreements with the franchisees.
Proof of concept of biological tracking technologies	Licensee	Our team acted for a licensee with an exclusive licence to exploit biological tracking technologies (subject to a patent application) and negotiated a proof of concept agreement with a food supply chain group.

Service Agreements

Project	Client	Description of Project & MKB Law Involvement
Food waste recycling business	NI Recycling Provider	Our team negotiated a service agreement in respect of the recycling service of household food waste.
Drop shipping agreement	Family Run Company	Our team advised the client in the transfer of online retail portfolio and drafted a drop shipping agreement, including review of data protection issues and commission arrangement.

Power Purchase Agreements

A power purchase agreement (PPA) is a contract between an electricity generator and a party who is purchasing the power which incorporates the commercial terms for the sale and purchase of electricity for a project.

There are a number of considerations to be made during the negotiation and drafting of PPAs which our team can advise you on. Like other sale contracts, the majority of PPAs will contain provisions dealing with the power price, commencement, term and extension, the sale of power, duration, change in law, credit support and force majeure.

Agency Agreements

Agency Agreements is an arrangement under which a company, or 'principal', appoints an Agent to act on their behalf. In business, Agents are commonly appointed for introducing and concluding agreements with new customers, marketing or customer support.

The Corporate lawyers at MKB Law will guide you through the agency relationship, taking your particular needs into account during each step of the process.

Trademark Registration

A trademark is a brand that identifies a specific product or service. The owner of the trademark may be an individual, company or other legal entity.

Whether you are starting a new business venture, or are an existing business owner with multiple brands already in place, it is essential that you protect your Intellectual Property by registering a trademark. This is done through the UK Intellectual Property Office or the EU Intellectual Property Office.

The Corporate lawyers at MKB Law will provide the client with expert advice and guidance when applying or registering a trademark with the Intellectual Property Office. Registering the trademarks for new franchises is part of the package of services that we delivered to **Ortus**, the business development agency.

In the event that your application receives any objections, or if conflicts arise, our team will advise on the best course of action going forward. We will also assist with trademark renewals (these should be renewed every ten years) and any changes that may be required.

Licensing and Royalty Agreements

Licensing and Royalty Agreements deal with the legal aspects concerning the use of Intellectual Property. The term "Intellectual Property" can cover an enormous range, such as: music, software, hardware design, architectural drawings, artistic works, written pieces, trademarks and patents.

Intellectual Property, much like any property, can be bought, sold and licensed for commercial use.

A **Licensing Agreement** can be used when the owner of the Intellectual Property (the Licensor), grants another party (the Licensee) the rights to use their IP under license and for a specified fee. The agreement will detail the specific terms and conditions of use.

The **Royalty Agreement** is essentially an extension of the Licensing Agreement, with specific references to the monetary provisions owed by the licensee to the licensor, known as royalties. This agreement will specify the value of royalty fees and the frequency with which they should be paid.

Our Corporate lawyers have extensive experience in drafting, reviewing and advising licensing and royalty agreements for various purposes including: software, technology and copyright/trademark licences.



E-commerce

This covers a vast spectrum of elements relating to online business applications and transactions. An E-commerce Agreement defines the terms and conditions between the participating parties, and protects their rights.

With the ever-changing updates to online technology and software, it is important that your E-commerce Agreements take into consideration any new developments.

At MKB Law we subscribe to services that provide us with daily updates of documents and legal developments.

Confidentiality and Non-Disclosure Agreements

At the outset of any potential commercial transaction the parties involved may need to exchange 'confidential' or 'sensitive' information in order to determine whether or not to take the deal or relationship forward.

It is advisable to enter into a mutual Confidentiality or Non-Disclosure Agreement to regulate and monitor how such information will be shared or disclosed.

The Corporate lawyers at MKB Law are highly skilled in the drafting, reviewing, negotiating and adapting of these agreements to suit the particular circumstances of the transaction and the relevant needs of the parties involved.

Put and Call Options

Put and Call Option Agreement are similar to Cross-option Agreements. They can be useful where there is a desire to transfer shares in the future but without creating a legally binding commitment at the date of the option.

A Share Option Agreement is between the holder of shares and a third party. The option gives one party the right (but not an obligation) to purchase or sell shares.

Cross-Option Agreements

The death of a shareholder or a business partner can have a major impact on the running of a business. The shares of the deceased shareholder or partner may have to be transferred under the provisions of a will to their family or a third party.

To avoid a new or unknown shareholder being introduced the other shareholders may choose to enter into a Cross-Option Agreement.

Under a Cross-Option Agreement, the purchase of the deceased shareholder's shares should be financed by funds from an insurance policy covering the life of the deceased. Such a policy should be entered into by each shareholder and written under trust, with their fellow shareholders as beneficiaries.

Offshore Trusts

Working closely with accountants, MKB Law can advise clients on creating and using non-UK resident companies, whether owned directly by individuals or through an offshore trust or company structure.

Our team regularly advises clients in respect of offshore structures based in Europe, Central America, the Middle East, the Caribbean and Asia.

Investment Agreements

An Investment Agreement relates to the rights and responsibilities of individuals or parties who wish to invest shares in a company.

An investment agreement will need to cover much the same ground as a Shareholders' Agreement. A prudent investor will want to be satisfied that they have security for their investment but also that the company will be properly managed and sensible arrangements put in place for business risks, such as the death or incapacity of key personnel. In extreme circumstances, the investor may wish to have the right to take control of the company if he considers that his investment is at risk.

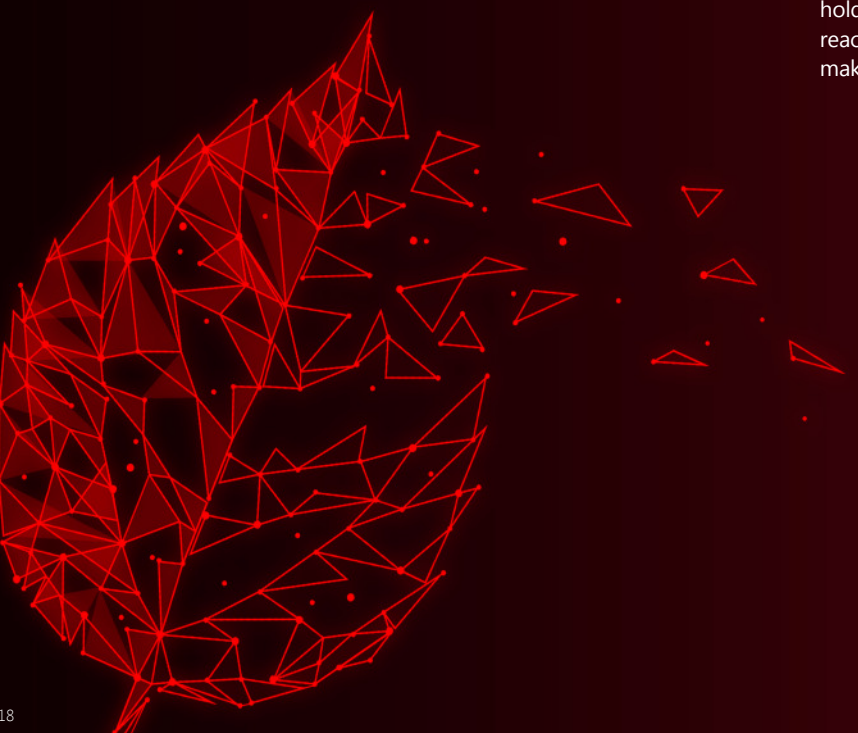
EMI Schemes

The Enterprise Management Incentive is Government run employee share-option scheme designed for smaller sized companies (250 employees or less).

The scheme, which is highly tax efficient, benefits both the employee and employer, and gives a commercial advantage to the business owners when recruiting and/or retaining employees.



End of the Line



Succession Planning

When it comes time for a business owner to hand over the reins to someone else, it is important that there is a plan in place. MKB Law are trusted advisors to many family owned businesses undergoing this transition.

There are four routes by which the change can take place: transfer within the family, management buy out, management buy in (or a combination of both) and a full business sale.

It is never too early to begin succession planning. In fact, the foundations for proper transition should be laid when the business is functioning well and long before there is the prospect of the crisis developing.

Sometimes unforeseen circumstances make it necessary for a business to be either sold or transferred to the ownership of someone else. This may involve the introduction of minority shareholders which will necessitate a new Shareholders' Agreement, the creation of new classes of shares, reaching new agreement with the business's funders or making appropriate pension arrangements.

Business Restructuring

In our ever-changing economic climate, it is advisable to review your current business structure to ensure that both your business and personal assets are protected.

The restructuring process may mean making major changes internally or externally, with the overall view of improving the business operations and achieve financial stability or prosperity.

At MKB Law, our legal experts will advise on all aspects of company restructuring, company planning and group formation.

Exits

An exit strategy gives a business owner a way to reduce or terminate their stake in a business. The business owner may choose to do this for several reasons, for instance, if the business is prosperous, the owner may choose to step down thereby making a sizable profit.

Alternatively, if the business is facing difficulties, the exit strategy will enable the owner to cut their ties to limit any financial losses. An exit strategy may also be carried out when an investment has met its profit objective.

The exit strategy a business owner chooses may depend on their own personal preferences. For instance, they may wish to retain some element of control or involvement. They may also wish to have the company run in a similar way to its current setup or see it change going forward, provided a fair price is achieved in regard to ownership shares.

MKB Law's Corporate lawyers can guide you through the key elements to make your exit a success, and suit your particular requirements.

