



MKB
LAW

Corporate & Commercial



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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.

Led by Director Gordon McElroy, our team is adept in all areas of corporate law, combining progressive-thinking with pragmatic solutions.

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.

Compiled by our lawyers, 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



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Getting Started

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

- sole traders
- limited liability companies
- partnerships
- 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. For lawyers, it provides the benefit of limited liability and a clear corporate governance structure with its distinction between shareholders and directors. 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 such matters as:

- funding the company
- right to appoint directors
- the business objectives
- rules relating to the issue, transfer and sale of shares
- procedures for dispute resolution
- protections for minority shareholders
- protection of the company's goodwill and IP
- how to deal with a defaulting shareholder, and what will happen if a key individual passes away or retires

An investor in the business will have many similar concerns. It is often not enough to take security for the investment. This should 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.

We provide full company secretarial service to advise on company formations, maintaining registers, annual returns and preparation of agenda and minutes of meetings.

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.

In a business where, each year, all of the profits are distributed the partnership may be more tax efficient. A limited liability partnership provides the same tax treatment as a general partnership but provides the members with limited liability if the business fails.

Partnerships are still regulated by the Partnership Act 1890. This piece of Victorian legislation is often inappropriate for modern business relationships. However, this can be corrected by writing a good Partnership Agreement between the partners.

The Partnership Agreement should cover all the issues covered by the Shareholders' Agreement and also deal with those issues that are specific to a partnership, such as:

- how decisions are to be taken
- how profits are to be distributed
- ownership of partnership property
- expulsion of partners

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.

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.

To be successful, a robust agreement is necessary to address the parties' expectations, to set out clearly the responsibilities of each party, to determine how important decisions will be made, to allocate how risk will be shared, as well as to establish contingency measures for disagreements and disputes.

MKB Law works 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.

At the outset our advice includes consideration of the best business structure to adopt and the practicalities of forming a new company for the duration of the project. During the life of the project, we also provide advice as and when required to keep the joint venture running smoothly.

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 on page 24.

Tax Relief Schemes

Enterprise Investment and Seed Enterprise Investment

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

Enterprise Investment Scheme: is designed to assist small to medium businesses and growing companies (250 employees or less) to raise finance by offering a range of tax breaks to investors who buy new shares in the company, including income tax relief of 30% and capital gains tax exemptions.

Seed Enterprise Investment Scheme: is designed to help start-up companies (25 employees or less) to raise finance using similar tax relief incentives for new investors; income tax relief for this scheme is 50%.

For both schemes, there are certain conditions which should be met before applying. In addition, 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.

Heads of Terms provide a useful roadmap to get to the final contract and are often regarded by the parties involved as being morally binding.

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 legal 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 (T's & C's)

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

Of course, however, nothing comes without risk. There are complicated regulations affecting T's & C's, for instance, the Unfair Contract Terms Act, the Sale of Goods Act and the Unfair Terms in Consumer Contracts Regulations.

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.

A Director may also be employee or a shareholder of the company. If they are an employee, then an employment contract should be put in place. Where the Directors are both shareholders and employees, the employment contract must tie in to the Shareholders' Agreement.

Director's Duties

The Companies Act 2006, supplements the general duty to promote the interests of the company with additional specific duties, notably:

- to act in accordance with the company's constitution
- to exercise their powers for their intended purposes
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid any conflicts of interest between themselves and the company
- to declare any interest in proposed transactions or arrangements with the company

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. If the company becomes insolvent, they must manage the company in the best interests of the creditors, rather than the shareholders. Failure to do so may result in the Directors incurring personal liability for some or all of the company's debts if the company goes into liquidation or administration.

Our expert Corporate and Insolvency lawyers will guide the 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.

As noted above, MKB Law can assist with terms and conditions with customers and clients. Our expert Employment team will work with our Corporate team to ensure that the Directors can comply with their employment obligations.

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 general Shareholders have the right to:

- appoint the Directors to manage the company
- receive a share of the company's profits
- receive notice of general meetings and vote on issues that may arise
- receive certain documents if requested, including the company's annual report
- any final distribution upon the winding up of the company, if surplus funds are available

In addition, where shares have been divided into separate classes, the holders of the shares may have specific rights attached to them.

The Corporate lawyers at MKB Law will provide advice 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. If the company does not have a Company Secretary then this obligation falls on the Directors.

Corporate Governance typically involves balancing the interests of those involved or associated with the company, this includes: shareholders, management, clients, suppliers and, often, the local community.

The Company Secretary will also maintain the company records such as lists of Directors and shareholders, a register of persons with controlling interests, and the company's annual accounts.

At MKB Law, our Corporate Team will provide as much assistance as any client may need for its Corporate Governance purposes.



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.

A Trustee can refer to any person who holds property, authority, or a position of trust or responsibility for the benefit of another individual or company.

Overall, the nature of a Trustee's duty towards a beneficiary of a trust is fiduciary. That means the Trustee owes the beneficiary a duty of good faith and trust. This is the highest legal duty of one party to another, it also involves being bound ethically to act in the beneficiary's best interests. A Trustee who fails to carry out their duties will be in breach of trust.

It is the Trustees' responsibility to familiarise themselves with the interests of the beneficiaries under the trust, and the powers available to them in the administration of the trust. Trustees also have a duty to act impartially between the beneficiaries and a duty to exercise reasonable care.

The Trustee Act 2000 also created a statutory duty of care. However, both the common law duty and the statutory duty may be limited or excluded by appropriate wording in the trust instrument. The trust instrument may also seek to limit the Trustees' liability should they fail in their duty to exercise reasonable care.

A Trustee is not permitted to obtain any indirect or incidental profit or gain by reason of the fact that they are a Trustee, where their personal interest and their duty may come into conflict.

It is a fundamental principle of trust law that a beneficiary must be able to enforce the trust and to make the trustee account for their conduct in the administration of the trust. In order to do so, the Beneficiary must receive sufficient information about the trust assets. Any information obtained by a Trustee during the course of the trusteeship must be kept confidential and may only be exploited by the Trustee for the benefit of the Beneficiaries.

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.

Major Events

Mergers and 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 variety of intermediaries, MKB Law's Corporate team provides made-to-measure mergers and acquisitions advice to both 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.

Recently we have been acting on behalf of a leading Solar Photovoltaic Systems (PV) developer in assembling potential developments and realising value from the disposal of special purpose vehicles.

MKB Law is particularly well known for having lead advisory roles in the acquisition and disposal of property development and investment vehicles.

Among the transactions we have advised on, documented purchases and sales of:

- hotels
- bookmakers offices
- residential homes
- restaurants and bars
- solar farms
- retailers
- software businesses
- professional practices
- property development and investment companies
- renewable businesses
- nursing homes
- insurance brokers
- veterinary practices
- wind farms
- funeral homes
- manufacturing businesses

Inevitably these transactions will involve advising on confidentiality agreements, heads of terms, the due diligence process, the regulatory environment, employment, sellers' warranties and indemnities, sellers' disclosures, consideration payment structure and arrangements.

At MKB Law we will advise our clients on the legal risks attached to each element of the transaction. We will then document in correct legal form the commercial solutions to ensure that the transaction properly implements our client's intentions.

Examples of merges and acquisitions that our team has been involved in can be viewed on page 25.

Shares or Assets

When buying a business there is often a choice as to whether it is better to buy the assets making up the business, or 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. The purchase of assets may enable the buyer to choose the most profitable assets and liabilities. The price of the assets can be apportioned, which may in itself have tax advantages.

The steps in the purchase of assets are similar to those in share sale but there can be added complications. For instance the assets (including the properties) need to be transferred, conveyed or assigned to the buyer as they would in a standalone property acquisition.

If leasehold properties are involved in the transaction, then the lease provisions may require the landlord's consent to assignment; this should be dealt with at the outset.

If there are any third party contracts, e.g.: building contracts, maintenance and service agreements, software or intellectual property licences etc., then they will also need to be assigned to the buyer.

The scope and amount of warranty cover contained in the acquisition agreement may not be as extensive as a share purchase transaction, as there is less risk of unexpected liabilities arising. However, the warranties will still be a key element of the sale agreement, these will typically include, warranties that the seller has good and marketable title to the properties, and the properties are free of third party rights and encumbrances.

An asset sale may provide tax advantages, for example, if capital allowances apply on the transfer, or the transaction constitutes a transfer of a business as a going concern.

MBO's & MBI's

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.

Normally, the Directors involved will be familiar with the business that they are buying or selling and this can make the legal process more straightforward, particularly when compared with a merger or an acquisition.

That being said, there are pitfalls to be avoided which means specialist legal advice and a solid transaction agreement are vital.

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.

We will carry out the relevant due diligence exercises, prepare all related documents such as Confidentiality & Non-Disclosure Agreements and Heads of Terms, right through to advice on the structure of the deal and preparing the sale document.



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 last very briefly, but in some circumstances it may be fundamental to the business and may also last for the entire lifetime of the business.

Indeed, some of these may be so important that if they are not properly documented, an otherwise valuable business may unfortunately be unacceptable to a buyer.

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.

In this section are examples of some of the most important business arrangements that need to be properly documented.

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. The basic premise of the agreement is that the Franchisor continues to own all the intellectual property (e.g.: the brand, style of business) and the Franchisee, for a fee payable to the Franchisor, has the local right to run the business.

The agreement is a legal contract that sets out the rights, obligations and expectations of the Franchisor and Franchisee, in order to protect the interests of both parties. The contents of the agreement can vary depending upon the franchise system and sector but will typically cover:

- the term, i.e.: how many years the agreement will last
- fees and expenses payable to the Franchisor
- daily operation of the franchised business
- guidelines on the permitted use of the brand and IP
- renewal rights (if any)
- how the franchised business can be sold and any restrictions on the Franchisee after they have left the franchise or sold the business

A well drafted agreement should also clearly set out what commitment a Franchisee can expect from 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 a range of 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 employment contracts with staff.

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 where 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.

Distribution Agreements will generally include the following provisions:

- what goods or products the agreement relates to
- limitations as to where the distributor can do business and information on selling competing products
- limitations on the supplier appointing other distributors
- main duties of the distributor in terms of marketing and minimum purchase levels etc.
- main duties of the supplier, e.g.: any technical support
- pricing and payment provisions
- termination provisions
- limitations of liability

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.

Co-operation Agreements

A Co-operation Agreement outlines the rights and responsibilities of the relevant parties when entering into a co-operative business relationship. It is typically used to draft the general terms of the agreement, before entering into a final contract.

The agreement will outline the overall objectives of the agreement, term, responsibilities, obligations, Intellectual Property ownership and any non-disclosure agreements.

Outsourcing Agreements

An Outsourcing Agreement relates to the terms set out when outsourcing the provision and management of specific functions to an external supplier. For many businesses, the most common example of this is the outsourcing of IT or telecoms services.

The agreement should be negotiated and set in place from the outset to protect the interests of all parties to ensure a successful business relationship. Outsourcing Agreements typically include the following provisions:

- standard terms and conditions
- delivery and timescales of functions
- Data Protection and Intellectual Property Rights

The Outsourcing Agreement focuses on the legal aspect of the business arrangement. This should not be confused with the Service Level Agreement which focuses on details including the actual services that will be provided and the overall quality of the service.

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.

Contracts made by the Agent within the scope of the authority given by the Principal are binding. The Principal will be liable for acts done within the Agent's usual authority as well as the Agent's actual or express authority. If the Agent makes a contract outside of the authority given, the contracts may not be binding unless the Principal approves them. It is important that both parties understand the scope of the authority. The Principal should be careful when appointing someone whose actions can create legal obligations for them.

The Agent owes both contractual and fiduciary duties to the Principal. The contractual duties should be set out in the Agency Agreement and the Agent is responsible for performing them with reasonable care and skill, and in compliance with the Principal's instructions. Fiduciary duties require that the Agent put the interests of the Principal before their own and perform the duties of the agency properly and faithfully.

The duties owed by the Principal to the Agent should also be set out in the Agreement, with the Principal's main obligation being to pay the agreed commission.

In many cases, an Agent in business will be a commercial agent within the Commercial Agents. One of the most substantial changes being that the Agent may be entitled to a payment on termination of the agency. Terminating an arrangement can be complex, especially if it is considered to be a commercial agency. An Agent may be entitled to compensation under the Commercial Agents (Council Directive) Regulations 1993.

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.

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 purpose of the agreement is to define the rights and obligations of all parties involved, and should cover the services to be provided, e.g. payment terms and length of term (e.g.: one off or ongoing basis).

A service agreement may also involve an agreement between the business and a senior employee or consultant, detailing the more specific terms of duties expected.

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 legal services, secretarial support, supply of staff or cleaning services.

The main provisions covered within an SLA include:

- the required performance level, specifically in terms of reliability and responsiveness
- monitoring process and service level reporting
- procedure for reporting issues with the service and expected response and resolution time scales
- repercussions for not fulfilling commitments, including the right to terminate the contract

SLAs are also suitable for internal departments within larger companies, for example, the service being provided by an internal IT helpdesk to other departments.

Drop-shipping Agreement

Drop-shipping is when a business vendor does not keep physical stock of goods but rather transfers any orders directly to the manufacturer who then take responsibility for shipping. This allows businesses, especially smaller sized ones, to reduce stock overheads and make a profit on the difference between the wholesale and retail price.

Alternatively, they may receive a percentage of sales in commission, these details will be set out in the Agreement. As drop-shipping becomes increasing popular with online retailers it is important that a watertight agreement is in place detailing the obligations of all parties involved.

Power Purchase Agreement

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.

The PPA allows the generator (an individual or organisation) to market the electricity it generates and can be from various sources such as wind, hydro, landfill gas, or large scale solar. In the case of renewable energy generating stations, the generator may be entitled to receive "green" benefits for generating electricity from renewable sources.

There are a number of considerations to be made during the negotiation and drafting of PPAs, such as the sale and transfer of green benefits, export volume, maintenance and outages, exclusivity, dates for construction of the plant, registration of the supply point, output forecasts, meter accuracy and access rights, guarantees, and assignment.

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.

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.

In addition to the visual and written aspect of your trademark, you will also be required to list it within the specific classification that accurately describes the product or service being offered.

It is advisable to check the trademark database in advance to ensure there are no conflicts. If a conflict arises and you have already spent time and money on the branding and marketing aspect, then any changes or adaptations may incur unplanned (and often unnecessary) expenses.

Once the application has been received by the IPO, it will then be featured in the trademark journal for a period of two months, during which time anyone may object to the application.

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, typically:

- scope of the license, i.e. what is permitted and restricted monetary compensation, or royalties
- length of the contract and renewal options
- quality control standards and procedures

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. Fees may be paid in a number of ways typically in full at the start of the agreement, periodically (half-yearly or quarterly), or a fixed fee based on each individual use.

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. The agreement should reference the obligations and duties of:

- website developers, domain and hosting service providers, SEO providers
- customers and consumers - specifically purchase transactions and privacy policies
- online partners, suppliers and advertisers

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 regular, often 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. In business there are many different scenarios where a Confidentiality and Non-Disclosure Agreement will usually be required, including during mergers and acquisitions.

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



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. This agreement provides a mechanism for the transfer of the legal and beneficial ownership of each shareholder's shares in the event of their death. Each shareholding will be subject to the following two options:

Call Option: the right of the remaining shareholders to purchase the deceased shareholder's shares from their personal representatives.

Put Option: the right of the deceased shareholder's personal representatives to require the remaining shareholders to purchase the deceased shareholder's shares.

It is important to ensure that the options are drafted as rights rather than obligations, in order to avoid the transfer of shares on the death of the deceased shareholder being deemed to be subject to a binding contract for sale. If the transfer is deemed to be subject to a binding contract for sale, it will be treated as being a transfer of cash for inheritance tax purposes, which means that Business Property Relief (BPR) for inheritance tax may be unavailable.

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. It is important that the life insurance policy is written under trust as this ensures that the proceeds of the policy will fall outside of the deceased shareholder's estate and will not be subject to inheritance tax.

Put & Call Option Agreements

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.

If the option is exercised then the other party is obliged to buy or sell the option shares, depending on whether the option is a put or call option.

Call Option: gives a third party the right to purchase the shares subject to the option in the circumstances and at the price established by the option agreement.

Put Option: gives the holder of shares the right to force a third party to buy the shares subject to the option in the circumstances and at the price set by the option agreement.

The production, Call Option or both, will be documented in a Share Option Agreement. This sets out detailed terms in respect of shares, the option and the circumstances in which the option can be exercised, including a statement of:

- the grant of the Put or Call option
- the shares subject to the option
- any payment to be made on grant of the option
- any conditions that must be satisfied beforehand
- the period in which the option can be exercised
- the method by which the option is to be exercised
- the option price and how it is to be calculated, e.g.:fixed price or in accordance with a specified formula
- any circumstances in which the option will lapse or any restrictions while the option is in effect
- whether the shareholder will give warranties in respect of the shares
- whether a reorganisation of share capital will affect the option (i.e. to ensure the option shares are not diluted)

Off-Shore 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 off-shore trust/company structure.

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

An offshore trust is simply a trust, the Trustees of which are resident in a no/low tax jurisdiction. Most offshore trust jurisdictions follow the basic common law principles of trust law, but are likely also to contain additional features such as the ability to appoint a protector, longer duration, and the ability to accumulate income.

The most common offshore trusts are discretionary trusts, life interest or hybrid trusts, which combine the fixed life interest with discretionary power for the trustee to create other interests that may override the fixed interest.

The requirements to establish an offshore trust are similar in many ways to those for onshore trusts, for example:

- assets to be transferred must be specified and identifiable
- assets must be owned by the settlor prior to the transfer, and the settlor must have the legal and mental capacity to transfer the assets
- there must be a valid disposition to the trustee such that ownership of the assets is transferred
- there must be intent to create the trust in the form described by the trust deed
- the terms of the trust must be lawful

Investment Agreements

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

The agreement should represent the interests of all the prospective investors, the existing shareholders plus take into account those directly involved with the business, i.e. the company founders. The agreement will set out the extent to which the investor will have direct management of the company, and how much income they will receive.

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.

If the company has assets of £30 million or less, then share options are typically available up to the value of £250,000 within a 3 year period. If the employee buys the shares for at least the market value granted by the company, they will be exempt from paying Income Tax or National Insurance on them.

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.

Many factors should be considered on the first instance, for example, determining the value of the business, any tax and debt obligations, appointing a new successor, and developing a plan to deal with succession.

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.

Succession planning takes into consideration a number of legal provisions including:

- business or sale agreement
- share transfers
- insurances and pensions
- business licenses
- VAT
- memberships of professional or trade bodies
- name changes
- outstanding agreements or contracts
- permissions from other shareholders, partners etc.
- domain name transfers

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.

This includes, but is not limited to:

- Articles of Association
- Creation of Parent or Holding Company
- Creation of Subsidiary Companies
- Creation of New Classes of Shares
- Shareholders' Agreements
- Re-Designation of Share Capital
- Sub-Division of Share Capital
- Company Own Purchase of Shares
- Mergers/De-Mergers
- Issue of Company Securities
- Capitalisation and Bonus Issues of Shares
- Rights Issues
- Business Succession Planning/Exit Strategies
- Liquidations (which may be either solvent or insolvent)
- Corporate Insolvency

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.

It is important that details of any exit strategy are outlined and set in place from the inception of the business or investment.

The most common types of exit strategy include strategic acquisitions and management buyouts. Typically these will depend on the size and type of business, and should also need to take into account the interests of any company shareholders involved.

The exit strategy a business owner chooses will also 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 fashion to its current setup or indeed 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.

Deals

Below are samples of deals that our team has been involved in.

Joint Venture		
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.

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 Northen Irish manufacturer operating within various jurisdictions in respect of their shareholding structure to allow fresh, new multi-million pound equity investment.

Franchise and 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.

Mergers and Acquisitions		
Project	Client	Description of Project & MKB Law Involvement
Sale of Shares in Solar Energy Company	Irish Solar Photovoltaic Developer	Our team represented the vendor, negotiated the transaction documentation (heads of terms, sale agreement & disclosure letter) and acted on completion of a multi-million pound sale of equity in a number of operating companies in Northern Ireland. This included reviewing requisite planning permissions for the development of solar plants, 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	Our team advised the vendor, negotiated and drafted shareholders' and sale agreements, and acted as a project manager coordinating with financial advisers and the accountants in a purchase of a local utility service provider by one of the six leading utility service providers.
Divestment of Shares in a Shopping Mall	NI Developer	Our team acted for the vendor, advised on all aspect of the assignment of the leases, negotiated and drafted the sale agreement, and assisted in financing arrangement with the banking institution.
Restructuring of Group Business	Office & retail leasing company	Our team advised on the restructuring and assignment of leases within the group, and reviewed and drafted the transaction agreements.
Sale of Sound Production Business	Family limited liability partnership	Our team acted for the vendor, negotiated limited warranties, advised on TUPE issues and financing arrangements.
Sale of Multiple-Outlet Bookmakers Business	Business Owner	Our team acted as lead advisor in the disposal of one of Northern Ireland's largest family owned businesses operating in a highly regulated sector.
Sale of a children's soft play business	Family run Company	Our team advised the purchaser in an acquisition of a children's soft play business, drafted and negotiated sale agreements, and advised on potential breach of contractual warranties by the vendors.
Sale of share in housing development partnership	Partner in a family partnership	Our team advised the client and drafted the sale agreement.

Testimonials

"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

"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

"MKB Law have been the 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."

Dr Bill Wolsey, Beannchor Group

"We found the advice provided by MKB Law to be efficient and accurate. They took time to understand our business, and provided a sensible and commercial approach to help us achieve the desired outcome."

Keith Storey, ASM Financial Planning Ltd

"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 achieve, and their advice was concise, focused and prompt. The team were understanding and courteous throughout."

Dr J McKelvey, Tullywest Manor Residential

"MKB Law provides all legal services to our Little Wing Pizza 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

"The Corporate team at MKB Law have consistently provided high quality, efficient and effective advice around complicated business finance, restructuring and property issues. I am very happy to recommend their services."

Neil Adair, PJC Recovery

About Us

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: commercial and business services, conveyancing and property, financial services, debt recovery and insolvency, disputes and litigation, employment, private client, and matrimonial services.



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