



Giving your business the legal **EDGE**

How we can help

WE CAN ASSIST SCOTTISH EDGE BUSINESSES ON ALL ASPECTS OF THEIR GROWTH JOURNEY INCLUDING WITH THE FOLLOWING:

CONTRACTS

- Shareholder agreements
- Terms & conditions (customers and suppliers)
- Manufacturing agreements
- Investment documentation
- Loan/funding agreements
- Contracts relating to succession
- Property and lease arrangements
- Business structure including social enterprises and community interest companies
- Joint ventures

INTELLECTUAL PROPERTY

- Intellectual property transfers
- Trademark registrations
- Disputes over ownership of intellectual property
- Advice and documentation to protect a business's intellectual property

EXPORT & IMPORT

- Franchising
- Licensing
- Distribution
- Agency

DATA PROTECTION

- Updating current policies and procedures to reflect recent GDPR rules e.g. privacy policies
- Specialist advice for software/technology
- Advice where there has been a data breach
- Subject access requests

RECRUITMENT & EMPLOYMENT LAW

- Contracts of employment
- Employee handbooks
- Employee benefits (including share options)
- Post-termination restrictions
- Disputes with employees
- Settlement agreements

Are you in the know?



ABOUT CONTRACTS

They do not require to be in writing and in many instances businesses will contract verbally. However, verbal contracts can have significant downsides in the event that something does not go to plan. If so, in a dispute there can be competing opinions about the agreed contractual terms and which party is correct. Such disputes over the contractual terms can become protracted and may impact significantly on one or both of the businesses. A well drafted set of terms and conditions or bespoke contractual agreement can provide clarity to the parties on the agreed contractual terms in the event of a dispute, such as the goods/services to be provided, the dates for performance, the price and payment terms, amongst many others.

Extreme caution should be exercised when using online contract templates. Access to legal templates is becoming ever-easier and cheaper due to the rapid expansion of the online legal services market. However, having the wrong documentation in place can leave your business open to risks. Documents should be tailored to your specific business needs. This cannot be achieved using an online template – they are often overly vague as they try to appeal to numerous needs which can lead to misrepresentation, misunderstanding and miscommunication which could result in a huge financial loss for the company.

When you convert from a sole trader business or partnership to a private limited company, the new company is a completely separate legal entity. It is therefore important to consider if there are assets of the initial business that require to be transferred into the new company.

In terms of any loans to a company, they are often made on an informal basis and are not set out in a written agreement. Any loan which is not in writing will be repayable on demand.

ABOUT INTELLECTUAL PROPERTY

You are probably familiar with the © symbol and recognise that it means whatever you are looking at is protected by copyright. It appears everywhere. And so you'd expect everyone who has a registered trade mark to do the same with the similar symbol of the R in a circle. So why don't they?

The © symbol indicates that the item is subject to copyright protection under local law. By using the R symbol you are making a statement that your mark is registered – which is absolutely fine if it is, but what if you are selling abroad and it isn't registered there?

Many countries, including the UK, make it an offence to claim that your trade mark is registered when it isn't – in the UK it can result in a fine. So if your trade mark is registered in some markets but not all of them, if you use the R symbol you could be breaking the law. So now you know why it's not as widely used as you'd think!

Copyright is automatic and doesn't need to be registered. But its owner is the creator, not the person who paid for it unless you say otherwise in a contract.

In order to assign any form of intellectual property (IP) from one party to another, it must be in writing. This is relevant in cases where a third party has designed your logo or branding and you should ensure that you have a written assignation of the IP from the developer to ensure that the company owns this. Whilst where an employee of your company develops IP during the course of their role there is a lower chance of a dispute over ownership, it is still always a good idea to have an IP assignation clause within your employment contracts to remove any room for potential dispute. Smaller companies, with fewer employees, need to be especially careful as often employees have no specific or defined role and usually end up carrying out a variety of tasks. In such circumstances, it may be more difficult to prove that any IP that any such employee was working on belongs to the company.

ABOUT EXPORT & IMPORT

If you are entering into any kind of agreement with another party in relation to the supply of goods either from you to the other or vice versa, we would strongly recommend putting in place a written agreement. Some things that need to be considered before the agreement is finalised include how any disputes are going to be handled in the event that goods arrive faulty or broken or not on time and whether the agreement will actually be suitable for the country of distribution. Without a distribution agreement these issues are up in the air, so it's always better to seek the protection of an agreement.

Agents may automatically be entitled to compensation if their appointment is terminated, so distributors may be a safer option for your business.

Franchising is not just for fast food concepts like McDonalds, Subway and Dominos. The British Franchise Association confirmed that in 2018, there were 48,600 franchise units across the country, contributing over £17.2 billion and 710,000 jobs to the economy. 60% of franchise units turned over more than £250,000 in 2018. Continually growing, the UK franchise industry is a healthy one, with 18% of franchisees under 30. Franchisee-franchisor relationships are as a result at their strongest recorded level and the franchise sector is operating at record levels with all-time highs reported in turnover, employment and numbers of franchisee-owned businesses.

ABOUT DATA PROTECTION

The General Data Protection Regulation (the GDPR) continues to apply in the UK as the UK GDPR. In combination with the Data Protection Act 2018 it sets out rules on the processing of personal data and imposes a duty on all organisations to report certain types of personal data breaches to the relevant supervisory authority. Rights given to individuals under the GDPR include allowing easier access to the data companies hold about them and a clear responsibility for organisations to obtain the consent of people they collect information about. Businesses covered by the GDPR are accountable for their handling of people's personal information and this can include having data protection policies, data protection impact assessments and having relevant documents in place on how data is processed.

Having proper procedures in place that comply with GDPR is important, as non-compliance can result in a fine of up to 20 million euros or 4% of the total annual worldwide turnover of the business in the preceding financial year, depending on which is higher. British Airways' recent fine of £20 million for a data breach is one of the most high-profile examples of this.

If you have a website or an app and you use cookies then you are required to tell device users that cookies are being used, the type of cookies that are used, why they are used and what they do. You must also obtain each person's consent to the use of cookies for the first time that they use your website or app on a particular device. You don't have to obtain consent every time that same person visits the website or uses the app on that device, but remember multiple users may use each device and you may need to repeat your cookie statement at appropriate intervals to obtain those persons' consent. You may also need to obtain new consent if your use of cookies changes over time.

ABOUT RECRUITMENT & EMPLOYMENT

Around April every year, the **UK National Living Wage** is updated. In April 2023, the rates were updated to be:

23 and over: £10.42

21-22: £10.18

18-20: £7.49

Under 18: £5.28

Apprentice: £5.28

(under 19, or over 19 and in the first year of apprenticeship)

Employers should update their employees on the change, as well as ensuring they are implementing the change (e.g. via payroll) to make sure employees are paid the correct amounts from the implementation date.

Employees must be provided with a 'written statement of employment particulars' no later than the day they begin employment. This is a change from the previous position where written particulars had to be provided within 2 months of an employee beginning employment. These particulars must contain certain basic information (such as the employee's place and hours of work) but it is preferable to issue the employee with a tailored employment contract. Doing so ensures that an employer's interests (such as protecting intellectual property and confidential information or implementing post-termination restrictions) are adequately protected. It also provides greater certainty in the event of any dispute.

Alongside a comprehensive employment contract, we recommend that employers have detailed employee handbooks setting out relevant policies and procedures for their workplace. There are certain policies and procedures which are required by law, and others which operate to protect employers from claims.

Are you in the know?

A SNAPSHOT
OF OUR

Support for Scottish EDGE

CONTACT US

SEND AN EMAIL TO
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SUPPORT FOR SCOTTISH EDGE, NET ZERO EDGE, CREATIVE EDGE, SOCIAL EDGE AND CIRCULAR ECONOMY EDGE WINNERS

LEGAL EDGE MENTORSHIP PROGRAMME

The advantages of in-house general counsel but without the cost.

All main category Scottish EDGE winners get the opportunity to apply to join our Legal Edge programme, designed to give growing companies many of the benefits of having an in-house general counsel to call upon but without the cost. Successful applicants get to enjoy a host of benefits on Legal Edge, including:

- One-to-one sessions with specialists on topics such as investment, share options, intellectual property and employment law.
- A dedicated point of contact and a legal mentor who will be a leader in the field of entrepreneurship law to help anticipate, identify and resolve legal issues;
- Regular check-ins help the businesses make the most of the opportunities and minimise the risks;
- 50% off Harper Macleod legal fees;
- Access to Harper Macleod sector events and clubs; and
- Access to Harper Macleod legal updates.

Get in touch for more information and details on how to apply.

SUPPORT FOR ALL SCOTTISH EDGE FINALISTS

LEGAL EDGE HELP LINE

Legal help when you need it.

All finalists get access to Harper Macleod's expert lawyers to chat through what they want without charge. Whether it's a funding, property, employment, intellectual property or commercial arrangement query, a member of our team is here to help.

Email us and we'll call you back for a chat on any legal issues you may have.

SUPPORT FOR YOUNG EDGE WINNERS AND WILD CARD EDGE WINNERS

SUPPORT AVAILABLE

- Invitations to Harper Macleod legal clinics to get free support and help
- 25% off Harper Macleod legal fees

We are Harper Macleod

Harper Macleod is a leading Scottish independent law firm that is driven to deliver.

Our growth and success is determined by your success, which is why we always try harder. We don't just see ourselves as lawyers, we see ourselves as problem solvers and business advisers, who focus on understanding your needs. We work side by side with you, using law as a tool to provide innovative solutions that are tailored to organisations and individuals.

It's this drive that sets us apart and delivers a better outcome for you or your organisation.