DOWNLOAD SLIDES AT
BUCKWORTHS.COM/RAISING-INVESTMENT

BUCKWORTHS

Raising Investment

DOWNLOAD SLIDES AT
BUCKWORTHS.COM/RAISING-INVESTMENT

About Buckworths

The only law firm working exclusively with start-ups and high growth businesses.

- Advisor primarily to start-ups from pre-seed, seed and Series A-C
- Experts in SEIS, EIS and VCT tax reliefs
- Recognised by the Legal500 ranking

@BuckworthsLaw

DOWNLOAD SLIDES AT
BUCKWORTHS.COM/RAISING-INVESTMENT

What are we covering?

- Update on the market
- Sources of investment
- Angel rounds
- Convertible debt
- Investment process
- To do list

Investors remain active

- Many angels and VC funds are closing rounds
- Investors see opportunities to invest in the most innovative start-ups
- Start-ups with good underlying financials pre-lockdown are perfectly placed to raise

There has been an adjustment in terms of investor make-up of early stage rounds

- VC are investing earlier
- Many more early-stage funds
- Investors investing bigger tickets at an earlier stage

INVESTMENT

Sources of investment

- Grant funding
- Friends and family;
  Angel investors
- Crowdfunding – debt and equity
- ASAs / SAFE / Convertible loans
- VC / Institutional investors
- ICO (for relevant businesses)

ANGEL ROUNDS

What are SEIS & EIS?

[Seed] Enterprise Investment Scheme

Tax rebate schemes

High risk investments

- Start-up companies
- Full risk investments
- No preferential treatment

Incentivise high net worth individuals to invest

First £150,000 raised – 50% tax relief

Thereafter EIS - £5,000,000 per year – 30% tax relief

ANGEL ROUNDS

What are the specific reliefs?

Income tax relief up to an annual investment limit of £100,000

- 50% under SEIS up to £100,000 p/a
- 30% under EIS up to £1,000,000 p/a

Relief can be claimed in the year of investment and/or the year before

Capital Gains Tax (CGT) reinvestment relief on reinvestment of gain on disposal of assets or shares. Only 50% of the tax fue on the disposal is payable.

CGT relief at 100% on disposal of relief shares after 3 years

Under EIS, deferral relief is also available

Loss relief

ANGEL ROUNDS

Requirements

- Company must be carrying on a qualifying trade
- Investor must receive full-risk ordinary shares
- UK permanent establishment or holding company
- Investment must meet the “growth requirement”
    - Expenditure of investment will lead to organic growth in employee, customer and/or revenue numbers
    - Restrictions on ability to repay debt

- No debt/convertible debt
- No preference shares
- No redeemable shares

Procedure

Claim for relief
Advance assurance that: (i) company carries on a "qualifying trade" and (ii) Company has suitable connection to UK

Investors claim tax relief
Generally, via their annual tax return but potentially intra-year

Investors invest into the Company

Claim for relief
Immediately for SEIS and once traded for 4 months for EIS

HMRC issues certificate
This takes 4 to 6 weeks to be processed

KEY TERMS

Convertible Debt

Conversion

Under whose control: Company or investor?
What events trigger conversion:

- Investment round – discount to valuation?
- Events of default
- Sale

Commercials

- Valuation cap
- Discount
- Interest Rate

Insolvency

- To convert or not convert?
- Debt ranks above equity
- Unconverted convertible makes company insolvent

Advance Subscription Agreement

- SEIS /EIS compliant
- No interest rate
- Non-refundable subscription i.e. it is NOT a loan
- Convertible within 6 months
- Reasonable discount to next round valuation

Note:

1. It is vital that the advance subscription is recorded as a pre-subscription in the accounts and NOT as a loan. Incorrect accounting treatment will void [S]EIS.

2. SAFEs are US format agreements that usually need to be tailored to UK law. They may also not be [S]EIS compliant.

3. Depending on the approach being taken, it is often worth getting a clearance from HMRC prior to using an ASA.

Investment process

- Company and interested investors find each other
- Company makes its pitch to multiple investors:
    - Business plan, executive summary, financial projections with assumptions, competitive analysis
- Interested investors engage in due diligence:
    - Technological, market, competitive, business development
    - Legal and accounting
- A lead investor is identified; rest are follow-on
- The following are negotiated:
    - Company valuation
    - Size of round
    - Lead investor share of round
    - Terms of investment
- Legal process: terms of investment documentation

Investment documents

- Term sheet
- Subscription agreement
- Shareholders' agreement
- Articles of association
- Disclosure letter
- Management right letter
- Board and shareholder resolutions
- Consent letter
- Pre-emption notices

FORMULAE

Calculating your valuation

Pre-money valuation = value of company today pre-investment

Post-money valuation = pre-money valuation + amount invested

Percentage investor will receive = amount invested/post-money valuation

Price per share paid by investor = pre-money valuation/number of shares pre-investment*

*Generally, the number of shares used is the *fully diluted share capital* (i.e. including any option pool)

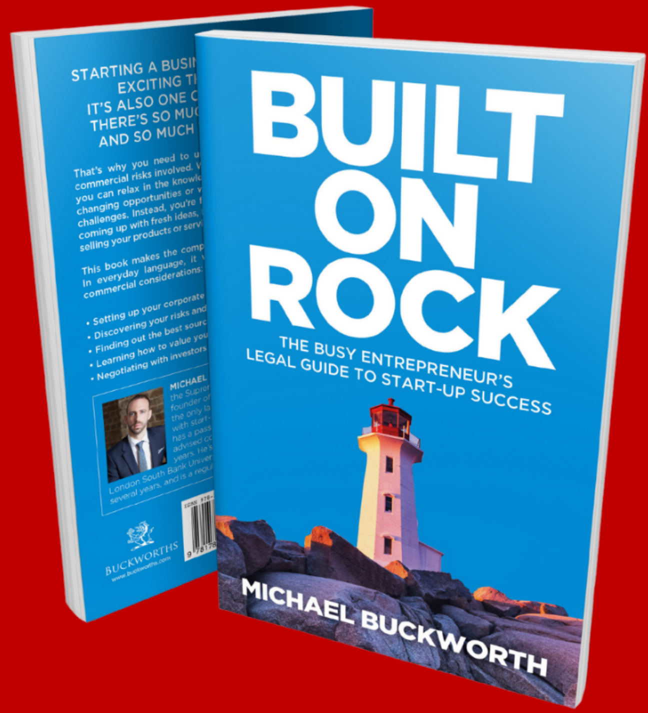
MICHAEL BUCKWORTH

Built on Rock

Available on Amazon and in all good bookstores

#1 BEST SELLER

amazon



Built on Rock, the busy entrepreneur's legal guide to start-up success, is Michael Buckworth's first book and Amazon Best Seller, in which he sets out how to make the complicated aspects of start-up law simple. This book provides busy founders with answers to all their legal questions from an expert.

DOWNLOAD SLIDES AT
BUCKWORTHS.COM/RAISING-INVESTMENT

Next Steps

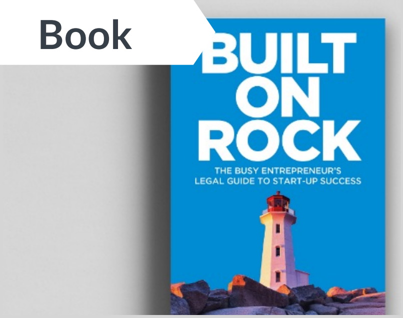
Events

Follow our upcoming events at **buckworths.com/events**

Insights

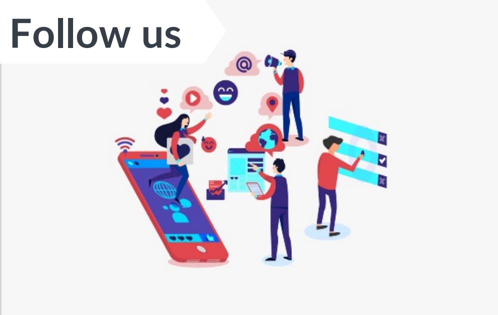
Learn more on our insights page at **buckworths.com/insights**

Book



Download Chapter 1 for **FREE** at **buckworths.com/built-on-rock-michael-buckworth**

Follow us



Stay up to date and follow **@BuckworthsLaw** on Facebook, Twitter, Instagram and LinkedIn

Contact Us

BUCKWORTHS

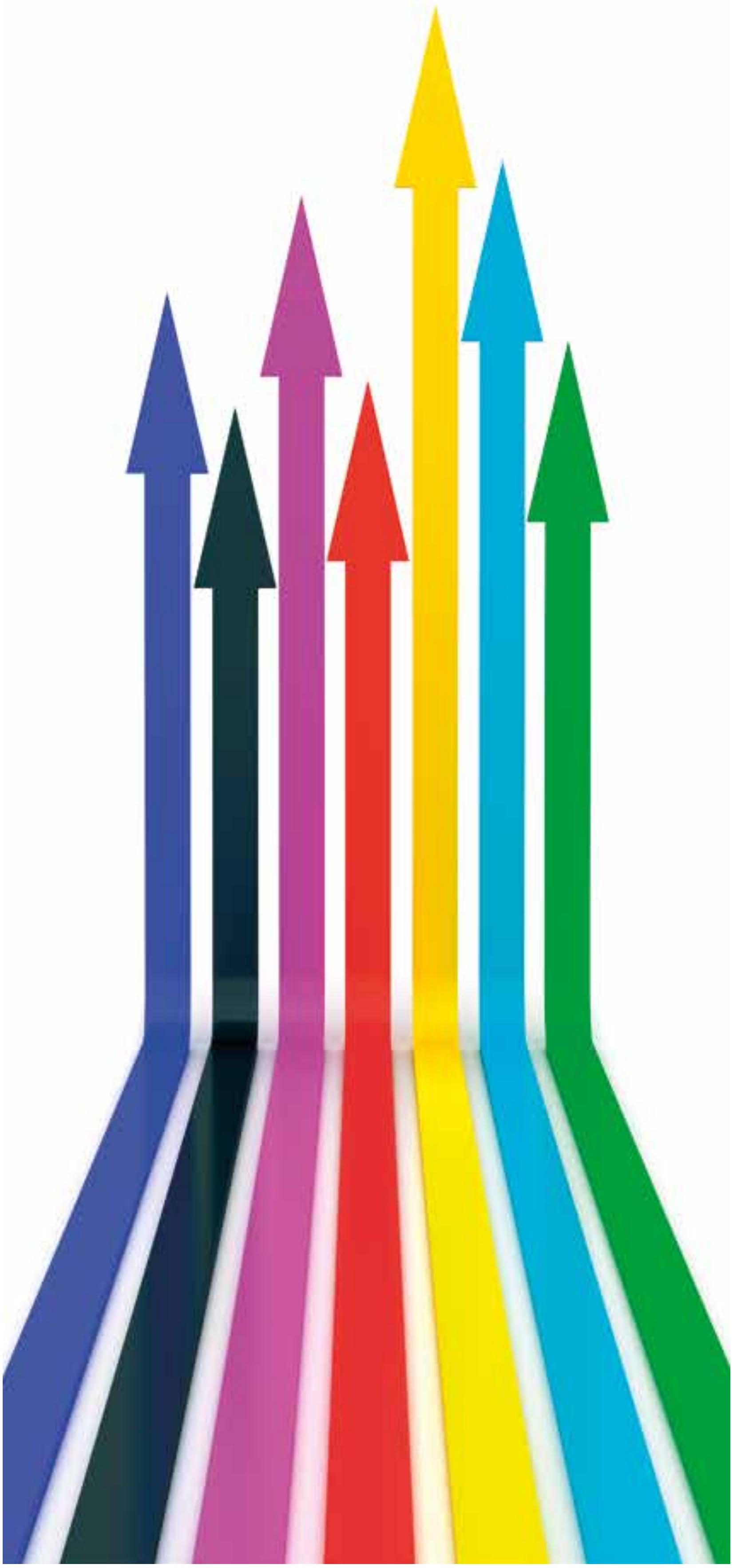
2nd Floor, 1-3 Worship Street,
London, EC2A 2AB
E: office@buckworths.com
T: 020 7952 1723

@BuckworthsLaw

Introduction to Startup Law

Buckworths

Contents



CONTACTS

E. office@buckworths.com
W. www.buckworths.com

An "Introduction to Startup Law" is published by Buckworths. Buckworths is a trading name of Buckworths Limited.

Buckworths is a body recognised and regulated by the Solicitors Regulation Authority in the UK with registered number 559537 including for any incidental services relating to investments, insurance and mortgages.

The content of this booklet is a general summary of a number of areas of law. It is not intended to be, and shall not constitute, legal advice. You are strongly advised to seek specific legal advice in relation to your business and are not permitted to rely on any statement contained herein.

Any recommendation of a third party supplier made by us herein or otherwise is made by us in good faith but does not constitute a representation that such supplier is suitable for your business. Accordingly Buckworths will not be responsible for any losses suffered by you arising from your use of any such supplier.

Buckworths specifically disclaims any liability for losses, damages or other expenses incurred by any person as a result of reliance on any statement in this booklet.

I am Michael Buckworth, Managing Partner of Buckworths. I am very proud of our firm and its reputation as the leading UK Law Firm advising startups and high growth businesses.

Buckworths is the only Law Firm in the UK working exclusively with startups and high growth businesses. We offer an exceptional service to our clients which leverages our unique experience of working with some of the most cutting-edge and innovative entrepreneurs.

Buckworths is highly sought after as trusted advisers acting in its clients' long-term interests. We advise clients from a range of business sectors including tech, fintech and retail.

"Buckworths is the market leader in advising startups"

The purpose of this "Introduction to Startup Law" is to provide entrepreneurs with a helpful, easy-to-understand resource to which they can refer as they begin (or continue) their journey in developing a successful business.

We do everything we can to give our clients and other entrepreneurs as much relevant information as possible. As well as this guide, we provide business consultancy services working closely with a wide range of businesses to develop their corporate and commercial strategies and strategic relationships.

I hope that this resource is useful and informative. To the extent that you have any questions or require advice of any aspect of startup law, please send us an email or give us a call.

Good luck with your business!

Michael.

About Buckworths

Buckworths is unique in that it works exclusively with startups and early stage businesses.

Buckworths is a leading boutique law firm advising high growth startups. Named “Corporate Law Firm of the year” for the past three years, Buckworths advises new and established businesses in the UK as well as businesses seeking to redomicile or expand into the UK.

Although a law firm, Buckworths also provides more general business consultancy to clients which leverages its broad experience working with a range of businesses. Buckworths advises clients operating in various business sectors including technology, fin-tech, med-tech, bio-tech, retail and hospitality.

Michael Buckworth, the founder of the firm, has unique experience and skills having worked with a large number of businesses over the past decade. Michael read law at Merton College, Oxford University. He qualified and worked initially as a corporate solicitor at the top global US firm, Shearman & Sterling LLP before he joined the leading New York law firm Cleary Gottlieb Steen & Hamilton LLP. Having set up Buckworths in 2011, Michael now acts as board advisor and trusted counsel to a number of high growth clients from early stage startups to businesses closing Series B and Series C investment rounds.

Buckworths provides advice to clients covering a range of practice areas, outlined below.

Acquisitions and Disposals:
Since the establishment of the firm, Buckworths has acted for businesses on both national and international sales. Advice on these transactions involves the analysis, structuring, negotiation and preparation of documents relating to the sale or purchase of the business. Buckworths understands that each deal is unique. The firm works closely with each client to ensure that the client’s goals are met.

Branding:
The firm assists clients with protecting their brand and other valuable intellectual property. Buckworths advises on securing and enforcing copyright, design rights and trade mark protection. Our team works pro-actively with clients to maintain a register of intellectual property relevant to their business and to actively discourage (and if necessary, prosecute) infringement.

Commercial:
Buckworths acts on a range of issues including incorporation of companies, drafting customer contracts and terms and conditions, supplier agreements, risk analysis and reduction, and insurance. By understanding our clients’ businesses we are able to offer commercial, practical and accessible advice. Our aim is to ensure that our clients understand our advice and are able to proceed with confidence in growing their business.

Dispute Resolution:
We understand that each dispute requires a unique approach and we always look to meet our clients’ needs with the help of our excellent litigation team. There are a number of different ways to resolve conflicts, including through negotiation and litigation. Where litigation is unavoidable, we work with our clients to ensure that their case is argued in the clearest most robust manner. We strive to ensure that disputes are resolved as quickly as possible, causing the least disruption to our client’s business and in a cost effective manner.

Employee Incentivisation:
As well as advising on employment matters, we are experts at structuring reverse vesting and option schemes for employees, contractors and advisors. We understand the complex tax implications of share incentivisation and the importance of creating a scheme that properly incentivises stakeholders to perform to the best of their ability and stay with the business for the long term.

Fundraising:
A key part of our business involves advising on the fundraising process for our clients. We are experts at negotiating investment rounds for our clients and ensuring that the commercial terms give the company flexibility to develop their business as they wish. Our team is one of the best in advising on the tax relief schemes used by investors when investing in startups and early stage businesses.

Shareholder Relations:
We advise on a range of shareholder matters including negotiating founder and shareholder agreements, putting in place vesting arrangements and resolving shareholder disputes.

Tax and Compliance:
We are market leaders at structuring and advising on SEIS and EIS and have an in-depth understanding of the ever-changing regime governing these schemes. These schemes are driving the UK startup finance market and are vital for any early stage business looking to raise funds. Securing and maintaining compliance is crucial and our team have the expertise to ensure continued qualification.

Buckworths advises clients in a number of sectors including the following:

Bio-tech and med-tech:
In addition to assisting with commercial documentation and investment rounds, we can help biotech and pharma startups with the complex issues involved in securing compliance for SEIS and EIS. Our dedicated experts can advise on how to satisfy relevant "intangible asset rules" applicable to these schemes as well as the negotiation of licensing and development agreements.

Blockchain:
We advise some of the leading and most innovative Bitcoin businesses in the UK. Leveraging this experience, we are working with a number of startups looking to bring blockchain to other sectors. This understanding of blockchain is unique within small firms and is a specialty that we believe will be of increasing value to our clients over the next few years.

Fin-tech:
We advise a large number of fin-tech companies both in the UK and abroad. These include both FCA regulated and unregulated businesses. We advise on the full range of commercial and regulatory issues applicable to these businesses.

Restaurants and hospitality:
Our team has a strong record advising restaurants and hospitality businesses on raising equity investment using tax reliefs, securing debt funding and negotiating commercial leases for their premises. We have acted for a range of successful restaurant startups including on the subsequent exit of the founders and investors.

Technology:
Buckworths is a specialist in advising technology businesses on a range of legal and commercial issues. 75% of our clients are tech (including fin-tech, med-tech and bio-tech) companies. We routinely advise on fundraising, tax reliefs, commercial issues, brand protection and intellectual property. Our clients range from startups to medium sized businesses with many of them doing some of the most innovative things in their sectors.

For Profit Businesses: Legal Structures

The first decision for any entrepreneur is what legal structure to use. Fortunately, in the UK a limited company is cheap and flexible to set up and operate.

Introduction

There are a variety of legal structures through which a business can be operated. We look here at incorporated structures in the context of for-profit businesses.

There are two main reasons for operating a business through an incorporated entity (as opposed to operating a business as a sole trader). The first is to take advantage of the limited liability nature of some incorporated entities with the result that (absent the directors committing criminal offences or the shareholders giving personal guarantees of the business's liabilities) the founders will not be personally liable on an insolvency of the business. The second (which is applicable to companies but not to limited liability partnerships) is to have the business taxed separately to its owners.

Most common types of entities

Private company limited by shares: this is a company with a share capital. Shares in the company construe an ownership stake and are purchased either at their nominal value or at a premium (i.e. at nominal value plus an additional amount). Ordinary shares generally carry three rights: the right to a vote at a meeting of the shareholders, the right to receive a dividend (a distribution of profits) and the right to share in the capital of the company (which is generally relevant when the company is wound up or its assets sold). Crucially the liability of shareholders is limited to the amount unpaid on their shares.

***Limited liability partnership (LLP)*:** this is a special kind of partnership structure which is recognised as a separate legal entity from its members for the purposes of entering into contracts and carrying on its business and has limited liability. Unlike a limited company, however, an LLP is not taxed as a separate entity but each limited partner is taxed annually on the profits of the LLP in accordance with his proportional entitlement to such profits. An LLP must be set up by two or more people with a view to carrying on a profit making business.

Taxation of companies and the reliefs available

Companies have to pay corporation tax. In the tax year 2017/2018, corporation tax is charged on profits (broadly income less allowable expenses) at 19%. Once corporation tax has been paid on any income, that income can remain in the company and (under current tax law) will not be taxed again unless and until it is paid out.

Companies with a turnover in excess of £85,000 in the tax year 2017/18 are required to register for VAT. Companies with a turnover below that threshold are not required to register, but may if they wish. VAT is chargeable at 20% on provision of VATable goods and services and is payable to HMRC in arrears. Companies registered for VAT are permitted to offset VAT they have paid (input tax) from VAT they have charged (output tax).

Subject to meeting certain qualification criteria, entrepreneurs' relief is available to founders of a company when they sell their shares. At a high level, a shareholder must have been appointed as a director or employee throughout the period of 1 year prior to the sale of the shares for entrepreneurs' relief to be available. Entrepreneurs' relief reduces the capital gains tax payable on any gain arising on a sale of shares to 10%.

As discussed later in this booklet, SEIS and EIS reliefs may be available to investors investing in companies. These reliefs include income tax relief up to a maximum of 50%, capital gains tax relief up to a maximum of 100% and loss relief.

Ongoing costs

Limited companies are required to file three sets of information on an annual basis: a return to Companies House, annual accounts (or, if the Company is dormant, a dormant return) and a corporation tax return.

If the company has employees, it must deduct PAYE and account to HMRC monthly for such deductions and its own employer's NIC liabilities.

When new shares are issued and/or directors are appointed or removed, filings must be made at Companies House.

The cost of this compliance is relatively low. So long as all filings are made on time, the fees payable to Companies House should not exceed £50 per year. Accountancy fees will vary depending on the complexity of the company's business but in general should be in the region of £750 to £2,000. Where the company is dormant, accountancy fees should be nominal.

Like limited companies, LLPs must file annual returns and they are also required to file accounts. Each limited partner will be required to file a personal tax return taking into account his proportion of the earnings of the LLP. The fees payable to Companies House should be similar to those of a company.

Choosing a legal entity

Before choosing a legal entity, you should consider the following questions:

(i) Is my business selling a packageable product, software or service or is it a means for me (and my fellow founders) to sell our time, experience and knowledge?
(ii) Will the business need investment in the future?
(iii) What is my exit strategy?
(iv) Is there any reason why I would want to be taxed personally on the profits of the business?

> "Limited companies are ideal structures for businesses that want to seek investment..."

As a general rule, limited companies are ideal structures for businesses that want to bring on board investment, or commercialise a mass market product or service. Bringing in investment is effected (relatively) simply by issuing shares; selling a stake in the business (or the entire company) is achieved by a sale of shares. Also there are a number of significant tax reliefs available on the issue and sale of shares.

Investing into an LLP is more complex whilst selling the business of an LLP is generally more challenging and often less tax efficient.

Getting the structure right up front is important as changing it later can be complicated and may give rise to tax liabilities.

For businesses wishing to attract investment in the UK, having a limited company is almost mandatory. Structuring offshore tends to void most tax reliefs and is less advantageous until the business has significantly expanded.

Buckworths can assist with any questions about structure and with incorporating your chosen entity once that decision has been made.

Customer Agreements

The cornerstone of any business is the contract with its customers. This document limits the liability of the business and requires the customer to pay.

Forms of contract

Customer contracts come in three main formats: terms of business, terms and conditions on websites and formal written agreements. The nature of the business will often determine which format is most appropriate. Regardless of form, the provisions are largely the same.

Key provisions

Other than "boilerplate" provisions (clauses dealing with governing law, waivers, notices, severance etc.) which are very important to include in any contract, there are three main provisions that are vital.

Limitation of liability: any business will want to limit its liability if things go wrong. Every business is exposed to liability. By way of example, a tech business providing a website could as a matter of English law be liable to its customers if the website temporarily stops working. Where customers are business users, the company might face a claim for loss of profits. Where the website offers travel booking services, the business could face a claim from a customer who was unable to retrieve his booking. In each of these cases, the business will want to exclude its liability for any loss or damage incurred as a result of the website not working.

Businesses offering advisory services could be potentially liable for huge losses arising from a minor mistake. This kind of business will want to limit its liability to a manageable level (generally within the limits of its professional indemnity insurance).

In the UK, businesses cannot exclude liability for death and personal injury, gross negligence or fraud. In addition, some types of business (including lawyers and businesses offering financial services) cannot exclude all their liability for negligent advice. These specific risks should generally be dealt with by insurance.

"In the UK, businesses cannot exclude liability for death or personal injury"

Payment: most (though not all) businesses operate to make a profit. Customer contracts must set out what customers will be charged, when they will be charged and when the charges will be payable. Failure to set these matters out in writing can result in disputes and arguments with customers over what and when they are required to pay. Further, in the absence of clear provisions concerning payment, a court may refuse to give judgment in favour of a business pursuing a client for non-payment.

In parallel with payment provisions, businesses should consider and detail their cancellation policy. Particularly where cancellation of an order could result in the business suffering loss, clear provisions should be drafted to set out what fees will be payable in the event of cancellation.

Termination: theoretically, failure to provide for termination and/or set a defined term can result in a business being unable to stop performing a service without being in breach of contract. This can be problematic if the service is no longer profitable or if the business no longer wishes to provide the service for other reasons. Similarly, if a customer consistently breaches the contract, absent specific termination provisions, it may not be possible to terminate the provision of goods or services.

Businesses should always include detailed termination provisions in contracts with customers.

Other matters

Depending on the nature of the business, other provisions may be appropriate. Often it is necessary to define in detail the services or goods to be provided, particularly where payment is conditional on performance.

Privacy Policies and Data Protection

Privacy policies outline a business' practices as regards the collection, storage and use of personal data. This is helpful in showing compliance with data protection laws.

The collection and use of personal data by businesses in the UK must comply with UK data protection law. Currently the main piece of legislation is the Data Protection Act 1998, although two additional sets of European regulations are also relevant from 25 May 2018, one of them being the General Data Protection Regulation (GDPR) which will apply to all UK businesses and will introduce very significant changes to the regime.

The regulator in the UK is the Information Commissioner's Office (ICO). Businesses collecting, storing and using personal data are required to register with the ICO and tell people whose personal data they collect (data subjects) what they do with it. Failure to comply can, in certain circumstances, lead to criminal sanctions and liability for damages. Directors can become personally liable for failures to comply with data protection law.

The purpose of a privacy policy

Processing personal data requires the consent of the data subject (the person to whom the data relates). Processing is widely defined and includes disclosing, obtaining, holding, and using personal data. Personal data includes email addresses, names and contact details of individuals.

Disclosing personal information to third parties and/or using personal information to send marketing emails requires the prior consent of the data subjects. One purpose of a privacy policy is to secure the requisite consent by requiring users to tick a box acknowledging that they have read and agree to the privacy policy.

> "Failure to comply can lead to criminal sanctions and damage"

A second purpose of a privacy policy is to set out in clear terms what personal information the business collects and what it will (and won't) do with it. This helps reassure customers that the business is compliant with data protection law and that their data is safe with the business.

Cookies

Cookies are small data files which are placed on the hard drive of a browser's computer. Cookies gather and store information to improve the user's experience of the website (such as for example enabling the website to recognise the user and prefill forms with his information). The law relating to cookies changed in 2012 so that cookies may only be used where the user has been provided with clear and comprehensive information about the purposes for which cookies are used and has given his informed consent to such use.

As a result, privacy policies contain a provision describing the use of cookies and set out what types of cookies will be used. The user is told that the use of the website will be treated as explicit acceptance of the business' use of cookies and as explicit consent to such use.

Storage of personal data

The transfer of personal data to countries outside of the EEA is only permitted where the country to which the data is being transferred has comparable levels of protection to those in the EEA or where the data subject has consented to such transfer. Personal information is transferred out of the EEA when it is stored on servers outside of the EEA. It is important to understand where your servers are based and to be mindful of what personal information might be transferred to foreign suppliers or partners.

Statutory compliance

The legislation requires businesses to tell data subjects their rights and what steps they need to take to access the information held about them by the business. In summary, a data subject is entitled to receive a copy of the data held about them and to be told the source of such data. The information must normally be provided within 40 days and the business is allowed to charge a £10 fee for each request.

Employment Contracts

Complying with employment law is vital if a business is to avoid employee claims. The employment contract is the main agreement between employer and employee.

The law discriminates between employees and contractors. The most important difference between them is that the business will deduct from salary paid to an employee amounts in respect of income tax and national insurance contributions under PAYE. It will also pay employer's national insurance contributions. The business will pay fees due to a contractor gross and will not pay employer's national insurance contributions. There are complex rules that determine whether a relationship is one of employment or contractor: simply labeling a relationship as a contractor relationship is not sufficient.

"Employees are entitled to written particulars of employment within two months"

Employment law regulates the relationship between the company and its employees. It sets out the employment conditions, rights, responsibilities and duties of the parties.

The employment contract maps out the employment relationship and each of the parties' rights and obligations under it. Whilst the contract does not need to be in writing, it is advisable to have a comprehensive written contract in place as evidence of the terms agreed. Furthermore, employees are entitled to a written statement with particulars of the employment to be provided to them within two months of the start of their employment with the company.

General provisions: all employment contracts should include the commencement date, job title and place of work such as the premises of the office or the home of the employee.

Notice periods: the employment contract must set out the notice periods that each party must give in order to terminate the contract. The statutory notice periods for an employee with between one month and two years service is at least 1 week's notice, and after such time an additional 1 week for each continuous year of employment up to a maximum 12 weeks (for 12 years of employment).

Payment in lieu: the company must consider whether they want to offer payment in lieu of notice. This allows an employer to pay an employee a lump sum rather than letting the employee work out their notice period. If so, this must be stipulated in the employment contract.

Salary: every employee is entitled to receive at least the national minimum wage. The employer is only entitled to make deductions to an employee's wages if required by statute such as PAYE contributions or if the employee has consented to such deduction or it is an agreed term under the contract. Each employee must receive a payslip each time payment is made.

Hours: the employment contract must stipulate the employee's expected hours of work. According to the Working Time Regulations 1998 an employee may not work for more than 48 hours per week without the written consent of the employee to opt-out of this restriction. The contract must make the employee aware that they may be expected to work over their contracted hours, with or without remuneration for over-time.

Holidays: the Working Time Regulations stipulate that a worker who works full-time is entitled to 5.6 weeks paid holiday per year which can include public holidays. In the UK there are currently eight public holidays per year. The employer can decide to offer longer paid holiday entitlement and can allow any untaken holiday (usually up to ten days) to be carried over into the next year.

Disciplinary and grievance procedures: information on disciplinary and grievance procedures should be set out in the contract of employment. For example an employee must notify the employer in writing with any grievances. Further, an employee is entitled to be accompanied by

a colleague at a disciplinary or grievance hearing.

Pensions: by 2018 all companies will have a duty to automatically enrol employees onto a private pension scheme and to make a minimum contribution towards each enrolled employee's pension. Each company will have its own staging date by which the auto-enrolment scheme must be implemented. Each company is entitled to postpone the staging date by up to three months.

Sickness and sick pay: if an employee is absent from work due to sickness, the employer is required to pay Statutory Sick Pay for a period of up to 28 weeks for any period of sick leave. Some individuals do not qualify for Statutory Sick Pay, for example if they do not earn enough to pay national insurance contributions. The Statutory Sick Pay can be supplemented with contractual sick pay which will generally be equal to the employee's normal salary instead of Statutory Sick Pay, or the employee can receive their normal salary less the amount for SSP. However any entitlement to contractual sick pay must be included as a term under the contract.

Confidentiality: an employer may wish to include a term in the contract that governs the employee's duty to protect the confidential and commercial information of the company during and after termination of employment. During employment the employee will have an implied duty of fidelity and good faith to protect the confidential information of the company. After termination of employment the employee will still have an implied duty, but this will be limited to protect information that is sufficiently confidential to amount to a trade secret.

Restrictive covenants: whilst the employee is bound by a limited implied duty to protect the trade secrets of the company after termination, the company may wish to consider incorporating express contractual restrictive covenants as a further safeguard against any potential harmful conduct of the employee after termination. However, the general position is that restrictive covenants are unenforceable as they are considered a restraint on trade unless the restriction can be proven reasonable in order to protect the legitimate business interests of the company. The test for whether a restraint on trade is deemed reasonable depends on an assessment of the length of time, scope and geography of the restriction. Restrictive covenants can be used to protect interests such as trade secrets, business connections and the stability of the employer's workforce and include non-compete, non-solicitation covenants e.g. soliciting specified business connections, and non-dealing covenants prohibiting dealing with customers.

Getting employment terms right is important to avoid claims against the company in the future.

Incentivising Stakeholders

Providing incentives to employees to retain them in the business in a cost efficient (and tax efficient) manner can be complex. This section looks at the common approaches.

For many businesses, cash to incentivise employees and contractors is limited. One solution can be to grant employees a stake in the business by way of issuing them with shares or options.

There are three main ways to grant a stake in the business to employees and contractors: (i) outright grant of shares, (ii) grant of shares subject to reverse vesting, (iii) grant of options. The decision as to which approach to use is often driven by tax considerations – any transaction in shares is likely to have a tax implication.

Outright grant of shares

When a company has no significant value (i.e. before it has completed an investment round or generated significant revenue), it can be simplest and most tax efficient to issue shares up front. This crystalises the value of the shares (and any tax implications) at the value of the shares when they are issued. Advice should always be sought on the actual value of shares as the value for tax purposes may differ from other values commonly used by the company.

Reverse vesting

A common tool for incentivising employees and consultants is to issue shares up front but subject to a right for the company to claw back some or all of the shares if the holder fails to satisfy certain performance requirements. This is known as reverse vesting.

Quite specific drafting is required to effect reverse vesting as a stock transfer form must be signed to transfer shares from a shareholder. If the shareholder will not co-operate by signing the requisite documentation, the company needs to be able to sign the documentation on his behalf.

Companies should be careful to understand the impact of any reverse vesting structures on investment tax reliefs (particularly EIS) which can be impacted by a repurchase of shares and on any tax implications for the employee or consultant receiving the shares.

Options

For employees, there is a tax efficient option scheme called the

Enterprise Management Incentive Scheme (EMI). EMI options are intended for employees in smaller, high risk companies. They allow employees to be granted shares by way of a tax neutral transaction at a time when the shares may have significant value.

EMI options must grant rights to acquire non-redeemable, fully paid up, ordinary shares. Shares are treated as being redeemable if they may become redeemable at a future date.

Employees must spend an average of 25 hours per week on the business of the company or 75% of their total working time if they are self-employed or work elsewhere. Employees who have no other remunerative employment or self-employment of any kind are also eligible for EMI options. EMI option holders must not hold 30% or more of the shares in the company or control 30% or more of the voting rights.

The EMI options must take the form of a written option agreement between the grantor (the company or the employee) and the employee. Options must be capable of being exercised within ten years after the date of grant.

The maximum amount of unexercised EMI options at any point in time must be no more than £3,000,000. No individual employee can hold shares (and unexercised options) in the company with a market value in excess of £100,000.

Unfortunately contractors are not eligible for EMI options and so they are generally issued with unapproved options. These are structurally the same as EMI options but do not carry the same tax treatment meaning that they are less attractive as contractors are likely to be liable to income tax on the difference between the exercise price of the options and the value of the shares on exercise.

Before putting in place an option scheme, a number of formalities must be complied with. In respect of EMI, a valuation must first be agreed with HMRC. This valuation is generally less than the valuation at which investors would invest.

The options must be granted within 60 days of the date of the valuation. The company must then notify HMRC of the option grant within 92 days for unapproved options, and whilst a valuation is not mandatory, HMRC must still be notified of the grant of the option.

The decision as to which approach to use is often driven by tax considerations – any transaction in shares is likely to have a tax implication.

Shareholders' Agreements

Where money is involved, even the best of friends can fall out. Agreeing ownership and management structures up front reduces the risk of irreparable disagreements.

"Failure to consider and document ownership and management structures in the early stages can spell disaster"

A shareholders' agreement is an agreement between the owners of a company agreeing how the business will be run, who will be responsible for decision-making and what will happen if and when one or more shareholders wishes to exit the business.

A well-drafted shareholders' agreement should set out in clear unequivocal terms what happens in the event of a shareholder wishing to sell his shares and how disputes between shareholders are to be resolved. Failure to deal with these issues in the early stages of a company's life can spell disaster further down the line.

When thinking about putting together a shareholders' agreement, founders and stakeholders should consider and discuss the following questions:

Control: will the managing shareholder (if there is one) retain control of the board and a majority shareholding? If so, will there be any matters on which the unanimous consent of the directors/shareholders will be required? Can the managing shareholder be removed as a director or forced to sell some or all of his shares?

Capitalisation and business plan: is the amount of any investment in the company sufficient? Have all shareholders been involved with producing the business plan and have all shareholders taken responsibility for it? Is the business plan realistic?

Further capital and dilution: have the shareholders discussed and agreed how additional capital would be raised if required? Who would provide additional capital? By loan or equity? If by equity, are all shareholders comfortable with having their shareholdings diluted?

Accountability: who will run the business on a day-to-day basis? Where some shareholders will be "silent", are mechanisms agreed for them to be kept informed about the performance of the business? What documentation will they receive and when? Is this practical? What powers do they have if they feel that the business is being poorly run?

Risk allocation: have the shareholders discussed the allocation of risk amongst them? Are some shareholders better

protected on an insolvency than others (e.g. they have security over company assets) or do some shareholders have preferential access to profits?

Profit allocation: have the shareholders agreed the remuneration of directors (if any), the extent of management fees paid to a shareholder (if any) and the dividend policy of the company?

External work and conflicts of interest: have the shareholders agreed what work shareholders are permitted to do for other companies? Does this include competing businesses? Does the shareholder owe a duty of confidentiality to the company? Are non-compete, exclusivity and non-approach provisions appropriate in respect of any shareholder?

Dispute resolution: notwithstanding the above, is there a mechanism by which disputes will be resolved? Will this mechanism operate if a shareholder (or group of shareholders) refuses to take part in any process? What happens if a shareholder breaches any provisions of the Shareholders' Agreement?

Exit: have the shareholders agreed their exit strategy? When do shareholders wish to exit? Will all shareholders exit at the same time (e.g. by sale or listing of the company)? Is there a mechanism to force all other shareholders to sell their shares if an offer for the company is made? Do pre-emption rights kick in if a shareholder wishes to sell his shares? Is there a mechanism for valuing the company for the purposes of a sale?

Insolvency: to the extent possible, are the assets of the business operated by the company protected from an insolvency of the company? Do any of the shareholders have preferential rights on an insolvency of the company?

Key provisions

There are a number of provisions that should be considered in the context of all shareholders' agreements and will appear in most.

Transfer provisions: in the event that a shareholder wishes to sell his shares, the common approach is that they must first be offered to the other shareholders. For the first years as the business is founded, it might be appropriate to state that no founder can sell his shares. Some businesses also seek to prevent sale of shares to competitors.

Restrictive covenants: it is common for founders to agree not to set up a competing business and not to solicit any client or employee of the company either during or after the end of his involvement with the company.

Mandatory transfer: some shareholders' agreements contain provisions that contemplate the company (or other shareholders) buying some or all of a leaving founder's shares at a pre-agreed valuation. This can be structured as a simple mandatory buy back or as a reverse vesting.

Management provisions: shareholders' agreements contain provisions setting out how board and shareholder matters will be decided, and allocating some decisions to the board and other matters to the shareholders.

In addition to it being easier to agree profit splits and management matters when the company has no value, the other benefit relates to tax treatment. When a company has no value, more structures are available as share issues and transfers are less likely to result in significant short term tax liabilities.

Confidentiality and intellectual property: there should be an obligation on all shareholders to keep confidential the confidential information, trade secrets and intellectual property of a company. In addition, these assets should be used exclusively for the benefit of the company. It is common to see provisions in shareholders' agreements designed to provide this protection. In particular, where the company is reliant on its intellectual property, one would expect to see an IP transfer provision assigning all IP created by any shareholder, now and in the future and relating to the business of the company, to the company.

"When a company has no value, more structures are available as share issues and transfers are less likely to result in significant short term tax liabilities"

Seed Enterprise Investment

The Seed Enterprise Investment Scheme (SEIS) is a tax relief scheme for investors investing in startup companies. The rationale behind SEIS is to encourage high net worth individuals to invest in high risk startup businesses on a full risk basis.

SEIS offers investors generous income tax, capital gains tax and loss reliefs. Under SEIS an investor can invest in qualifying companies up to a maximum £100,000 per annum and a qualifying company can raise a total of £150,000 under SEIS.

Whilst the scheme was created in order to incentivise and facilitate investment into startup companies, complicated and technical rules apply both for the investor and the investee company.

SEIS is a must for all startups looking to raise investment as the scheme drives investment in the UK market.

"SEIS offers investors generous income tax, capital gains tax and loss reliefs"

Tax reliefs available

An investment that qualifies for SEIS can benefit from relief from income tax and capital gains tax.

Income tax relief: an investor is entitled to 50% income tax relief on the amount invested in shares in a qualifying company up to an annual limit of £100,000. Therefore, if an investor invests £100,000 in a tax year and his tax liability for that year is £50,000, he can set the relief against his tax liability and reduce his tax liability to zero.

The relief will be set against the investor's personal tax liability for the tax year in which the investment was made. However, an investor who invests in shares in one tax year is permitted to carry back the tax relief to the previous tax year in respect of all or part of the cost of the shares, as if the shares had been acquired in that previous year.

Capital gains tax relief: two forms of capital gains tax relief are available under SEIS, disposal relief and reinvestment relief.

With disposal relief, a qualifying shareholder can be entitled to up to 100% exemption from capital gains tax on a disposal of the SEIS qualifying shares if a claim for income tax relief has been made on the shares and they have been held for at least three years.

Reinvestment relief allows investors to treat up to 50% of a gain made from the disposal of an asset arising in any given tax year as exempt from capital gains tax if they acquire SEIS qualifying shares, up to a maximum of £50,000.

The time limit for claiming SEIS re-investment relief is five years from 31 January following the end of the tax year in which the shares were issued.

It is important to keep in mind that should an investor dispose of SEIS qualifying shares before the expiry of three years from the date of the investment, the relief will be withdrawn in its entirety. The relief will also be withdrawn should either or both the investee company and the investor fail to meet any of the requirements of the scheme as summarised below.

Loss relief: if the SEIS shares are disposed of at a loss after the end of the three-year investment period, the loss can be set off against income made in the year in which the shares were disposed of, less any income tax relief already given.

Investor requirements

The investor must subscribe for new, full risk, ordinary shares. There must be no arrangement in place to protect the investor from any normal risks associated with an investment into a company. The shares cannot have any preferential rights and must be non-redeemable.

The investment must be made for genuine commercial reasons and not for tax avoidance purposes and the shares must be paid for upfront in full before the shares are issued.

The investor must not have received a loan from the company that would not have been made on the same terms were it not for the investment in the company. The investor must not dispose (or agree to dispose) of some or any of the shares prior to the end of the period of three years from the date of the investment.

The investment must not be part of a reciprocal arrangement whereby the investor subscribes for shares under SEIS in return for another person subscribing for shares in a company in which the investor or a connected person has a substantial interest.

The investor cannot be a person connected with the company. The investor cannot hold 30% or more of the share capital or voting rights and cannot be entitled to more than 30% of the company's assets. When considering whether an investor holds a substantial interest, HMRC will take into account the shareholdings of those deemed associated with the investor. Associates include spouses, civil partners, business partners, parents, grandparents, children and grandchildren, and certain persons with whom one has connections via a trust.

The investor cannot be employed by the company during the three-year investment period, unless they are also a director. An individual is not treated for this purpose as being employed by the company if they are also a director.

Company requirements

Only a qualifying company can issue shares under SEIS. In order to be a qualifying company, it must exist solely for the purpose of carrying on a 'new qualifying trade' or it must be the parent company of a group whose business is essentially that of the qualifying trade.

A 'new' qualifying trade is defined as a trade which has not been carried on by either the company or by any other person for longer than two years at the date of the issue of the shares, and where neither the company nor any qualifying subsidiary had previously carried on any other trade. The company need not have started trading to qualify. Preparatory activity, including research and development, which takes place with a view to carrying on a new qualifying trade at a later date will qualify.

The trade itself must be conducted on a commercial basis to qualify, and must not consist wholly, or substantially, of excluded, non-trading activities, for instance dealing in land and property, providing financial or legal services, managing hotels or residential homes, or being engaged in farming or mining activities. All investment funds must be applied towards progressing a new qualifying trade within three years of the relevant share issue.

> "The company must be tax resident in the UK and not in financial difficulties"

From the date of incorporation until the end of the relevant three-year investment period the company must be independent. This means that the company cannot be a 51% subsidiary or under the control of another company. Moreover, the company cannot control any company which is not a qualifying subsidiary.

From the date of issue of the shares until the end of the three-year investment period, the new qualifying trade and any preparation work or research and development leading to it must be carried on by the issuing company itself or by a qualifying 90 percent subsidiary. If the company has a subsidiary whose business consists wholly or mainly of holding or managing land or property deriving its value from land, that property managing subsidiary must be a qualifying 90 percent subsidiary of the company. The company must directly or indirectly hold more than 50% of the ordinary share capital of any subsidiary during the three-year investment period.

At the time the shares are issued the company must be resident in the UK (and it must not be in financial difficulty, listed or have received any previous investment under any venture capital trust or EIS investment. The company must have twenty-five employees or less. Immediately before the shares are issued the company must have no more than £200,000 gross assets.

Procedure

Prior to the investment a company can apply for advance assurance from HMRC to see whether it meets all the requirements to qualify for investment under SEIS.

The advance assurance is not mandatory but does speed up the process of claiming relief, and is often useful in attracting further investment into the company.

Once the share issue has been made the company can apply to HMRC for a compliance certificate in respect of the share issue. Once HMRC has issued a compliance certificate the company can then issue the SEIS investor with a claim form (SEIS3) so that he can claim his relief.

The investor claims relief by completing a Self-Assessment tax return for the tax year in which the shares were issued.

If an investor holds a form SEIS3 but has yet to be issued a tax return, the investor can request a change to their PAYE tax code or any self-assessment payment due.

Qualifying for SEIS is simple and the benefits to investors are huge. All startups should consider whether they are eligible for the scheme and should submit an advance assurance if they are.

Enterprise Investment Scheme

For investors in large, more-established companies, EIS offers a 30% income tax relief and no capital gains tax to pay on a sale of shares in the investee company.

EIS is a tax relief scheme for investment into startup companies. The scheme offers 30% income tax relief and capital gains tax relief to investors in qualifying companies. Under EIS, an investor can invest up to a maximum £1,000,000 per annum in a qualifying company and a qualifying company can raise a total of £5,000,000 per annum under SEIS, EIS and other similar schemes combined, up to a total of £12,000,000.

A company which has initially raised money under SEIS must have spent at least 70% of the monies raised prior to issuing shares in respect of funds raised under EIS, and any money raised by the company under EIS must be spent on a qualifying business activity and within two years of the date of the investment.

Tax reliefs available

Income tax relief: an investor is entitled to 30% income tax relief on the amount invested in shares in a qualifying company up to an annual limit of £1,000,000. Just like with SEIS, the relief can be carried back, as if the shares had been acquired in the previous year.

Capital gains tax relief: two forms of capital gains tax relief are available under EIS, Capital Gains Tax Exemption and deferral relief.

Under Capital Gains Tax Exemption a disposal of EIS qualifying shares will be tax free if a claim for income tax relief on the shares has been confirmed and they have been held for at least three years.

Deferral relief allows investors to defer any capital gains tax liability arising from a disposal of an asset by investing the gain in shares of an EIS qualifying company, on condition that the gain is invested one year before, or within three years after, the gain arose. There is no investment limit under this relief so long as the investment does not exceed the maximum amount a company can raise per annum. The shares can be disposed of at any time as there is no minimum or maximum period for holding the shares, and the tax liability will crystalise upon disposal of the shares.

Should investors have obtained the full amount of income tax relief available because their income tax liability is insufficient, they can still claim deferral relief on the full amount that would qualify for income tax relief.

Loss relief: if EIS qualifying shares are disposed of at a loss after the end of the three-year investment period, the loss can be set off against income made in the year in which the shares were disposed of or income from a previous year, less any income tax relief already given.

Investor requirements

Except for the following, the investor requirements for EIS are the same as for SEIS.

The investor (and/or associate of the investor) will not be eligible for income tax relief if he is employed as a partner, director or employee by the company within the period of two years prior to the date the shares were issued and three years after that date (or the date the qualifying trade began if later). There is an exclusion to the above rules for an investor who acts as a 'Business Angel'. A Business Angel is an investor who makes their business expertise available to the Company. Business Angels are allowed to qualify for Income Tax relief despite the fact that they receive payment for their services, but they must not have had any connection with the company prior to the time when the shares were issued, and any remuneration must be reasonable. The Business Angel can further invest in the company after the initial investment and still benefit from EIS, so long as the investment is made within the three-year investment period.

Company requirements

Similar requirements to those set out above in relation to SEIS apply, except as follows:

Immediately before the shares are issued the company's gross assets must not exceed £15,000,000, and immediately after the share issue the company's gross assets must not exceed £16,000,000. The company cannot own a subsidiary that is not a qualifying subsidiary and there must not be any such arrangement or plan in place to do so at the time the shares are issued. The company must have 250 employees or less (or 500 or less for knowledge intensive companies).

Trade Marks

Securing a trade mark in the UK is deceptively simple. However, registering a mark that is actually enforceable and will provide the protections against infringement afforded to valid marks requires an understanding of the complex law governing trade marks.

What is a trade mark?

A trade mark is a badge or logo conveying the origin of goods or services from a particular supplier. Trade marks grant a monopoly on the use of the mark in specified classes of goods and services. A registered trade mark is a valuable commercial asset which can be commercially exploitable. It is relatively easy to protect and enforce, provides a deterrent to infringers and is renewable indefinitely.

On registering a trade mark, the registrant is able to take action against anyone using the mark or a brand similar to the mark in the same classifications of goods and/or services. This prevents competitors from seeking to confuse customers into believing that they are dealing with the registrants' business or a company associated with that business. The registrant is also able to sell and license the mark to other businesses including selling franchises. Finally, the registrant can put the ® symbol after the mark. Whilst anyone can place the ™ symbol after a brand, it is a criminal offence to place the ® symbol after a mark unless that mark is registered and you are the holder or licensee of the mark.

Requirements of a trade mark

A trade mark must be unique and can include words, numerals, sounds, logos, smells, gestures, internet domain names, colours or any combination of them. A trade mark cannot be offensive or misleading, describe the goods or services to which it relates, be a 3-dimensional shape, be common or lack distinctiveness or look similar to state or governmental symbols.

The two most common reasons for trade marks being refused are the mark being descriptive and the mark lacking distinctiveness. A mark is descriptive where it can be viewed to be describing the goods and services to which the mark relates.

Application for the trade mark

Most startups make a first registration in the UK or the EU as it is the cheapest and quickest way to secure protection within these jurisdictions. Once a business has a mark registered in the UK or EU, that mark can be "passported" to other more complex jurisdictions relatively easily. This avoids some of the more difficult and expensive requirements imposed for new applications.

Although there is a route to make a "global" application for trade mark protection, this is actually a very complex and expensive approach because a separate application (and separate fees) must be paid in each jurisdiction and the application must be translated into an official language for each jurisdiction.

If an application for a trade mark is opposed, the applicant can withdraw the application, talk to the person making the opposition and seek to negotiate a settlement or defend the application. Where an objection is defended, the matter will be judged by a trade mark tribunal and additional costs may be incurred.

Dealing with trade mark infringement

The TMA 1994 (Trade Marks Act) specifies three types of infringement, and all three are centered around the use of an identical or similar sign for goods or services. The proprietor of a registered trade mark would usually have to produce evidence of confusion, or unfair advantage or detriment.

The legal steps which are usually undertaken when an infringement occurs include sending an explanatory letter to the person infringing the mark, and if the matter is not then resolved, sending a letter before claim and requesting that the infringer signs undertakings agreeing not to continue the infringing usage, and finally, if the matter cannot be resolved, commencing litigation.

Difficulties of protecting an unregistered trade mark

The owner of an unregistered trade mark must rely on the common law for protection. Case law recognises the concept of passing off, which allows a user of an unregistered trade mark to prevent infringement of their mark. This approach to stopping infringement is generally more time-consuming and expensive than relying on infringement of a registered trade mark.

INTELLECTUAL PROPERTY RIGHTS

Failing to secure ownership of crucial IP at the very start of a business can be a very expensive (if not terminal) mistake. Fortunately, getting it right is relatively straight forward.

For many businesses, ownership of rights in designs, graphics, content and code is crucial. These rights are known as "intellectual property rights" (IP). The most important aspects of IP for most businesses are copyright, trade marks and patents.

Copyright arises automatically on creation – no formal registration is required. Copyright protection applies for a limited period of time and allows owners to prevent the use or adaptation of their copyright content.

Trade marks arise by virtue of registration with a registry (which in the UK is the IPO). Trade marks are granted for a period of time and allow the trade mark holder to prevent competing businesses from using his trade mark.

Patents are also granted by registration and are designed to offer a limited period of protection to innovative products or processes.

For startups, the priority should be on ensuring that all IP is owned and controlled by the business. The following are 5 common problems faced by new businesses and some suggested solutions.

"Businesses should take steps to ensure they own any IP created by employees and consultants from day 1"

Ownership of IP created by an employee

Under English law, intellectual property rights created by an employee during the course of employment automatically belong to the employer. However, difficulty can arise when trying to show that the employee did in fact create a disputed IP right during the course of his employment.

The fact that material embodying intellectual property rights was created outside office hours and/or using the employee's private resources, or that the material embodying the intellectual property rights is not related to the employee's normal duties, may give rise to arguments that the rights belong to the employee rather than his employer.

The Solution: inclusion in employee's employment contract of the following clause:

The Employee acknowledges that all Employments IPRs, Employment Inventions and all materials embodying them shall automatically belong to the Company to the fullest extent permissible by law. To the extent that they do not vest in the Company automatically, the Employee holds them on trust for the Company.

Ownership of IP created by a consultant

Under English law, intellectual property rights created by a consultant during the course of the consultancy automatically belong to the consultant.

The Solution: inclusion in consultant's consultancy agreement of a clause providing for the automatic assignment of all IP to the company on creation and including a requirement on the consultant to facilitate any transfer.

Moral rights

Moral rights are statutory rights relating to copyright works. Copyright applies to software and computer programs automatically by operation of law. These rights survive assignment of the copyright works to a third party with the result that the third party (and any subsequent assignee) is limited in what it can do with the work. The two main moral rights of concern are the right to be identified as the author of a work and the right to object to defamatory treatment of the work.

An employee cannot enforce moral rights against his employer, but he can enforce them against an assignee of the employer. If an employer wants to assign the copyright in a work to a third party, that third party may be prevented from adapting the work. This could affect the value and sale of the copyright.

The Solution: inclusion in employee's employment contract (or agreement with contractor) of a waiver of moral rights by way of the following clause:

The Employee waives all his present and future moral rights which arise under the Copyright Designs and Patens Act 1988, and all similar rights in other jurisdictions relating to any copyright which forms part of the Employment IPRs, and agrees not to support, maintain or permit any claim for infringement of moral rights such as copyright works.

Disclosure of invention

If any person reveals how an invention works, other than in strict confidence, then it is highly likely that the invention will no longer be patentable. This is because an invention must be "novel" to be patentable and any non-confidential disclosure whatsoever destroys this novelty.

The Solution: inclusion in employee's employment contract of the following clause (in addition to the standard confidentiality provision):

The Employee agrees to keep confidential each Employment Invention unless the Company has consented in writing to its disclosure by the Employee.

Right to obtain a patent

Only the inventor or other first owner of an invention is entitled to obtain a patent for it. The Patents Act does not grant ownership of any invention made by a consultant to the company.

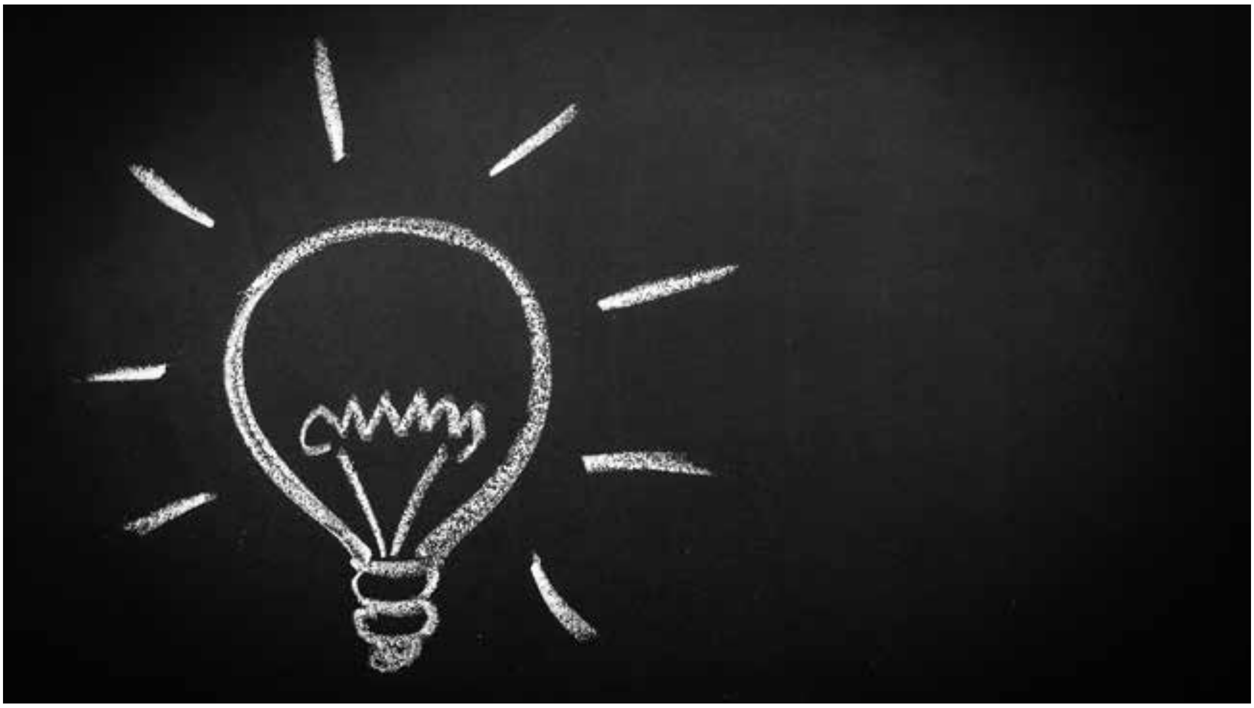
The Solution: an agreement to assign future rights should be included in the consultancy agreement. It should be as precise as possible in identifying the rights to be assigned.

The agreement should also provide that the consultant must (on request and on condition that the company will pay the costs) apply for the patent itself, and on being granted the patent, assign it to the company for a nominal consideration.

Conclusion

As a starting point anyone creating IP for a business should sign an agreement containing appropriate IP protections. This applies equally to employees, contractors, developers and founders. Getting IP ownership right is relatively straightforward. It should be a priority of any startup reliant on controlling and owning its IP.

Getting IP wrong can be a very expensive mistake. Companies can find that investors will not invest or IP creators may require payment to transfer IP.



Moving to the UK

The UK is a fantastic jurisdiction in which to operate a startup business. Setting up a UK branch of a foreign company or relocating to the UK is relatively easy.

Businesses operating in the UK (whether UK or foreign business) are able to attract investment from UK investors who benefit from SEIS and EIS.

In order to take advantage of SEIS and EIS and government grants in the UK, a foreign company needs to either create a UK holding structure or establish a permanent establishment in the UK.

Holding Company

The foreign company can create an English holding company that sits above the existing foreign company. This is done by way of a "share for share exchange". This is a tax neutral transaction requiring a valuation to be completed in the home jurisdiction and the value of the company to be reflected in the issued share capital of the new English holding company.

The result is that all the shareholders of the foreign company swap their shares in the foreign entity for shares in the new English holding company. The foreign company becomes a wholly owned subsidiary of the English holding company.

Permanent Establishment

The foreign company can establish a "permanent establishment" in the UK which requires the foreign company to have a permanent office in the UK from which a significant part of the company's business is carried out. In addition, one or more persons must be employed in the UK. The foreign company would usually register as an overseas company with the companies regulator in the UK (Companies House).

Registering a permanent establishment is often a more complex option than setting up a UK holding company when viewed from the perspective of on-going compliance. Whether or not the foreign company has a permanent establishment in the UK is a factual question to be decided by the UK tax authorities, HM Revenue & Customs (HMRC).

Both of these options allow the company to take on investment from UK investors claiming tax relief.

Brexit

Brexit raises significant challenges to UK startups but also offers massive opportunities to grow and evolve by being ready in advance for the world post-Brexit.

The Prime Minister has declared that "Brexit means Brexit". But nobody really knows what that means. There is extensive debate in the press between those who want a "hard Brexit" and those calling for a "soft Brexit", with the apparent difference between the two being whether or not the UK retains access to the European Single Market.

For all businesses operating in the UK, the position of the UK post-Brexit and in particular, whether or not the UK will retain unrestricted access to European markets and whether European citizens will be able to live and work in the UK, are of vital importance.

Risks vary by business sector. For fin-tech businesses, the biggest risk is whether they will continue to be able to passport their regulatory clearances to other European countries. The likelihood is that they will be able to do so as the most-likely scenarios governing the post-Brexit deal allow some form of passporting at least in the medium term. The likely adoption of MiFID II in 2018 should allow fin-tech businesses to passport into Europe whether or not we remain part of the Single Market, whilst the UK signing up to EFTA would also provide a route to passporting.

For med-tech and bio-tech businesses, the withdrawal of parallel legislation for drugs and medical appliances poses a significant risk to their ability to trade with Europe post-Brexit. For these businesses, the prospect of being required to comply with multiple regulatory regimes appears to post a very significant business risk. However, the likelihood is that the UK and Europe will maintain parallel regulatory positions for the medium term and that the main issue may well be the imposition of tariffs, a problem that can be resolved in part by the incorporation of a European subsidiary.

Since the referendum, Buckworths have been busy ensuring that we are best placed to advise clients on Brexit management. We have developed a monitoring team which keeps us abreast of Government policy announcements. We have created a Dublin-based team who can set up branches for our clients to ensure that they are able to trade within the EU post-Brexit. We have developed specialist knowledge of the options for fin-tech, med-tech and bio-tech clients seeking to passport into the EU as non Member State regulated businesses.

We offer detailed Brexit reviews to our clients which identify the risks to their business posed by Brexit and propose solutions to manage and reduce those risks. For many startups, the creation of a European subsidiary is an easy way to manage risk whilst simultaneously offering opportunities of expansion.

Buckworths

office@buckworths.com | www.buckworths.com