

CORPORATE REVIEW

JULY 2024

Welcome to our Corporate Review - an opportunity for our clients and wider network to stay informed on the latest developments in the corporate sector.

Over the last six months, although market conditions have remained challenging, transactional activity has continued and the Corporate team at Lewis Silkin has advised on a variety of buy and sell side M&A mandates, corporate finance, corporate advisory and financial services/regulatory matters. In [January](#) we anticipated that deal flow would continue into 2024, and we are pleased to say that this has been the case.

Our optimism persists regarding deal-making into the second half of 2024. Despite the now familiar geopolitical tensions and uncertainty, the UK has gained some clarity following the election of a new Labour government. In addition, inflation appears to be under control, and has met the out-going government's target of 2%. There is also widespread expectation in the market that a cut to interest rates will follow in the short term. We expect this to translate to financing costs becoming more certain and this in turn to boost M&A activity as we move into the second half of 2024.

Predictably, following the general election, some parties will be eager to execute transactions before any major changes are announced and legislated, and we have already seen early indications that this may be the case, with an uptick in transactional activity since the general election was announced in May 2024.

One trend that has remained constant during the last 12 months, and which we expect to remain a feature in

the latter part of 2024 is the emphasis that clients are placing on identifying and managing risk. This has resulted in increased scrutiny and investment in the due diligence process, and in particular a focus on financial due diligence as clients are keen to ensure the value in transactions. Inevitably, this focus has resulted in protracted transaction timetables; but we have also noticed a shift towards a positive appetite to get deals done.

Also looking forward, as we previously commented, the upcoming US presidential election also introduces some uncertainty for M&A activity. We believe there may be heightened cross-border M&A activity in the run-up to the US election in November 2024, driven partly by concerns over potential tax policy changes.

Although market conditions for growth companies have remained challenging during the last six months, it has been a busy period for our corporate finance team. Investment rounds and exits remain at the heart of the practice, with the team advising on several investment rounds so far this year. A feature of our work is that many of these transactions are not publicised. Our successfully completed transactions include advising [Fluent on its \\$7.5 million series seed investment round](#) led by Hoxton Ventures and [FilmChain on its €2.8 million series seed investment round](#) led by Holt IntersXion fund, with support from DaBa Ventures, among other investors.

It has otherwise been business as usual for the corporate finance team, who continue to advise on priced investment rounds and bridging finance arrangements, the latter of which remains a feature as companies continue to struggle to agree valuations with prospective external investors despite stabilising interest rates and falling inflation.

How we have helped our clients

Our partner-led Corporate team has advised on numerous acquisitions, disposals, investments and corporate advisory matters across different sectors including technology and communications, financial services, advertising and marketing, retail, hospitality, leisure, interactive entertainment, TV and film.

We're pleased to share some of the recent transactions on which we have helped our clients:

[Lewis Silkin has advised FilmChain on its €2.8 million series seed investment round](#)

[Lewis Silkin has advised FuturLab on its sale to Miniclip](#)

[Lewis Silkin has advised Havas on its acquisition of Wilderness](#)

[Lewis Silkin has advised Fluent on its \\$7.5 million series seed investment round](#)

[Lewis Silkin has advised Finboot on its latest investment round](#)

[Lewis Silkin advises Seedlip founder's latest venture on its first investment round](#)

[Lewis Silkin has advised Next 15 Group plc's MHP Group on the acquisition of Studio La Plage](#)

[Lewis Silkin has advised Banijay UK on its investment in Immovable Studios, co-founded by Akala and Chanelle Newman](#)

[Lewis Silkin has advised the shareholders of DriveRight Data on its sale to Infopro Digital](#)

[Lewis Silkin has advised CloudMade on the sale of its Artificial Intelligence Technologies and IP to Stellantis](#)

[Lewis Silkin has advised creative agency Mother on its investment in °Small World](#)

[Lewis Silkin has advised Havas on its acquisition of Ledger Bennett](#)

[Lewis Silkin has advised Mother on its investment into Run Deep, a new sports and entertainment agency founded by Jodie Fullagar and Rich Barker](#)

[Lewis Silkin has advised Norstella on its acquisition of J+D Consulting Ltd](#)

Focus on Gaming - FuturLab's sale to Miniclip

Karish Andrews, Partner and Joe Lythgoe, Senior Associate led our [deal team advising the founders of FuturLab](#), the award-winning independent game studio behind PowerWash Simulator on its sale to Miniclip, an international digital games and entertainment company.

Following the renowned success of PowerWash Simulator, FuturLab has become a genre leader and pioneer in the flourishing market for 'games that soothe'. This strategic move aligns with their mission to create universally soothing games and is in perfect step with Miniclip's goal to 'unleash the gamer in everyone'. The acquisition also allows Miniclip to firmly enter the PC/console space. Our deal team worked closely with Lvl Up Partners, Aream & Co and the FuturLab leadership team.

"One of the many reasons why PowerWash Simulator has been such a success is the help it has given people with their mental health. Players of the game have even taken part in a research project by Oxford University looking at the relationship between gaming and mental health. As society starts to take mental health more and more seriously, the birth of games like PowerWash may be seen in years to come as a key moment in a change of attitude to gaming." – Karish Andrews, Partner – Lewis Silkin

Computer and video games are now the world's biggest entertainment industry by revenue and lead in technological, societal, and regulatory change. Businesses in this complex ecosystem need expert legal advice from sector knowledgeable specialists.

Meet our new partners...

We are delighted to announce the promotion of three new partners Kathy Granby, Wendy Saunders and Sadiq Tajbhai.

Kathy joined Lewis Silkin in 2021 and is a partner in the Tax, Reward and Incentives Group. She advises on the legal and tax aspects of an extensive range of employee share and other incentives for both private and listed companies ranging from UK start-ups to multinationals.

Wendy also joined Lewis Silkin in 2021 and is head of our Financial Services Regulatory Group. She specialises in financial services and markets law and regulation, both advisory and contentious, and has particular interest in outsourcing, cryptoassets and payment services. Wendy has a breadth of experience from different perspectives across the financial services industry including at a regulator, in-house at a UK retail bank and a global investment bank, and in private practice enabling her to provide informed and strategic guidance to clients.

Sadiq joined Lewis Silkin in 2010, and is a key member of the Corporate, Commercial and Partnerships practice groups. He provides a wide range of corporate advice to both corporates and individuals with experience in the advertising & marketing, PR and technology sectors.

Jo Evans, Corporate Partner and Firm Chair commented:

“Being able to promote a record number of members of our team to the partnership is a reflection of the bench strength of talent at the firm and our commitment to invest in our people for the long term. All our newly promoted partners have demonstrated deep practice knowledge and expertise, their dedication to brilliant client service and a desire to continue nurturing our fabulous culture. I congratulate them all and look forward to welcoming them to our partnership.”



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Focus on Corporate

We've brought together the latest thought leadership articles from the Corporate team, if you have any questions on any of the topics raised, please do get in touch.

Joint Ventures

Joint ventures are becoming increasingly important in a globalised business environment as transactions and projects increase in scale and complexity. [Read more](#)

National Security and Investment Act: Government publishes updated Section 3 Statement and Market Guidance

The government has published updated materials in relation to the National Security and Investment Act 2021 (NSI Act). [Read more](#)

National Security and Investment Act: Government confirms updates in response to call for evidence

In November 2023 the government published a Call for Evidence on the impact of the National Security and Investment Act 2021 (NSI Act). It has now provided a response which summarises the key issues flagged and sets out the next steps that the government proposes to take. [Read more](#)

New identity verification requirements for directors and others

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) introduces changes to UK company law to ensure the accuracy of information and to reduce the possibility of fraud, it is being implemented in stages. [Read more](#)

The Economic Crime and Corporate Transparency Act 2023: first changes set to be introduced

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) received Royal Assent on 26 October

2023 and introduces several changes which are intended to prevent abuse of UK corporate structures and reduce economic crime. ECCTA will come into force in stages, and it is anticipated that the first changes will be introduced on 4 March 2024 (although this date is dependent on parliamentary timetables).

[Read more](#)

Selling Your Creative Business

Selling Your Creative Business is a podcast series hosted by Joe Lythgoe and Ayesha Chanda from our M&A team. Throughout the series, they talk to experts from across Lewis Silkin - sharing their top tips and valuable insights – about selling creative businesses.

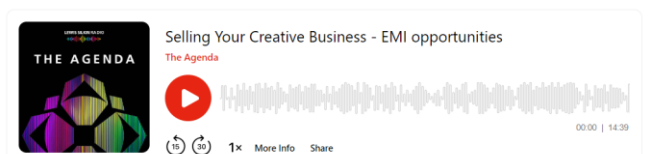
The Headlines with Jo Evans

In the first episode of the series, Joe and Ayesha chat to Jo Evans, Lewis Silkin's Chair and Corporate Partner. Jo has more than 20 years' experience advising sellers across a range of creative sectors including marketing, PR, communications, gaming, digital, and media. [Listen here](#)



EMI opportunities with Michael Birchall

During this episode, our hosts interview Michael Birchall, an Associate in our Employee Incentives team, to discuss EMI options and key considerations on an exit. [Listen here](#)



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The Economic Crime and Corporate Transparency Act 2023 – where are we now?

As we discussed in our original [summary](#) and our last [Corporate Review](#) the overarching aims of the Economic Crime and Corporate Transparency Act (**ECCTA**) are to strengthen systems for collecting, accessing and displaying information about UK companies and limited partnerships and to make it easier to prosecute companies for economic crime offences.

Which changes have been introduced?

The first measures that ECCTA introduced entered into force on 4 March 2024 and included:

- ▶ **Expanding the powers of the Registrar:** Companies House now has greater powers of scrutiny to ensure that information submitted to it is accurate. It can query filings and request additional supporting evidence, or it can reject anything that seems incorrect or inconsistent with information already on the register. It can also annotate the register to flag inconsistencies and issues requiring further investigation, so putting the public on notice of possible concerns. Companies House can also now use data matching to identify and remove any inaccurate information.
- ▶ **A requirement that all companies must have their registered office at an “appropriate address”.** This means that any communications sent to the company’s registered office should be received by someone acting on behalf of the company, and that recorded delivery can be used to acknowledge receipt. PO boxes cannot be used. Existing companies, particularly those that use a PO box may need to change their registered office to ensure that these requirements are met.
- ▶ **A new requirement to provide a registered email address** that Companies House can use to contact the company or someone acting on its behalf. The email address will not be public, and it should be actively managed so that important information sent to it is not missed. Newly incorporated companies must provide this email address as part of the incorporation process, and existing companies will be asked for it when filing their next confirmation statement.
- ▶ **Introducing a “lawful purpose” statement:** all companies now need to confirm on their annual confirmation statement that their future activities will be lawful. Newly incorporated companies must confirm that they intend to form the company for lawful purposes on incorporation.
- ▶ **Data sharing with other government departments and law enforcement agencies:** Companies House now has a new power to share information with other government departments and law enforcement agencies to meet the overarching objective of tackling economic crime, particularly in the case of filing errors or suspicious behaviour.
- ▶ **Stronger checks on company names:** a company can no longer have a name which: (i) contains a computer code; (ii) suggests a non-existent

connection with a foreign government or international organisation; or (iii) may facilitate crimes involving dishonesty or deception. The Secretary of State has the power to direct a company to change its name in specified circumstances, and if a company fails to comply with the direction, then Companies House has the power to change the company's name itself.

Are there other changes to be implemented?

Several key areas of ECCTA are yet to be implemented including:

- ▶ **Identity verification requirements (IDV):** ID checks will be introduced for all new and existing directors, people with significant control (**PSCs**), and anyone submitting filings to Companies House, including authorised corporate service providers (**ACSPs**). It is expected that an individual's identity will be verified either directly by Companies House or indirectly by an ACSP. Although the systems and technology at Companies House will need to be upgraded before these parts of ECCTA are introduced, Companies House has published [draft rules](#) which set out the information an individual will need to provide to complete the IDV process. As anticipated, the information to be provided includes contact information (e-mail address and current residential address) and evidence (such as biometric passports or driving licence). The specific evidence required will depend on the method of verification and the citizenship of the individual. You can read more about IDV requirements in our recent [update](#). [Draft regulations](#) on identity verification and re-verification have also been published by the government. The draft regulations anticipate that individuals will need to provide the contact information and evidence required by the draft rules and, once they have been verified, the Registrar will assign a "unique identifier" to them and provide further information on the role of ACSPs.
- ▶ **Filing information at Companies House:** new requirements in relation to how corporate entities interact with and submit information to Companies House. At present, certain documents to be delivered to Companies House must be signed by specific persons, but anyone is able to deliver the documents to Companies House. ECCTA will restrict the ability of those who can file information at Companies House on behalf of corporate entities to individuals and ACSPs who have undergone IDV.
- ▶ **ACSPs:** new requirements which will enable registered ACSPs to file documents on behalf of companies and to perform IDV of individuals. It is envisaged that ACSPs will be intermediaries such as lawyers, accountants and company formation agents.
- ▶ **Statutory registers:** companies will no longer be required to maintain their own registers of directors, directors' residential addresses, secretaries and PSC registers. Instead, all information regarding directors, secretaries and PSCs will be maintained on the register at Companies House and available to the public. Note that the directors' residential addresses will not be publicly available.
- ▶ **Accounts and reports:** small companies will no longer have the option to file abridged accounts; instead, they will be required to file both their profit and loss account and directors' report. Micro entities will also be required to file their profit and loss account, but they can choose whether to prepare

and file a directors' report. The level of detail and format required will become clearer once the relevant secondary legislation is passed. A company relying on an audit exemption will also have to state in its balance sheet which exemption it is relying on and make a statement that it qualifies for the exemption.

- ▶ **Ban on corporate directors:** the ban on the use of corporate directors was legislated for in 2015 but the provisions were never enacted. In March 2024 the government brought into force a provision which will enable it to make regulations incorporating a "principles based" exception. It is apparent from the drafting of provisions currently in the Companies Act 2006 that companies will have a 12 month grace period in which to replace any corporate directors not covered by an exception. However, there is no indication of when these changes will be introduced.

When will these changes be introduced?

The Department for Business and Trade [published](#) its first report on the implementation of ECCTA in May 2024. The report summarised the progress made by Companies House to date, provided detail on the future steps and indicated that an implementation timetable would be published "shortly". However, a detailed timetable has not been published yet.

What steps can you take to prepare?

Although the implementation timetable remains unclear, there are steps that companies can take now to ensure that they are ready for the changes. These include:

- ▶ Checking that information on directors, members and persons with significant control is up to date.
- ▶ Reviewing current practices for filing at Companies House (both routine and transactional filings). Think ahead about how these might continue and/or how the process may need to be adapted given the restrictions in ECCTA on who can file documents at Companies House on behalf of companies.
- ▶ Identifying those individuals who will need to undergo IDV – this might include directors, company secretaries, PSC and employees who regularly submit information to Companies House. Alert them to the new requirements of ECCTA and ensure that they have the necessary information to be able to complete IDV when required.
- ▶ Checking whether any companies within their group have corporate directors, and if so, consider replacing them (where necessary).

For more information, please contact a member of our [Corporate team](#)

Spotlight on US M&A

[DealMAX](#), held in Las Vegas and organised by the Association for Corporate Growth (**ACG**) brings together over 3,000 private equity and M&A professionals. The conference provides the perfect setting for networking, exchanging ideas and fostering connections.

Most of our time was spent connecting with industry peers, old and new. However, we managed to attend a few of the various keynote speakers and insightful sessions as a part of the conferences extensive program.

An overwhelming theme was **the recovery of the global M&A market** with the main question being when? Following a lacklustre 2023, there has been some increase in deal activity for the first half of 2024, particularly within private equity but not yet the release of capital that had been predicted. Deal volumes have certainly improved over Q1 2024 when compared with the same period last year and outperformance of 2023 seems widely agreed upon. Everyone is hoping and expecting a material uptick in deal numbers this year with the back end of Q3 seeming the hottest tip as to when it will all start again. Whether the UK will lag behind the US market remains to be seen but if it does we wouldn't expect it to be by much, especially with an election out of the way here and one in the offing across the Atlantic.

Borrowing rates have also played a part, with high (and increasing) interest rates creating some caution in the market. However, as the market steadies, **an increase in activity**, particularly from PE backed and founder-led companies is sure to follow along with a more seller friendly market.

Other key takeaways included:

- ▶ **The rise of AI and its impact on M&A.** It's still early days however, the feeling is generally positive when considering how the technology can be used to improve pre-sale valuations for example. The inflection point for many AI products seems to be fast approaching.
- ▶ **Restructuring.** 2023 saw a record number of PE owned companies file for bankruptcy. Whilst bankruptcy is often seen in a negative light, it presents as an opportunity for investors to find high quality targets at attractive valuations.
- ▶ **Regulatory requirements** continue to impact M&A deals, often leading to more extensive due diligence processes, and longer transaction periods.

UK M&A: A Guide for US Buyers

An Introduction

One of the constant themes of mid-market M&A in the UK is the significant activity generated by US-based buyers acquiring British targets. [Read more.](#)

Risk Allocation

In our second article in the US/UK M&A series, we explore deal certainty, the different appetite for risk and measures that are used to apportion risk between the parties. [Read more](#)



Price Adjustment Mechanisms - The Locked Box

Price adjustment mechanisms are common in both UK and US style M&A transaction documents to determine the final price that the buyer pays. However, the manner in which the price adjustment is achieved varies; in the US, a closing accounts mechanism is generally used, and although these have remained common in the UK, in recent years we have seen increasing use of “locked box” mechanisms in UK style share purchase agreements governed by English law. [Read more](#)

Warranties

In this article we examine the different approaches to giving warranties in US and UK share purchase agreements (**SPA**) including the terms and scope of the warranties, who gives them, the basis of recovery under the warranties, the basis of the sellers' liability and other protections available to buyers. [Read more](#)

Disclosure

The disclosure exercise against the warranties contained in the share purchase agreement (**SPA**) is a common element of an M&A transaction on both sides of the Atlantic Ocean. In this article we will identify some of the different approaches taken in relation to disclosure in the UK and the US. [Read more](#)

Restrictive Covenants

In this article, we discuss what restrictive covenants are, how they are used in M&A transactions in the US and UK and whether there are any changes on the horizon that may alter this approach in the future. [Read more](#)

Miscellaneous/Common Issues

We explore some of the common issues in the M&A process and deal practice in the US and UK. [Read more](#)

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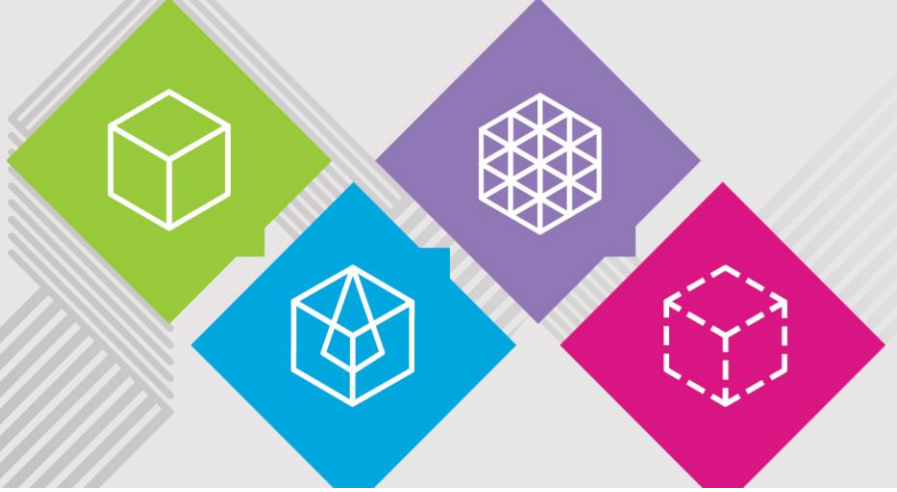
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Spotlight on Startups – CUBE by Lewis Silkin

Our [CUBE](#) community provides legal and business support for startups, founders and investors to help them navigate the unique legal challenges high-growth businesses face. With an established presence within the startup sector, our [dedicated team](#) understand the startup ecosystem and make business legals simple.

Check out our new dataroom and toolkit

During the due diligence process an investor will generally ask their lawyers to carry out “legal due diligence”, and the first thing the lawyers will normally do is send through a list of documents they want you to make available. Having a good dataroom set up in a structure they will recognise can help to answer those questions, so it makes sense to set one up early and be ready to go when an investor is interested. Plus, it showcases your startup’s knowledge of the investment/exit process, which can’t hurt!

Keeping a dataroom structure going in between transactions can also help improve organisation of legal docs, and even collaboration within your startup. Getting into the habit of filing contracts and other papers into the structure, rather than leaving them in email attachments, can make life a lot easier.

If you’d like to find out more, you can view the online dataroom [here](#). Alternatively, you can download our handy [toolkit](#).

Read our latest startup content

The basics of contracts

An explanation into the basics of what a contract is, and whether you need one. [Read more](#)

Tips to avoid co-founder chaos

To successfully grow and deliver your startup, you need to learn how to collaborate and, equally as important, consider what happens if you disagree with your co-founders. [Read more](#)

Data protection by design and default

One of the best ways to help prevent getting into tangles with data protection law compliance later down the track is to integrate privacy measures into your organisation and its practices from the start. Not only will it help you comply with data protection best practice, but the law also requires that you do it. [Read more](#)

When am I a data controller or a processor?

The UK GDPR (the UK’s main data protection law) puts different obligations on companies depending on how they control or process personal data about their customers, prospects, staff or anyone else. [Read more](#)

Getting your employee incentives right

Top tips on how to recruit, retain and motivate your staff with share incentives. [Read more](#)



LEWIS SILKIN



What should be in my startup's dataroom?

One of the first parts of a fundraising or exit transaction is a process called "due diligence". As part of this process, investors will generally ask their lawyers to carry out legal due diligence. The first thing their lawyers will normally do is send through a list of documents they want you to make available in a dataroom. [Read more](#)

"The partnership between Block Dojo and Lewis Silkin has provided our startups with invaluable legal guidance, from business formation and intellectual property protection to equity structuring and regulatory compliance. The workshops run by the team with our cohorts mean our startups are better equipped to navigate the complexities of the legal landscape, allowing them to focus on innovation and growth."

Jan McGinley, Block Dojo

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Focus on Banking and Finance

It has been a turbulent 18 months in the banking and finance sector.

We've raced to refinance our clients' loans to beat interest rate hikes – but we've also seen clients walk away from deals as a result of the loans becoming too expensive, plans for acquisition, expansion or purchase of assets no longer profitable or viable. Market conditions have been tough for some of our clients and have left some forced to take on additional debt to meet spiralling costs due to inflation.

Loan agreements typically contain 'financial covenants'. These are calculations that measure either the financial performance of the borrower or the value of assets, and the lender and borrower agree thresholds that must not be breached. When market conditions change (such as a rise in interest rates, a dip in property value or an impact on profits), those thresholds can suddenly and unexpectedly be in breach. This gives the lender the ability to 'accelerate' the loan – which means the whole of the loan is immediately due and repayable. Fortunately, the majority of the lenders that our clients have dealt with have been pragmatic and agreed to a 'covenant reset'; where the breach of the threshold is forgiven, the lender does not demand the loan repayable and the parties agree new thresholds that are attainable.

We've also seen an increase in requests for personal guarantees from directors and shareholders – it seems now that lenders are not willing to leave the liability for the loan at the door of the company and want more leverage in a scenario where a borrower is in default under the loan. Some say this is a tactic to ensure that directors and shareholders remain engaged with the lender if borrowers are not performing, but ultimately, if

a director or shareholder gives a guarantee and is unable to pay it following a demand from a lender, the lender would be able to take steps to make that individual bankrupt. In a nutshell, proceed with caution.

Some of our clients have delayed deals until after the result of the election, or for the optimistic, to see if the interest rate falls. It seems clear that we will not return to the low interest rates of the past decade. For those who want to act now, agreeing to lending at a higher interest rate but with low or no fees on repayment gives borrowers the option to refinance should interest rates drop in the coming years.

Lending from non-banks has continued to increase and the expectation is that this trend will continue. The market remains liquid and there is lots of debt – it is just expensive.

Top tips for our clients looking for funding arrangements this year:

- ▶ Bank lenders are undertaking extra due diligence due to the market conditions, which takes time. Give yourself plenty of time to find funding if you have any plans. Consider non-bank lenders if you need to go quickly (although this typically comes at a price).
- ▶ If you are asked to give a guarantee as a director or shareholder, try to agree a cap. A cap does not typically extend to legal costs the bank may incur in enforcing the guarantee against you, so bear that in mind when setting the threshold.
- ▶ As always, carefully consider the terms of the loan agreement and any security. Breach of the terms usually mean the lender has the power to 'accelerate' the loan which means the loan is

immediately due and repayable; borrowers should be cautious to ensure the terms that they agree are not going to be easily breached.

Our latest updates include

5 key considerations when entering into a loan agreement

Lending agreements can be quite restrictive on borrowers. If your business is entering into a loan agreement, this article outlines some key considerations for borrowers. [Read more](#)

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Focus on Tax and Incentives

We've brought together the latest thought leadership articles from the tax and incentives team, if you have any questions on any of the topics raised, please do get in touch.

Tax & Election 2024: Manifesto-a-go-go

You might not have heard, but there's an election campaign underway. And since the major parties have now launched their manifestos, it's a perfect time to see what we might have in store on the tax front. I am going to take a look at some of the key tax promises and controversies of the campaign. With all due respect to the other parties taking part, I'm going to focus on the Conservative and Labour Party manifestos, since they are most likely to form the next government. And if you pay any attention to the polls, it's tempting to go one step further and only review one manifesto. Still, anything can happen in an election campaign. [Read more](#)

What is R&D tax relief

For accounting periods beginning on or after 1 April 2024 the UK has two R&D regimes from which businesses could benefit: (i) the research and development expenditure credit (known as the RDEC); and (ii) an enhanced R&D intensive support regime (known as the ERIS regime) for R&D intensive SMEs. [Read more](#)

Upcoming deadline for employee share plan returns: 6th July 2024

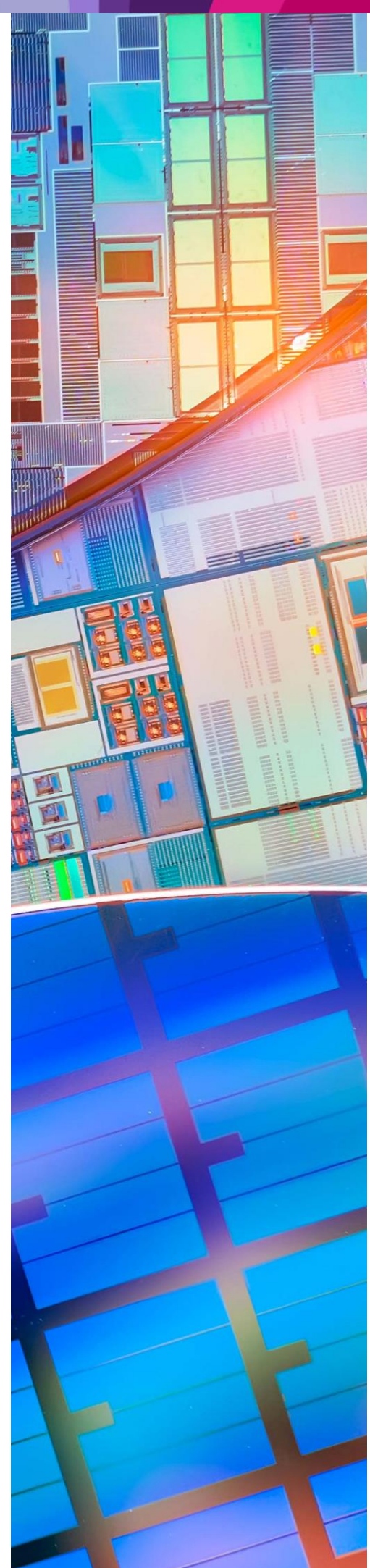
Companies must file an annual return with HMRC reporting any share or share option activity involving UK employees and directors. The submission deadline for the return for the 2023/24 tax year is Saturday 6th July 2024. [Read more](#)

LLP Members - HMRC circling

Last month HMRC changed its guidance on 'fixed share partners', which in this context means members of a limited liability partnership who receive their remuneration substantially in the form of 'disguised salary'. Reports are filtering through of LLPs increasingly being asked difficult questions by HMRC. The Lawyer has reported that HMRC is questioning the treatment of fixed share partners on the basis that they are trying to sidestep anti-avoidance rules in an artificial way (as opposed to sidestepping them in a graceful, balletic way that HMRC cannot help but appreciate / applaud). [Read more](#)

EMI options: Top 10 mistakes uncovered on an exit – and how to avoid them

In this article we explore the key issues around granting Enterprise Management Incentive (EMI) options, an extremely popular employee incentive mechanism for qualifying small and medium sized companies, thanks to their unrivalled tax benefits and the flexibility permitted around setting their terms. [Read more](#)



Budget 2024: Into the Chocolate Factory

“There is no life I know to compare with pure imagination!” So sang Willy Wonka, in both his Gene Wilder and Timothee Chalamet incarnations – I have no idea about the Johnny Depp version, that one looked terrifying to me. And the Chancellor seems to have been infected with the same Wonkaesque, starry-eyed enthusiasm. Good news everyone, the Chancellor’s found over £13bn to spend on tax cuts! Where did he find it? In a chocolate river? Under a liquorice bush? In the profits of a misconceived Glasgow tourist attraction? I don’t know, ask an economist. And look carefully to see if the economist gives any clues as to the wisdom of all this; be sure to watch for subtle stuff like steam coming out of the ears or heavy sobbing. [Read more](#)

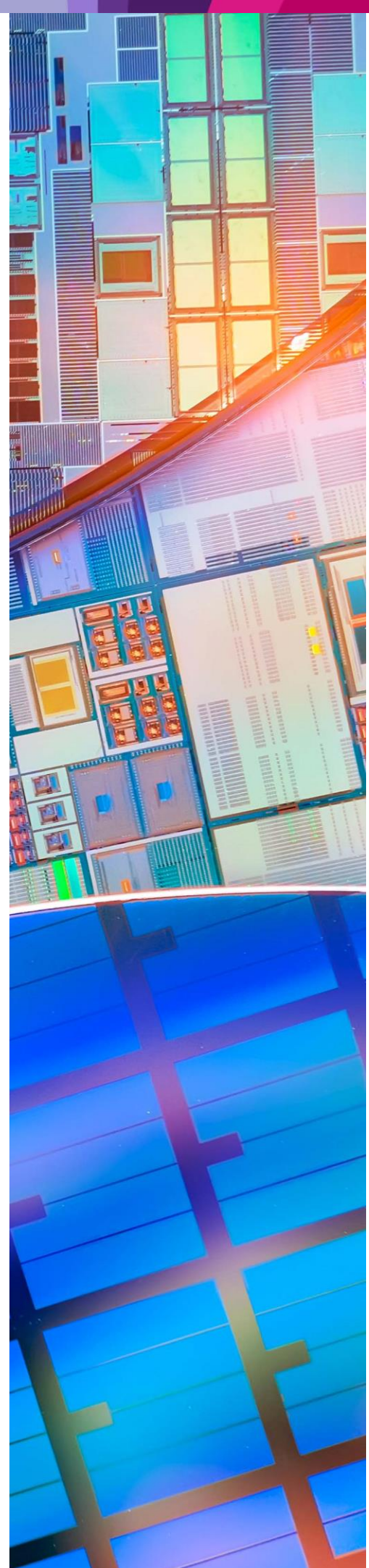
Crisps and Dolls (and how to tell them apart)

Anyone who thinks tax isn't entertaining needs to read some tax cases every now and again. Today we have a couple of recent cases about what constitutes a crisp (potato, mostly, it turns out) and how a doll can get an get more expensive the more human it looks. [Read more](#)

Routes to Market Series: Customs

A crucial element of ensuring the smooth running of an international supply chain is for a business to make sure they are compliant with local customs legislation. If you don't comply, your goods could become stuck at borders.

[Read more](#)



Talking Tax and Incentives

Our Tax and Incentives team have put together a new podcast and video series where they demystify complex topics in the world of tax and incentives.

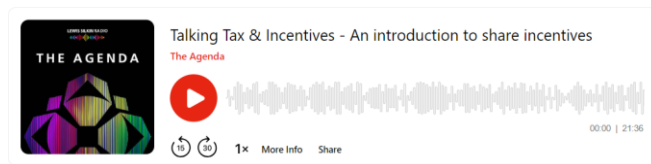
Why EMI Options?

Michael Birchall discusses five key reasons you should consider EMI options when incentivising your employees.



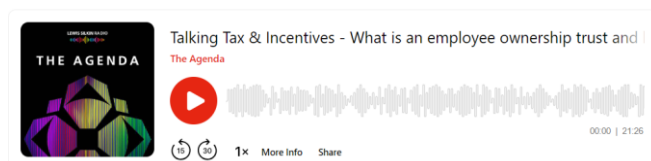
An introduction to share incentives

Kathy Granby and Matthew Rowbotham dive into the world of share incentives, highlighting key considerations for private companies thinking about implementing share incentives for the first time. [Listen here](#)



What is an Employee Ownership Trust and how does it work?

Kathy and Matt discuss the increasing popularity of moving to employee ownership, with a focus on Employee Ownership Trusts (EOTs). [Listen here](#)



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Focus on Financial Services Regulatory

Our financial services regulatory practice happily continues to be in demand by our clients. Fitness and propriety, exits and settlements continue to be a theme despite the FCA's consultation setting out its stricter expectations. Regulatory remuneration requirements also continue to be hotly debated. We have assisted both listed companies and individuals in relation to regulatory requirements applicable to listed securities. We have provided legal opinions to firms for purposes ranging from opening a UK bank account to applying for a cross-border financial services licence. Meeting the advertising requirements applicable to financial promotions is also a recurring challenge for clients.

However, unusually, the pace of regulatory change has currently slowed. At the time of writing the FCA had just announced that it did not consider it appropriate to publish the findings of its review into the treatment of domestic politically exposed persons during the pre-election period. So, all further developments are on hold until mid-July once Parliament has returned. What might that bring? Labour's manifesto says it will "...create the conditions to support innovation and growth in the sector, through supporting new technology, including Open Banking and Open Finance and ensuring a pro-innovation regulatory framework" we will have to wait to see what this translates to in practice.

However, what we really want to know is whether the FCA will persist with what has become known as its "naming and shaming" proposal, which is potentially its most controversial proposal to date and somewhat at odds with its international competitiveness objective.

There seems little doubt that second half of 2024 will bring with it some interesting changes for the sector.

Our recent updates include:

CryptoCompliance: are you operating on the right side of the line?

Whilst the majority of cryptoassets themselves are unregulated in the UK, businesses providing certain services involving cryptoassets will need to comply with various regulatory regimes. [Read more](#)

Finfluencers have been making waves...

Finfluencers have been making waves in the press recently, with the first prosecution brought by the FCA against influencers regarding alleged financial promotion breaches. [Read more](#)

Pendulum swings back in favour of SMEs and the economy. Investors beware

The ups and downs of the thresholds for being a high-net-worth investor or self-certified sophisticated investor. [Read more](#)

How would you like your justice served?...well done (outcome following full due process), medium, or rare (trial by media)

The FCA has recently committed to carrying out enforcement cases more quickly as it seeks to increase the deterrent impact of its enforcement actions. [Read more](#)

New Remuneration Code - For investment firms regulated under the Markets in Financial Instruments Directive

Since the 2007/08 financial crisis, as a result of both UK government and European initiatives, the financial services industry has been the focus of wide-ranging reform. A key aim of this reform is to align remuneration principles in the various sectors within financial services with a view to ensuring that policies and practices promote, and are consistent with, effective risk management. [Read more](#)

Remuneration Codes – for banks, building societies and designated investment firms

This Inbrief provides an overview of the Remuneration Codes issued by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) – we refer to these collectively as "the UK Regulators". [Read more](#)

Staying the right side of the regulatory line has never been more important

Keeping up with where the proverbial 'line' is at any given time in any particular sector is always a challenge given the fast pace of change in the financial services regulatory space. However, it is important that firms do so as the Financial Conduct Authority (FCA) is not flinching from continuing to flex its regulatory muscle to achieve credible deterrence in the pursuit of reducing and preventing serious harm in accordance with its statutory objectives and its published strategy.

'Naming and shaming'

In [CP24/2](#) the FCA proposed, amongst other matters, to publish the names of firms (not individuals) upon becoming the subject of an FCA investigation, with the power to be exercised in accordance with a 'public interest framework'. This proposal provoked a strong negative response across industry and the legal sector. In fact, the proposal caused such concern that it led to further examination by two parliamentary committees.

On 18 April 2024 the Chair of the House of Lords Financial Services Regulation Committee (HLFSRC) [wrote](#) to the CEO of the FCA which included the observation that:

"In our view, this proposal risks having a disproportionate effect on firms named in investigations, where those firms are subsequently cleared of any wrongdoing, particularly given the length of many investigations. This also risks the overall integrity of the market, including through possible unwarranted impacts on share prices for example. Additionally, individuals, whether named or not, may have their reputations unfairly tarnished through association with a publicised investigation. The severity of these impacts will depend on the length of

time before a firm or individual is exonerated, where that is the outcome."

The letter concluded with the following statement:

"the Committee intends to take evidence on this proposal and asks that you do not take further steps to implement this change until it has had the opportunity to do so and reach a final conclusion."

The FCA [responded](#) to that letter on 25 April 2024, to which the HLFSRC further [responded](#) on 1 May 2024 and the FCA [replied](#) on 7 May 2024.

The House of Commons Treasury Committee (HCTC) [wrote](#) to the FCA on 1 May 2024, with responses from the [Executive Directors](#) of Enforcement and Market Oversight and from the [CEO](#) of the FCA by letters dated 7 May 2024.

The FCA consultation closed on 30 April 2024, and the HLFSRC call for evidence on this matter closed on 4 June 2024.

It is worth further noting that the HLFSRC on 8 May 2024 [launched](#) an inquiry and call for evidence into the secondary international competitiveness and growth objective given to the FCA and the Prudential Regulation Authority (PRA) under the Financial Services and Markets Act 2023. The HLFSRC is considering a number of questions, including the extent to which the regulators are focused on the secondary international competitiveness and growth objective ("SICGO") and whether there are areas where the ability of the regulators to fulfil this objective might be constrained by the need to fulfil their primary objectives. It can be seen from the above referenced correspondence and outlined impacts that the FCA's naming and shaming proposal has the potential to

undermine its secondary objective. The HLF SRC call for evidence closed on 11 July 2024.

So, after the already extensive industry analysis and regulatory and parliamentary correspondence on this matter, are we any closer to an answer on the outcome of this proposal? In the latest board minutes of the FCA (dated 23 May 2024 but published on 3 July 2024) the Board noted (in relation to both naming and shaming and SICGO) that “*a large volume of consultation responses in favour of and against the consultation proposals were being assessed carefully. The organisation will continue active stakeholder engagement, to ensure that different viewpoints can be aired fully before moving forward to agree next steps in the context of wider changes relevant to the efficiency and effectiveness of the broader enforcement process.*” So there continues to be considerable uncertainty for firms in this regard.

Diversity and inclusion, and non-financial misconduct

This is another topic that has given rise to much debate. In September 2023 the FCA published (alongside the PRA), [CP23/20](#): Diversity and inclusion in the financial sector – working together to drive change, which closed in December 2020. On 8 March 2024 the HCTC published its [report](#) on its Sexism in the City inquiry, to which the FCA [responded](#) the same day. At that time, the FCA noted “*...After extensive discussion, including with the industry, our starting point was that what gets measured gets done and transparent, comparable data would benefit firms, employees and the wider economy. We welcome the Committee’s feedback on our consultation.*”

This year, we will prioritise proposals that tighten expectations on firms to tackle misconduct such as bullying and sexual harassment. We will also consider the Committee’s recommendations on whistleblowing and the use of non-disclosure agreements, building on our existing work...”

On 8 May 2024, the CEO and Chair of the FCA each gave [oral evidence](#) to the HCTC at a regular accountability meeting, and on 14 May 2024 the HCTC published a [report](#) containing responses from HM Treasury, the PRA and the FCA to the recommendations set out in its report following its “Sexism in the City” inquiry. In relation to the recommendation that regulators drop their plans for

extensive data reporting and target setting, the FCA noted “*... We would certainly agree with the Committee that we would not want any data collection to simply be a tickbox exercise without an appropriate focus on outcomes. The Women in Finance Charter annual review outlined what additional data signatories were collecting, which we will consider as we formulate our policy response...*” and went on to say “*...we are now prioritising our work on non-financial misconduct, including sexual harassment and bullying, and it will take some time to fully consider the very wide range of responses we have received to our proposals on diversity and inclusion...*”

So, when might we have the outcome of this consultation? According to the November 2023 [Regulatory Initiatives Grid](#) (page 18) the policy statement was due in H2 2024. However an updated grid was delayed due to the announcement of the general election, which is now expected at some point later this year.

Financial promotions

The importance of complying with this regime and its detailed requirements should not be underestimated. Breach of this regime can lead to criminal prosecution, as illustrated by the recent [case](#) brought by the FCA against a number of former ‘Love Island’ stars turned influencers. The FCA sets out limited guidance in its Enforcement Guide on the decision whether to prosecute, which for the conduct in question in this case is limited to “*The FCA’s general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate*” and that it will apply the basic principles set out in the Code for Crown Prosecutors. The public interest stage of the test sets out various factors for consideration including the seriousness of the offence, level of culpability of the suspect, circumstances of and harm caused to the victim, suspect’s age and maturity at the time of the offence, impact on the community, and whether prosecution is a proportionate response.

The decision to prosecute this case is illustrative of the FCA’s determined approach to protecting consumers and getting out its credible deterrence message, notwithstanding that it allowed an allegedly very high profile and harmful scheme to continue unchecked for a period of nearly three

years despite the FCA having a team that monitors financial promotions, that the investment in question only became subject to a permanent restriction on sale to retail customers part-way through the relevant period, that the FCA took six years post-commencement and three years post-completion of the alleged conduct to commence criminal proceedings, and that commencement came approximately two months after the FCA published its finalised updated guidance on financial promotions on social media.

Consumer duty

The FCA consumer duty came into force for existing products on 31 July 2023, and comes into force for closed products on 31 July 2024 (our earlier article on this is [here](#)). The FCA has yet to take formal enforcement action based on the consumer duty, but has already used it to achieve positive outcomes for consumers, for example in relation to savings interest rates. Consumers will also likely refer to it when they submit complaints to the Financial Ombudsman Service. The FCA has published extensive guidance on how to meet the requirements and expectations of the consumer duty, one of the most recent examples being the results of its insurance multi-firm [review](#) of outcomes monitoring. The review sets out detailed findings of good and poor practice, but the overall observation was that many firms need to make improvements in their monitoring to enable them to determine whether they are delivering good outcomes for retail customers, as required by the consumer duty. In particular, often metrics/data were not sufficiently comprehensive, data lacked analysis and explanation, and thresholds/standards in place did not appear to be appropriately set and/or communicated, which undermined firms' ability to carry out proper monitoring to facilitate identification and remediation of poor customer outcomes.

Crypto

Getting it right is not just important for firms that are already subject to regulation, but also for those seeking to be regulated. We have previously [written](#) about what it takes to make a successful cryptoasset provider registration application. Firms seeking such registration need to show at the point of application

that they are ready, willing and able to comply with the registration requirements, and that list is about to get longer. [CP24/9](#) closed on 27 June 2024, a policy statement will follow in due course. The proposal is that going forward, cryptoasset businesses will need to take into account the Financial Crime Guide when designing their financial crime systems and controls to comply with their obligations under the money laundering regulations and sanctions regimes. The Guide will be updated to reflect the Travel Rule that applies to cryptoassets (concerning the collection, verification and sharing of information in relation to cryptoasset transfers), and good and poor practice in relation to the use of blockchain analytics as part of transaction monitoring.

It remains to be seen whether the financial services regulatory agenda will change under the new government, and whether now we are out of election purdah the FCA will pick up the pace on regulatory initiatives. Broadly we would expect the new government to support the ongoing package of financial services reforms, set out in FSMA 2023 and the Future Regulatory Framework. Consumer credit reform may progress, as well as proposals to support and utilise technological innovation and fintech for example through the next phases in Open Banking and Open Finance and supporting the work on a central bank digital currency. The new government will no doubt want to ensure we remain globally competitive and seek to retain world leader status in this sector.

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More about our Corporate Team

Our Corporate team focuses on M&A, corporate finance, joint ventures, corporate advisory, debt finance, public markets advice and tax. We regularly undertake M&A transactions up to £100 million in deal value, and we have recently been recognised by Legal 500 as a tier 1 practice for M&A lower mid-market. Our firm and our corporate practice are market leaders in the advertising and marketing, and media and entertainment sectors, and we have unparalleled experience in these sectors over the last thirty years. In recent years our practice and client base has grown substantially in sectors such as retail, food, financial services, healthcare, real estate and technology.

[View our full Corporate team and get in touch here](#)

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