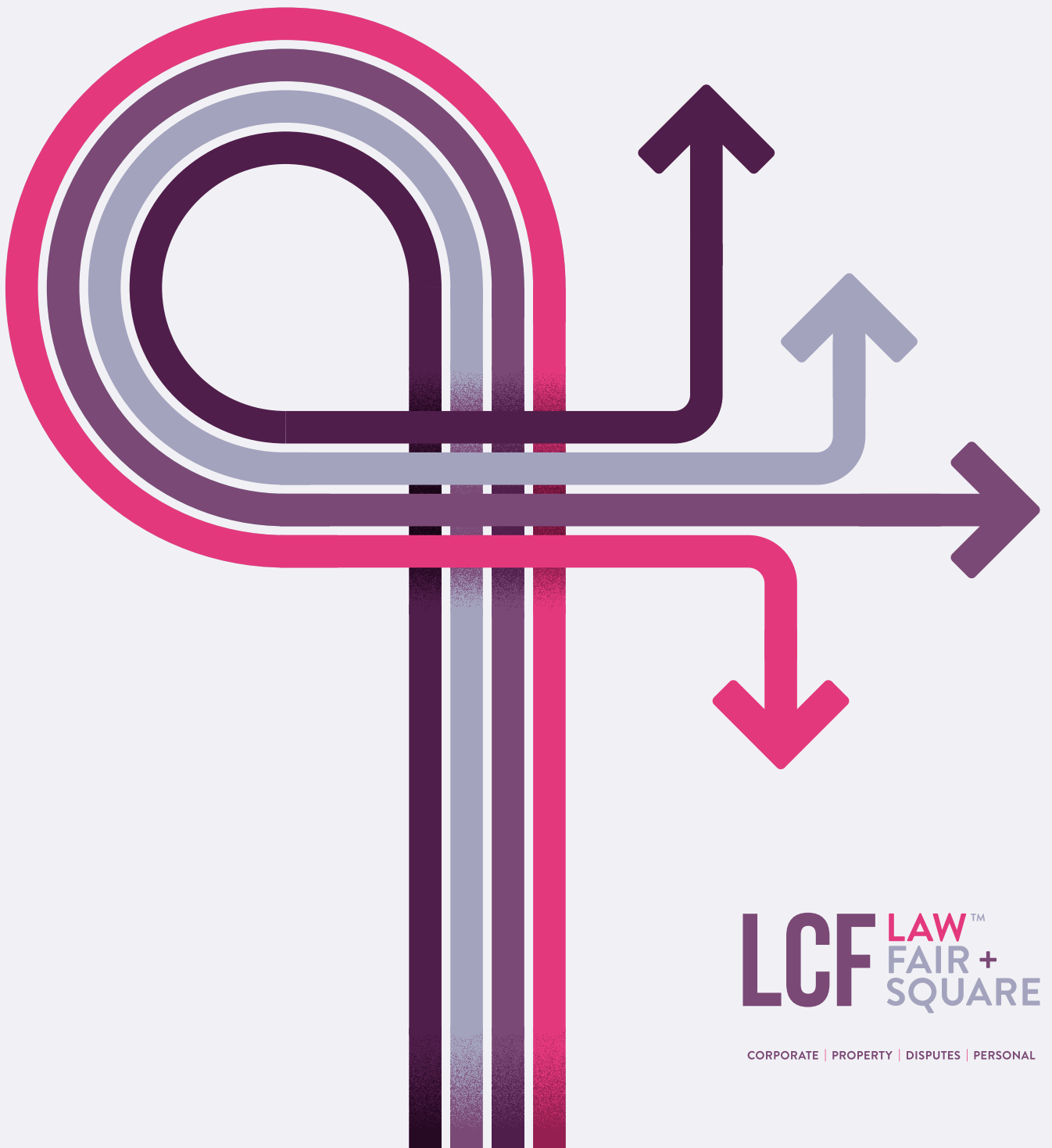


GETTING YOUR AFFAIRS IN ORDER

A Guide for Business Owners



LCF **LAW**™
FAIR +
SQUARE

CORPORATE | PROPERTY | DISPUTES | PERSONAL

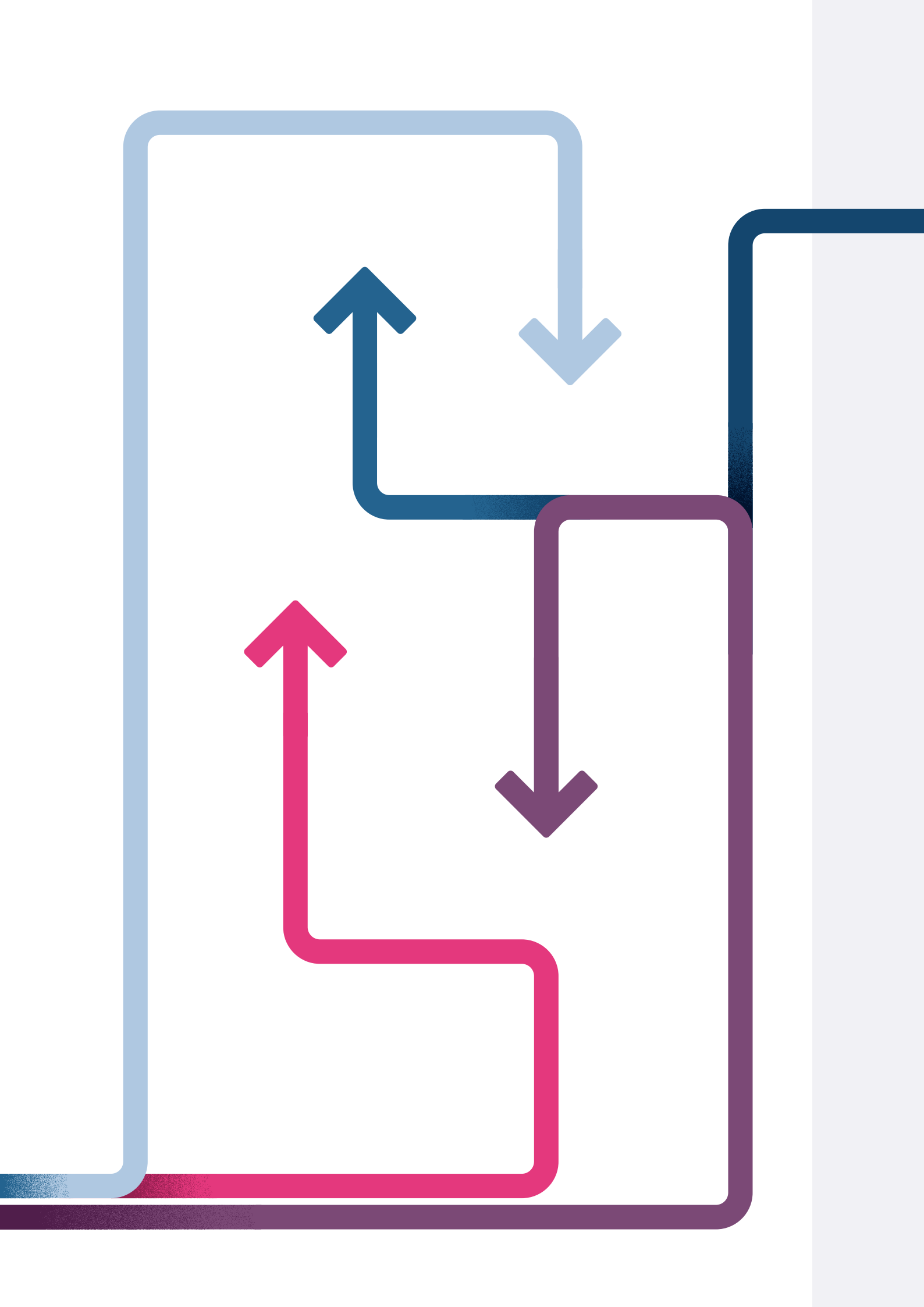




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+ In our experience Business Owners whether sole traders, partners or company directors put their whole energy into making their business a success.

They rarely stop and ask themselves ‘how do I?’ and ‘what if?’ questions about their personal affairs and how the answer to those questions can have a massive impact on their families, workforce, customers and fellow business owners.

The starting point for any business owner is to ensure that any Business Plan covers your personal plans for succession and exit. These plans may develop and change so regularly reviewing and updating the Plan is key. The Corporate and Personal Law Teams at LCF can help with some of the key areas of planning for the future.

We work closely with other advisors, your accountants and financial advisors to ensure that the most appropriate Plan for you and your business is put in place.



There are two key areas where LCF can help clients:



A planned exit and succession. This includes understanding how best to extract the wealth and value created out of the business; perhaps pass it down to the next generation or plan for a sale.

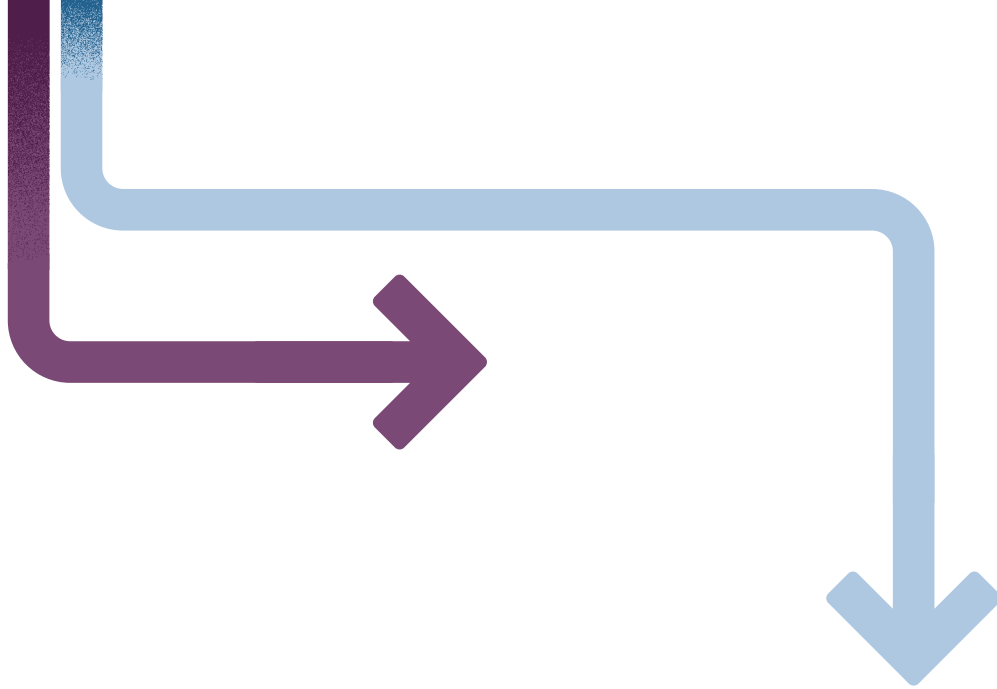


Avoiding or limiting the adverse consequences of an unplanned exit and succession including following incapacity or death.

+ HOW DO I PLAN FOR SUCCESSION AND EXIT?

This should be a key part of your planning. How best to do this will depend on your particular circumstances but you need to consider the goals of the business; the involvement of family members (perhaps the next generation); or a potential sale.





If you are thinking of realising the value of the business, things you need to consider include:



Will the business survive without you? Will you need to retain some involvement?



Do you need to make changes to the voting structure change as a result of any changes in the share ownership?



What do the company's Articles say about transferring or selling shares and do they need to be altered?



What are the tax implications of the sale or disposal?



How do I protect the assets from claims by third parties e.g. husbands or wives or partners of those I want to benefit?



The answers to these and many other questions will vary in every case and at LCF we help to identify the key issues for you and come up with solutions.

HOW CAN THE CORPORATE AND PERSONAL LAW TEAMS AT LCF HELP YOU WITH PLANNING FOR EXIT AND SUCCESSION?

We can work with you and your accountants and tax and financial advisors on mitigating the potential Capital Gains Tax liabilities arising on a disposal. A disposal can include gifting as well as selling. We will work with you to ensure that all appropriate reliefs are claiming including business asset disposal relief.

If your business is a trading company we can advise in relation to Business Relief which is a valuable Inheritance Tax Relief. We can help you maximise this working with your professional advisors particularly if your business seems to be moving from trading to investments.

We can help you review the share ownership which is crucial for succession planning. What are the shareholdings, voting rights, permitted transfers and who will have overall control? We can also put a mechanism in place to prevent a future deadlock where shareholders cannot agree.

If you have more than one key shareholder Cross-Option Agreements can be a helpful way to pass value to dependents of a deceased shareholder by allowing for remaining shareholders to buy them out (with a life insurance policy written in trust).

We can advise on the use of Family Trusts to enable shares to be transferred to the next generation potentially attracting Business Relief and deferring any CGT liability.

Many clients are now considering the use of Family Investment Companies as an alternative way to pass wealth between generations in a family. These are attractive because they enable assets to be passed down to future generations whilst business owners retain control. They are also potentially more difficult for third parties to challenge e.g. on a family breakdown.



We suggest the following “Action Points”:



When preparing your business plan including future succession plans consider the answers to the ‘How do I?’ and ‘What if?’ questions.



Review the structure of the business and the shareholdings.



Put in place Wills to ensure any company interests pass according to your wishes on death.



Consider the use of Family Trusts or Family Investment Companies.

Need some help?



Neil Shaw

Partner, Head of Personal Law

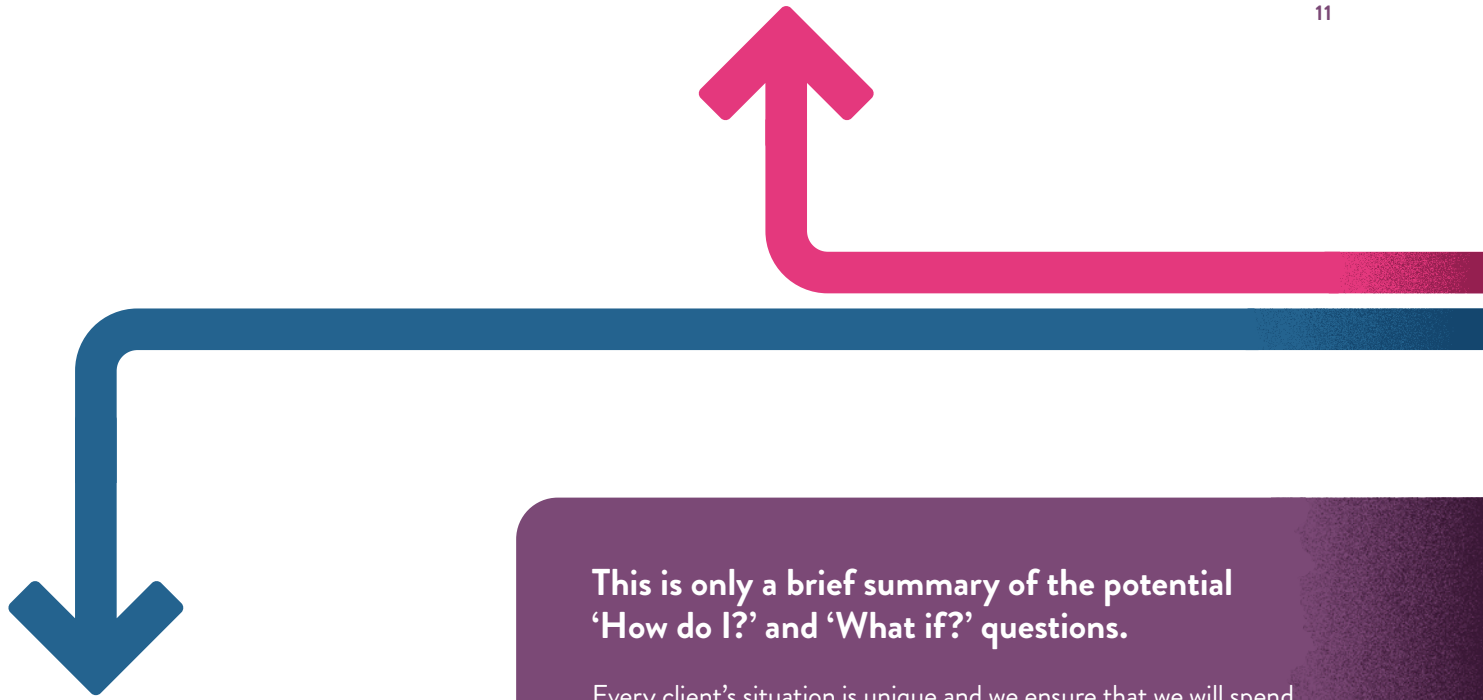
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HOW DO I AVOID THE CONSEQUENCES OF AN UNEXPECTED SUCCESSION

The unexpected succession can occur for various reasons including:

Loss of Capacity

- ➔ This could be as a result of stroke or accident which leaves you unable to work.
 - ➔ A Lasting Power of Attorney can allow you to plan for a loss of capacity allowing the business to function and preventing the bank from freezing accounts.
 - ➔ A Business Lasting Power of Attorney which enables you to choose who you would want to run the business until you recovered, is a business expense.
 - ➔ If no LPA is in place a Court application to the Court of Protection will be needed. This can take weeks even for an urgent application. The person appointed may not be the person you would choose.
 - ➔ A company director will automatically cease to be a director if they lose capacity but an Attorney can take over the directors shares and appoint new directors.
-



This is only a brief summary of the potential 'How do I?' and 'What if?' questions.

Every client's situation is unique and we ensure that we will spend the time getting to understand you and your business and your succession plans to ensure the appropriate structures are put in place and the appropriate legal documents are executed.

Death

- For sole traders without a Will this is likely to mean the business cannot continue. Without a Will no action can be taken until a Grant of Letters of Administration is issued by the Probate Court. Until then no one has authority to run the business or conduct the bank account. This process can take several months and even on an urgent application can take several weeks.
- A Will enables the business owner to decide who will run the business. The Will is effective from the date of death. It also determines who will inherit the business.

Divorce

- If you are passing the business down to the next generation you should consider asking them to sign a Pre-Nuptial Agreement before they get married. This enables them to ringfence the assets from a matrimonial breakdown. If properly drawn up they are recognised by the Courts. If your successors are already married you can ask them to sign a Post-Nuptial Agreement with their spouse.
- Consider the use of Family Trusts and Family Investment Companies. The timing of the creation of these can be crucial.

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