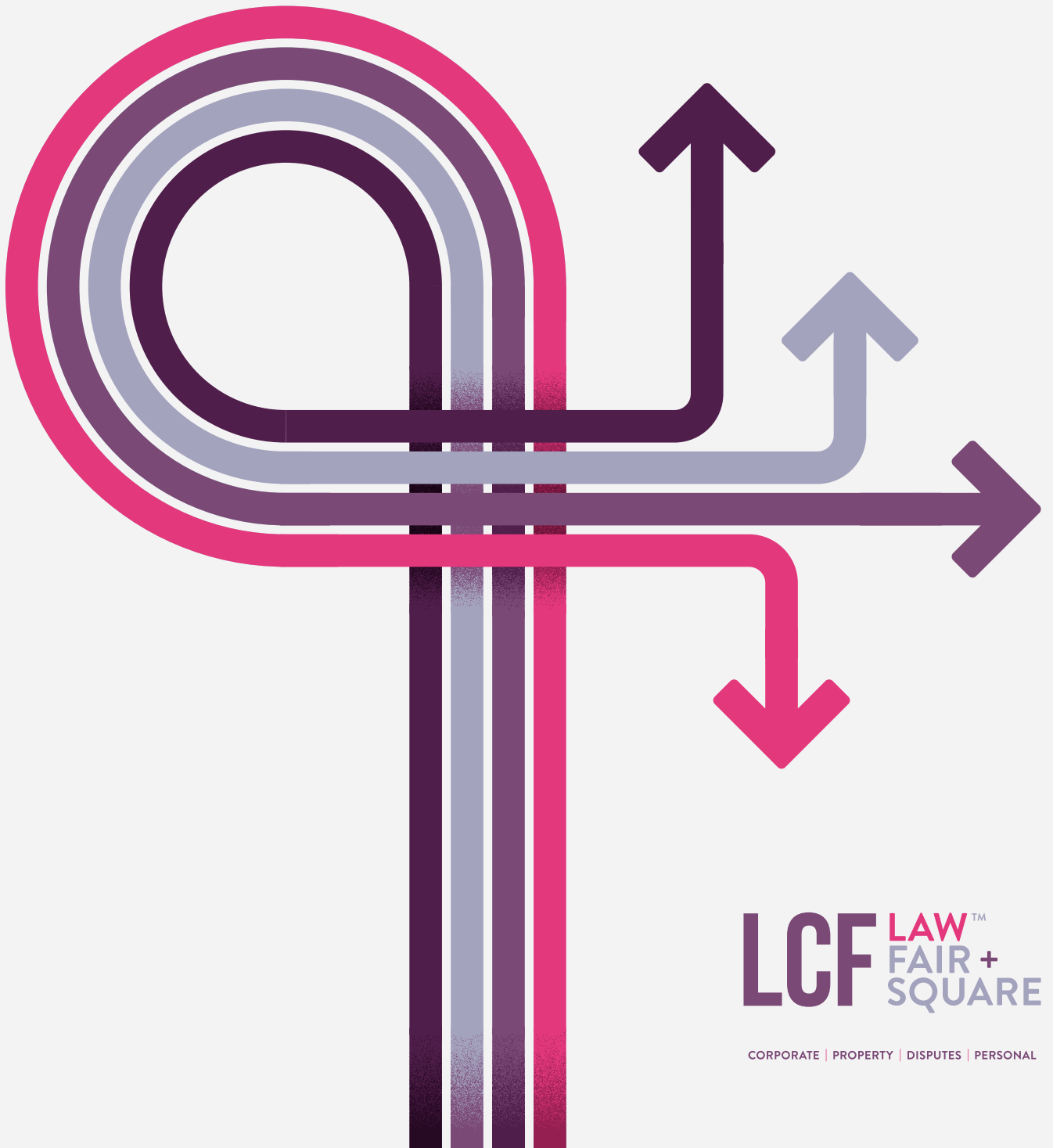


# GETTING YOUR AFFAIRS IN ORDER

A Guide for Business Owners



**LCF** LAW™  
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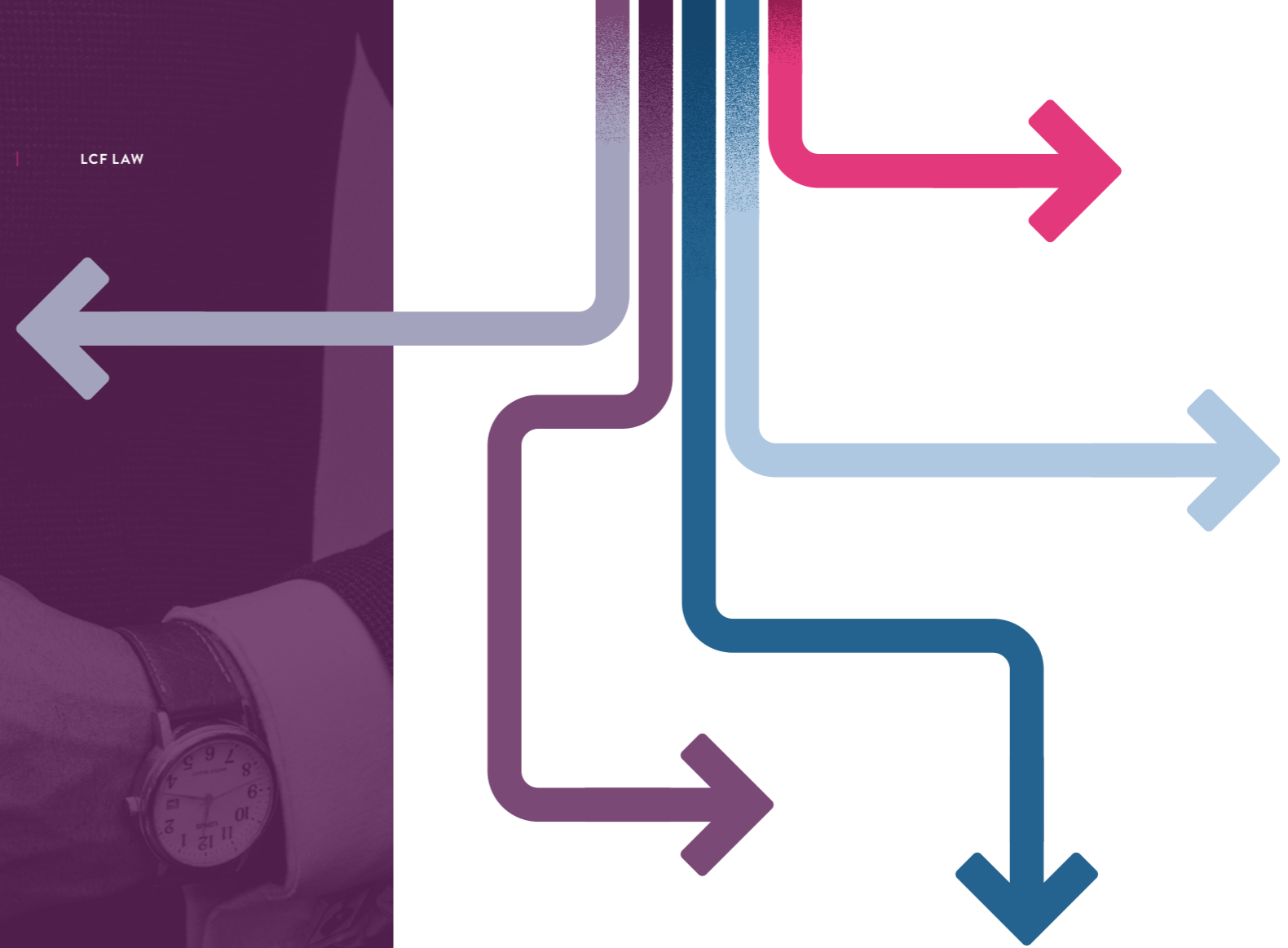
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**+** In our experience business owners, whether sole traders, partners or company directors, put their whole energy into making their business a success.

They rarely stop and ask themselves 'how do I?' and 'what if?' questions about their personal affairs or consider how they may impact their families, workforce, customers and fellow business owners.

The starting point for any business owner is to ensure that your business plan covers your personal plans for succession and exit. Your circumstances and intentions may change so reviewing and updating the plan regularly is key.

Our corporate and personal law teams can help with some of the key areas of planning for the future. We will work closely with other advisers including your accountants and financial advisers to help you put the most appropriate plan in place for you and your business.



**There are two key areas where we can help you:**



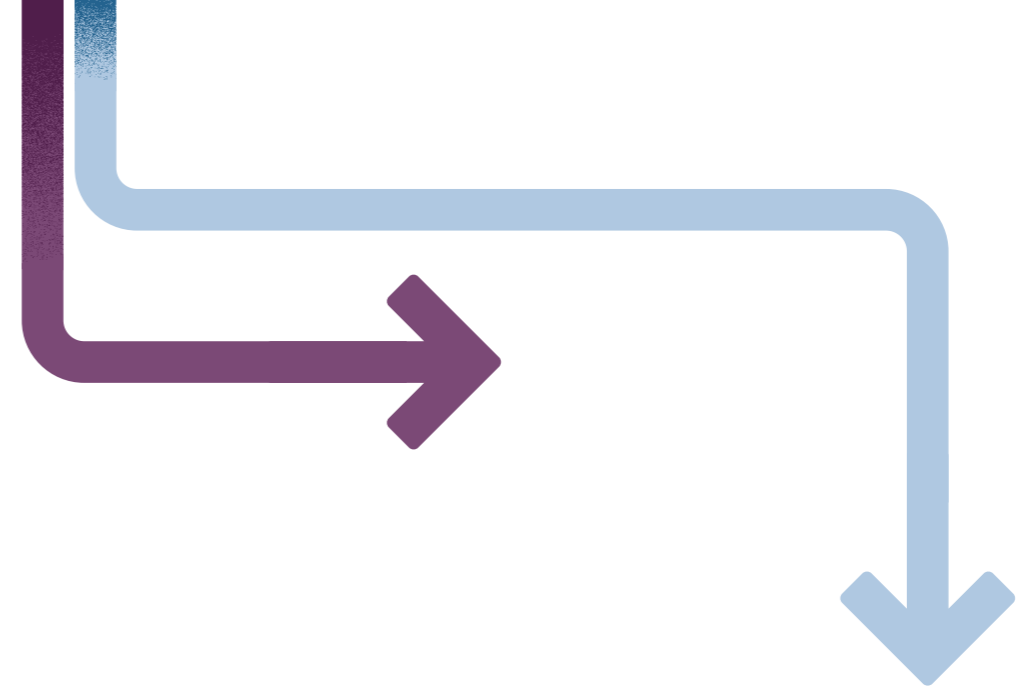
A planned exit and succession. This includes understanding how best to extract the wealth and value created out of the business and perhaps pass it down to the next generation or plan for a sale.



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

## + HOW CAN YOU PLAN FOR EXIT AND SUCCESSION?

This should be a key part of your planning. How best to do it will depend on your circumstances, but you need to consider the goals of the business, the involvement of family members (perhaps the next generation) and potentially its sale.



**If you are thinking of realising the value of the business, there are various things to consider:**



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



Do you need to make changes to the voting structure because 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 can you protect the assets from claims by third parties, e.g. the husbands, wives or partners of those you want to benefit?



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

## + HOW CAN WE HELP YOU PLAN FOR EXIT AND SUCCESSION?

We can work with you, your accountants and your tax and financial advisers to mitigate the potential capital gains tax (CGT) liabilities arising on disposal. A disposal can include gifting as well as selling. We will help ensure that all appropriate reliefs are claimed, including business asset disposal relief.

If your business is a trading company we can advise you on business relief, which is a valuable inheritance tax relief. Working with your other professional advisers, we can help you maximise this - 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 and 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 the 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 of our clients are now considering the use of family investment companies as an alternative way to pass wealth between generations. These are attractive because they enable business owners to retain control. They can also be more difficult for third parties to challenge if relationships break down, for example.

### Suggested actions:



When preparing your business plan and considering succession, ask yourself the 'how do I?' and 'what if?' questions.



Review the structure of the business and shareholdings.



Set up wills to ensure that any company interests pass according to your wishes on death.



Consider setting up a family trust or family investment company to transfer wealth to the next generation.

### Need some help?



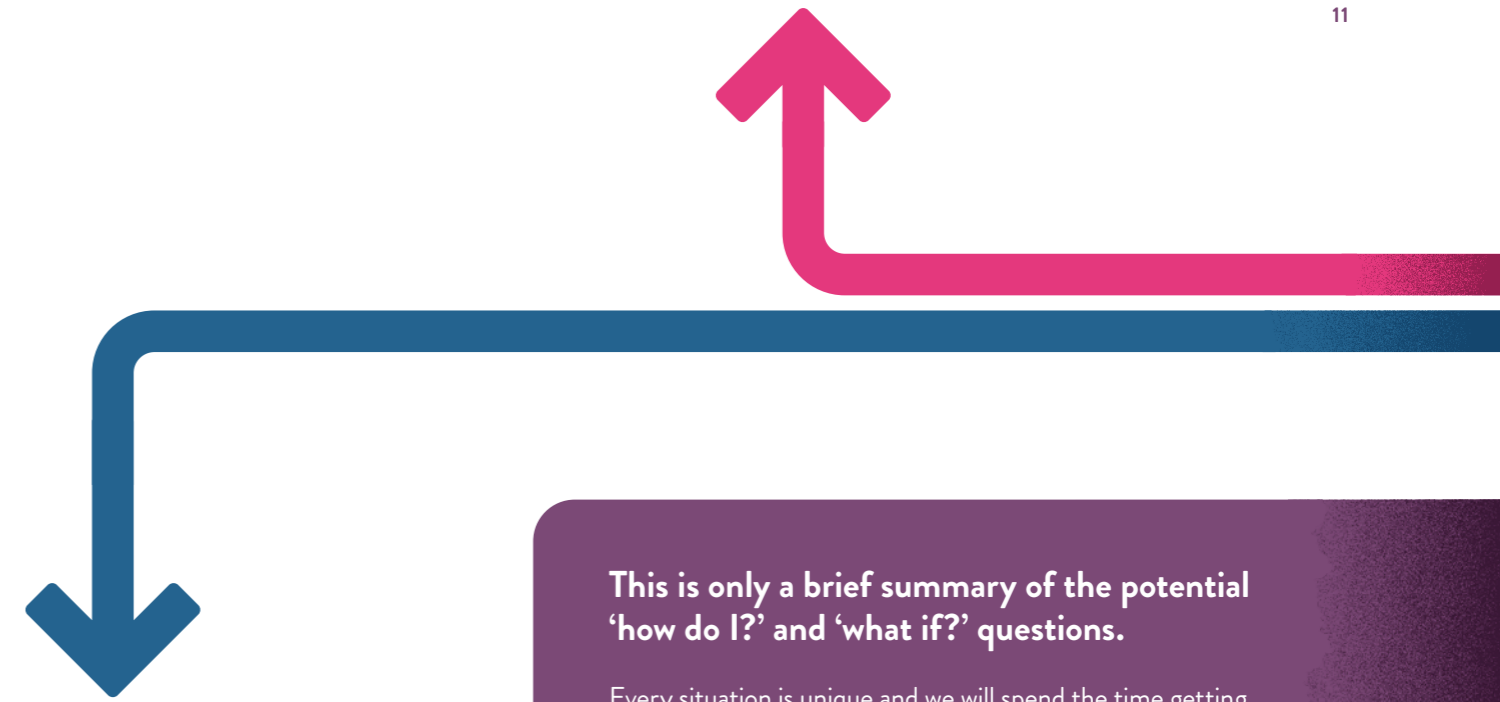
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## + HOW CAN YOU AVOID THE CONSEQUENCES OF AN UNEXPECTED SUCCESSION?

This can happen for various reasons.



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

Every situation is unique and we will spend the time getting to understand you, your business and your succession plans. This will help us ensure that the appropriate structures and legal documents are put in place.

### Loss of Capacity

- This could be the result of a medical condition or injury that leaves you unable to work.
- A lasting power of attorney (LPA) can allow you to plan for loss of capacity, allowing the business to keep functioning and preventing the bank from freezing accounts.
- A business LPA, which enables you to choose who you would like to run the business until you recover, is a business expense.
- If no LPA is in place, an 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. An attorney can take over the director's shares and appoint new directors.

### Death

- If you're a sole trader and die without leaving a will, the business is unlikely to be able to 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, it can take several weeks.
- A will enables the business owner to decide who will inherit and run the business. It is effective from the date of death.

### 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, it will be 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 a family trust or family investment company. The timing of their creation can be crucial.

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The firm is authorised and regulated by the Solicitors Regulation Authority ID 619553



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