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# Myerson **Business**

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**Share Options and Employee Share Schemes**

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# Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser, from assisting with day to day commercial issues, to advising on growth strategies, investment and business sales.

## Why Myerson?

At Myerson, we put our clients and their business at the heart of everything we do, establishing long term relationships, acting as trusted advisers.

We are proud to be ranked as **'Top Tier'** in the prestigious international directory **The Legal 500**, and commended by The Times **'Best Law Firms 2022'**. Therefore, you can rest assured you will receive a high quality and truly personal service.

Our corporate clients include those with local, national and international business interests across a wide range of sectors including: technology, creative and media, private healthcare, professional services, charities, manufacturing, retail and leisure, fashion and textiles and agriculture.



# Share Options and Employee Share Schemes

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## What is a share option?

A share option is a contractual right for the option holder to acquire or subscribe for shares in a company at a later date at a price agreed (or to be agreed).

This can be by way of either a transfer of shares by another shareholder or by a fresh issue of shares by the company.

## Why grant an option?

An option may be suitable in several scenarios, including:

- to recruit, retain and incentive key employees with the promise of equity at a later date;
- in circumstances where it may not be appropriate to hand over the shares immediately, but where the parties want certainty that it will happen at a later date;
- where the shareholders wish to have a binding option to acquire shares from another shareholder (or that shareholder's estate) in certain circumstances, such as upon the death or critical illness of that shareholder.

## How can an option be exercised?

An option must be exercised in accordance with the terms of the relevant option agreement.

The agreement may provide for various conditions to exercise, for example, a time limit, a specified time window, the occurrence of an event or the satisfaction of performance targets.



# What is an EMI Scheme?

EMI (Enterprise Management Incentive) schemes are the most popular tax advantaged share schemes used by companies to grant options to employees.

Subject to certain conditions being satisfied, the employee will benefit from relief from income tax and national insurance contributions (NICs) on the receipt of the shares as well as business asset disposal relief (formerly entrepreneurs' relief) on capital gain tax on a subsequent sale of the shares.

In addition, EMI schemes offer a great deal of flexibility in terms of both share rights and exercise conditions. This is attractive to business as it means that the company can implement performance conditions which must be satisfied before the option can be exercised.

## What other employee share option structures are available?

There are other employee share option structures available, including:

- Company Share Option Plans (CSOPs);
- Share Incentive Plans (SIPs); and
- Employee Benefit Trusts (EBTs)

## Which employee share scheme is best for us?

There are a number of aspects to consider before deciding which scheme to use. We would strongly advise starting the process by taking tax advice, as the tax advantages differ and each scheme has strict rules which need to be satisfied for the tax advantages to apply.

We can also discuss the various legal implications with you in more detail.



# What else do we need to think about?

When adopting a share scheme or granting an option, you should also consider:

## Share rights

Will the option shares carry full rights, e.g., voting or non-voting, rights to receive dividends and rights to participate in the proceeds of a sale of the company? Are there any other conditions or restrictions applicable?

## Constitution

You should also consider whether you need to update your constitutional documents to govern the relationship between the shareholders and to set out the different share rights. In particular, you should consider:

- whether you need to govern the manner in which the shares are transferable (for example, should pre-emption rights apply?);
- whether a shareholder is required to relinquish their shares in any circumstances (such as leaving their employment); and
- whether you need a “drag along” right to ensure that minority shareholders can be obliged to sell their shares on a sale of the company. This is crucial to cover, otherwise the employee could refuse to sell their shares at the time of the “exit” and potentially veto the sale of the company.



# You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our **Corporate Team** today.

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