

# Deal makers

## MAGAZINE

Corporate & Commercial

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**04** Recent deals at HM

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**23** Giving an EDGE to  
Scottish businesses

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made the Hot 100?

## We're here to help

From the High Street to hi-tech, and from healthcare to green energy, our team has been doing what it can to get Scotland moving

THINK  
ABOUT  
THINGS  
DIFFERENTLY

# Getting Scotland moving.

So far, 2020 has been a year like no other – and one that many of us hope will not be repeated in our lifetimes for a host of different reasons. We had actually prepared an unpublished edition of the Dealmakers magazine just as the first lockdown hit, and shortly after we'd been ranked in the Top 3 of Scotland's deal advisers following a busy 2019. However, it wasn't the right time to be talking about past activity at a time when our clients in all sectors, and every business for that matter, had no idea what lay ahead.

Now, more than six months on and with no definitive end in sight, we thought it was time to share some examples of the work that has defied the pandemic – if only to show that business has not stopped and that our economy can still prevail. No-one knows for sure what the next six months will bring. However, for our economy and society to rebound, business must take place, transactions must happen, and innovation must fill the spaces created by a new way of living and working for so many people.

This special extended edition of Dealmakers features a mixture of deals from before and during lockdown. Some of them feature businesses particularly apt for these times – from video conferencing trailblazers to cutting edge healthcare companies. Some are more traditional, but no less important for that.

Our team has worked on some major deals during the lockdown, none more so than the restructuring of High Street chain M&Co which, while difficult, saved thousands of jobs and hundreds of stores across the country.

Big or small, the message from our firm and team is that we are here to help no matter what you need. We want to help get Scotland moving once more.

We made sure that our business was robust and transitioned to a remote working operation instantly, so that we have always been here for our clients. That's something that will not change, while at all times our primary concern is the health and wellbeing of all of our stakeholders.

Of course Brexit was the big story at the start of this year, before Covid arrived, and the impact it will bring has not gone away. But no matter what challenges you face over the coming months, we'll face them with you.

## Donnie Munro

Partner, Harper Macleod LLP

e: [donald.munro@harpermacleod.co.uk](mailto:donald.munro@harpermacleod.co.uk)  
t: 0141 227 9314



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# Our deals.

From helping household names to allowing a city to meet its equal pay obligations, our teams have been busy.

## Renewables

### Powering one of the biggest corporate sales in Scotland

#### SALE



#### Windhoist Group

Lead Partner: Donald Munro

The corporate team at Harper Macleod has advised on the sale of wind turbine installation business Windhoist Group to European fund manager STAR Capital for an undisclosed consideration.

Windhoist, an owner-managed business which is headquartered in Scotland but has subsidiaries in Morocco, Ireland, South Africa and Australia, as well as premises in Germany, has erected more than 6,000 turbines across the

world, with a capacity of more than 11GW.

The company is a trusted supplier to leading wind turbine manufacturers and has an established track record in onshore wind while its recent projects include the portside construction of 84 offshore wind towers for the 588MW Beatrice offshore wind project, the first to utilise this approach in the UK.

The transaction is one of the most significant corporate deals of the year in Scotland, with Harper Macleod's team advising the seller on the restructuring and subsequent sale of the group. The deal was led by senior associates Craig Ramsay and Paul Macdonald, alongside partner and head of corporate Donald Munro.

Mr Munro said: "This was a complex deal involving multiple jurisdictions and we are delighted to bring it to a successful conclusion for our client and indeed all parties involved in it. Craig and Paul have particular experience in advising owner-managed businesses, especially where owners are looking to exit, while the renewable energy sector is one of Harper Macleod's key markets so we were able to bring that know-how to bear in this deal."

STAR managing partner Uniti Bhalla said: "We are delighted to have acquired Windhoist, which we believe is an excellent platform with a long history and a reputation for high quality and technical and commercial innovation.

Under STAR's ownership, Windhoist will continue to demonstrate its commitment to the sector and will invest in expanding into adjacent service areas and markets, alongside its customers, both on- and off-shore."

# Manufacturing

## SALE



## Making legal history in £107 million sale of manufacturer

### Low & Bonar plc

Lead Partners: Stephen Chan and John McHugh

We advised on the Scottish aspects of the £107 million sale of technical textiles business Low & Bonar plc to German firm Freudenberg SE, a leading player in the global market for performance materials.

Low & Bonar is a Scottish founded and listed company with a manufacturing base in Dundee among its global operations. Our team's role was advising on all aspects of the Scottish scheme of arrangement with the deal requiring the sanction of the Court of Session in Edinburgh, after receiving competition clearance from the European authorities. The deal made legal history as, due to the Scottish courts being shut, it was the first Scottish Scheme of Arrangement to be sanctioned by way of a conference call.

Stephen Chan said: "I am extremely pleased that we have managed to help Low & Bonar with this sale. This was a complex transaction made more challenging by the COVID-19 pandemic and it was certainly a unique experience in trying to come up with solutions to overcome issues that would ordinarily not be a problem. I am also particularly grateful to the courts and Companies House for their help in adapting to the circumstances."

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News Energy

### Wind turbine installer sold to European fund manager

Star Capital buys Irvine-based Windhoist from Irish owner



Craig Ramsay and Paul Macdonald of Harper Macleod

## What they said about us.

"Over a 9-month period, Paul Macdonald and Craig Ramsay were instrumental in helping me to sell my global wind turbine installation business to STAR Capital Their commercial and down-to-earth advice helped me to understand what was required in terms of the process. They were always available to me and went above and beyond to direct the deal towards completion, which included negotiating with a top 10 global law firm and project managing the various professional advisors across the UK, Ireland, Germany, Morocco, South Africa and Australia. Whilst based in Glasgow they travelled throughout Scotland, Northern Ireland, Republic of Ireland and London liaising with me, other advisors on the sell side and also the buy side to keep the deal on track. Ultimately, they helped me achieve a very good exit and I was delighted with the service I received."

**Former owner and managing director of Windhoist Group.**

## What they said about us.

"I am grateful to Harper Macleod for the work they undertook in guiding Low & Bonar through the complexities of Scottish law during this lengthy transaction, made more complex by the difficulties resulting from Covid-19 and people working from home. Harper Macleod ensured that the necessary approvals were obtained during these difficult times and without the deal timetable slipping."

**Matthew Jones, Company Secretary for Low & Bonar**

# Retail

## RESTRUCTURING



## High Street deal sees 2,300 jobs and over 200 local stores saved

### M&Co Trading Limited

Lead Partners: Chris Kerr, Gordon Hollerin & Tony Cameron

Our team advised on the restructuring exercise which saw Scottish headquartered retail fashion chain M&Co save 2,300 jobs and more than 200 stores, as well as the rescue of its Pension Scheme.

Following the start of the Coronavirus pandemic, Mackays Stores Ltd, as one of the largest privately owned retailers in the country, in April took the necessary step of appointing restructuring advisors. This ultimately led to the business being sold to a new company, M&Co Trading Limited. A 15-strong team from Harper Macleod advised M&Co Trading Limited on the transaction. The firm advised on all legal aspects of the exercise, including property, employment law, commercial contracts and intellectual property. Corporate Partner Chris Kerr said: "I've known the family for a number of years and was delighted that they put their trust in me and the team to deliver this. It was a job that became more than just another transaction for the whole team at Harper Macleod and we were genuinely honoured to assist them."

The financial restructuring exercise secured the company's future as a national High Street presence.

CEO Andy McGeoch said: "As everyone knows, retail has been one of the sectors hardest-hit by Covid-19, with long-term shop closures and social distancing having a hugely negative impact.

"Like many of the UK's best-known High Street names, we've been facing up to a number of underlying business challenges in the current retail environment, which have been exacerbated by the impact of COVID 19. Being forced to close

all our stores for several months meant a huge financial hit. "We reopened most stores in June and have been exploring every possible option, but it was obvious that the business, as previously structured, would remain under severe pressure from the ongoing challenges of Covid-19. It quickly became clear that best way to save most jobs and most stores was to enter administration, with a new company acquiring the assets of the old business, and this process has now been finalised.

"It's not a decision we took lightly, after more than 50 years of trading, but it gives us a sustainable basis from which to rebuild, with the majority of our staff keeping their jobs and 219 stores in High Streets across the country remaining open. "The most difficult part of this process is undoubtedly seeing 385 colleagues in stores and at our Glasgow and London operations leaving the business. It's a terrible situation for them and I'm desperately sorry that we couldn't come up with a viable plan which would have saved all the jobs."

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## What they said about us.

"The resource and skill which Chris, Gordon and Tony were able to throw at this made all the difference. They have a terrific team of lawyers who, working as partners with us through many difficult days and nights, helped to deliver the outcome which saved so many of our stores and jobs throughout the UK."

**M&Co CEO Andy McGeoch**

# Property



## FUNDING ARRANGEMENTS

# Advising City Property on £646 million funding deals

### City Property

Lead Partner: Tony Cameron

Our Banking & Finance team advised City Property on a series of three complex funding arrangements totalling £646 million. City Property is ultimately controlled by Glasgow City Council, which required the funding to meet its obligations under the equal pay settlement it agreed with members of staff. The three deals saw City Property secure finance of £646 million on a substantial property portfolio of assets located in and around Glasgow, including office, retail and industrial properties. The existing operational use of newly purchased landmark buildings will be retained through leaseback arrangements.

On the announcement of the final agreement, Council leader Susan Aitken said: "I am very pleased to see the conclusion of this process. It is the biggest financial deal concluded in the UK this year. The outcome of it is the payments delivered into the bank accounts of claimants."

## What they said about us.

"We are delighted with the support we have received from the team at Harper Macleod who have worked in partnership with us, demonstrating real commitment to the successful conclusion of this key project."

**Pauline Barclay, Managing Director at City Property**

Tony Cameron, Partner and Head of Banking & Finance at Harper Macleod LLP who led the 38-strong project team, said: "We were delighted to assist City Property in reaching deals which work for all parties, not least the 12,000 households in Glasgow which will benefit from the equal pay settlement. This was the final stage in a long-term plan to raise more than £600m by effectively enabling long term loans to be raised based on the value of these landmark assets, while still safeguarding their future use. These have been complex, bespoke deals but ones in which all sides have worked hard to ensure a successful outcome for all."

Our specialist team has extensive experience of advising on complex financing arrangements in the public and private sector.

The most recent deal saw Assured Guaranty announce the completion of a £195m loan package secured by a number of assets including the Riverside Museum, Tollcross International Swimming Centre, Glasgow Royal Concert Hall, Gorbals Leisure Centre and Torglen Football Centre.

This deal follows two others announced earlier this year. City Property agreed a £166m, 30-year loan facility package with Canada Life Investments secured by three assets - the Emirates Arena and Sir Chris Hoy Velodrome in Glasgow; Scotstoun Stadium and Leisure Campus; and Bellahouston Leisure Centre. In June, the first deal saw Legal & General arrange finance of £285 million secured on the existing property portfolio of City Property Glasgow (Investments) LLP and the funding of the acquisition of SEC Armadillo, City Halls and Glasgow Museums Resource Centre.

# Property

## ACQUISITIONS

### Homes purchase

#### Camlin Group

Lead Partners: John Meehan and Donald Munro

We advised Camlin Group, a joint venture between property entrepreneur Bruce Linton and Aviemore-based property developer David Cameron, on the acquisition of Ellon-headquartered Scotia Homes. Scotia was founded by the late Bill Bruce, whose son Martin will remain as managing director of the firm. Scotia has current and future developments in Aberdeen, Brechin, Elgin, Ellon, Forfar, Inch, Inverness, Kintore, Laurencekirk, Nairn, Newburgh and Peterhead. Our team advising on the deal included: Limor Wolfe, Kathryn Black, Caroline Summers, Lamia Al-Lamki, Lorna Davis and Scott Kerr.

### Letting expansion

#### Tay Letting East Ltd

Lead Partners: Paula Skinner and John Meehan

We advised Tay Letting East Ltd, property management specialists, on the acquisition of Dundee based Lickley Proctor Lettings. Lickley Proctor was established over 125 years ago and provides property management services in Angus, Tayside and Fife. We advised on all corporate, employment and property aspects. Our corporate team for the deal was headed by Paula Skinner with support from Gemma Sichi and Ewan Stafford (employment) and the property team was headed by John Meehan.

## What they said about us.

"The various teams engaged in this transaction worked together seamlessly to deliver a very satisfactory result for both buyer and seller at relatively short notice. Paula Skinner in particular familiarised herself with the brief very quickly, and we took comfort in knowing that the team were on board and understood what we were looking to achieve."

**Marc Taylor, Director, Tay Letting East Ltd**

# Construction

## GROUP REORGANISATION



### Giving insight to property group development

#### Insite Group Holdings Limited

Lead Partner: Donald Munro

We advised Insite Contracts Limited on a group reorganisation, new joint venture and the incentivisation of certain members of the business' management team. The Insite group specialises in the fit out, refurbishment and construction of property in the commercial, retail, industrial, healthcare and public sectors. The group currently employs over 80 people with an annual turnover of circa £20m. The completed corporate restructuring resulted in the creation of a new facilities management division in the group, a new waste solutions joint venture and the issue of growth shares in certain group companies to key individuals. Paul Macdonald has perennially acted for Insite on multiple matters over recent years, ever since advising Scott McMillan on the successful acquisition of Insite, through a management buyout in 2016.

## What they said about us.

"Harper Macleod have been an integral part in the development and re-structuring of The Insite Group. Paul Macdonald, in particular, provided invaluable advice throughout the process, providing a first class service that was responsive to my needs. What was invaluable was the fact that Paul always took the time to explain matters in layman's terms, ensuring that I understood my responsibilities and commitments therein. Professional and approachable, I would have no hesitation recommending HM."

**Scott McMillan, owner and managing director of Insite Group Holdings Limited**

# Energy & Renewables

## INVESTMENT



abundance.

## All pumped for £1.6m hydro deals

### Abundance

Lead Partner: Paula Skinner

We acted on behalf of Abundance, the UK's leading investment crowdfunding platform for investing in green and social infrastructure projects, in relation to its arranging £1.6m for the Intelligent Land Investment Group ("ILI") to take three sites in Scotland through development and the planning process for pumped storage hydro plants. These plants are designed to help meet the UK's increasing need for energy storage systems that can quickly balance supply and demand, and operate without any carbon emissions.

This transaction utilised security over projects elsewhere in ILI in order to raise finance for its pumped storage hydro development. Harper Macleod worked closely with the Abundance team to complete the transaction within the tight frames required to ensure that the investment was launched on the platform at the optimum time and we were best placed to do so given our market leading expertise in crowdfunding investments and the renewable energy sector. The transaction was led by corporate partner Paula Skinner, with support from banking and finance partner John Pringle and energy partner David Bone.

## What they said about us.

"Abundance was pleased with Harper Macleod's work and intends to instruct them again in the future. The partners were responsive and combine the requisite attention to detail with a pragmatic approach whilst also taking the time to clearly explain points of law to their client."

**Greg Stevens, Abundance**

## SALE



## Going the extra Green mile

### Green Home Group Limited

Lead Partner: Donald Munro

We advised the sellers of Green Home Group Limited (Green Home) on the sale of the entire issued share capital of Green Home to a company backed by Circularity Capital LLP, a London-based specialist private equity firm. Green Home is an Ayrshire-based energy efficiency business, specialising in the installation of insulation, boilers and other energy efficiency measures throughout homes across Scotland and the North of England.

We were delighted to be involved from the inception of the transaction to its conclusion, with Paul Macdonald and Donald Munro: guiding the sellers through diligence; mapping and navigating a complex pre-transaction restructure; completing on the sale and purchase of Green Home; and, as the consideration for the transaction comprised a mixture of cash and a 50% shareholding in Circularity's acquisition vehicle, advising the sellers on the equity arrangements. Paul and Donald were supported throughout by Lamia Al-Lamki.

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## What they said about us.

"I would like to thank Harper Macleod for assisting us in the successful sale of Green Home Systems. We were keen to work with a legal partner who understood the dynamic nature of our business and how best to formulate and structure a deal. Once appointed we were impressed by Harper Macleod's ability to understand our business and develop a plan that met our strategic objectives. The legal team provided an excellent level of service and ensured that the sale process remained on track throughout. I would have no hesitation in recommending Harper Macleod to others."

**Steven Easton, Managing Director**

# Technology

## INVESTMENT



**Beringar**

## Smart as they come

### **Beringar Limited**

Lead Partner: Jo Nisbet

We advised Beringar Limited, a leading information technology company, on its latest equity investment from a number of corporate and individual investors. Beringar has developed revolutionary smart sensor technology which detects, counts and positions people in buildings while simultaneously measuring temperature, air quality, light and sound. In addition to having won Scottish Edge funding, Beringar has already had organisations like the NHS using its technology.

Harper Macleod have advised Beringar since incorporation on a host of areas, including commercial contracts, employment contracts, share options and funding arrangements and we look forward to working with the company as it continues to grow.

The transaction was led by Corporate Partner Jo Nisbet with support from Gail Chalmers and Anisha Kaura (Corporate).

## What they said about us.

"Jo and her team at Harper Macleod have been a tremendous help to us as we grow our business providing pragmatic and clear actionable advice. We would not hesitate to recommend them to others businesses."

**Paul Byrne, Co-founder**

## SALES

## Software solution

### **X402 Limited**

Lead Partner: Donald Munro

We advised the shareholders of X402 Limited on the sale of the company to London-based King and Tuke Limited, an independent advertising agency and brand consultancy business whose clients include EA Sports, Canada Life and Santander Asset Management. X402 are a software development business with vast experience in delivering leading edge web and client-server based software solutions. Our Corporate team advising on the sale was led by Craig Ramsay with assistance from Lamia Al-Lamki and specialist banking input from Tony Cameron.

## What they said about us.

"We were very happy with the assistance we received from Craig Ramsay and Lamia Al-Lamki. Everything was handled professionally and the process went through as smoothly as it could."

**Steven Wojciechowski, former owner of X402 Ltd**

## A €2.4bn sale

### **Telecom Service Centres Ltd (Webhelp UK)**

Lead Partner: James MacGregor

We advised Webhelp UK (a subsidiary company of the French-based Webhelp group) on the UK aspects of the sale of the Webhelp group by the US-based private equity firm, KKR, to Belgian-based investment holding company Groupe Bruxelles Lambert in a deal with a reported enterprise value of circa €2.4 billion. Founded in 2000, the Webhelp group offers intelligent, data-led customer service and contact centre services from 150 sites in more than 35 countries around the world, and it is widely recognised as a global leader in the fields of customer relationship management and business process outsourcing. The Webhelp group had doubled in size following KKR's acquisition of the group in 2015 and has over 50,000 employees. Our team was led by James MacGregor with support from Tom Thomas, Rachel McNeill, Freddie Ward (Corporate) and Scott Milligan (Employment).

## INVESTMENTS



## Assisting AI growth

### Continuum Industries Limited

Lead Partner: Jo Nisbet

We advised Continuum Industries, an Edinburgh-based company providing AI tools for engineering professionals to rapidly design linear infrastructure projects and reduce their costs, on a £1.5 million investment deal. The investment will support the company in making its technology widely available to infrastructure planning and design teams around the world. The round was co-led by Playfair Capital and Credo Ventures with participation from Techstart Ventures, Simon Blakey, Michael Blakey and others. Our team have acted for Continuum Industries since near inception and have advised on a host of matters including its first round of investment from Skyscanner's Gareth Williams, commercial contracts, intellectual property rights, structure advice and EMI share options.

## What they said about us.

"This was a complex investment round with multiple different investors and law firms involved. The Harper Macleod team led by Jo Nisbet expertly advised us throughout and worked deep into the Christmas period and beyond to successfully close the round."

**Matthew Blythe, Co-founder & Chief Commercial Officer**



## Green software solution

### Par Equity

Lead Partner: Paula Skinner

We advised Par Equity, a venture capital firm based in Edinburgh that specialises in investing in innovative technology companies, on its lead role in a £1.6 million investment in subsea clean energy software firm EC-OG. It was their first deal with British Business Bank as their co-investor, the funds were allocated as part of the Regional Angel Programme. The £75m programme supports some of the fastest growing technology companies across the North of England, Scotland and Northern Ireland and is designed to provide early stage capital to smaller businesses with high growth potential.

Par were joined by existing investors, Orchard Venture Capital and Scottish Investment Bank. The investment will support EC-OG in its growth plans and will create 40 jobs in Aberdeen over 12 month period. Our team worked closely with the Par team to complete the transaction during lockdown and advise on all aspects of the investment.

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## High tech echos

### Imerai Ltd

Lead Partner: Jo Nisbet

We advised Imerai Ltd, a high growth tech company, on an investment from Apollo Informal Investments which will support the development of a world-leading echolocation technology. Along with allowing Imerai to focus on refining the designs of the sensor it develops, the investment has will help to create five new high-skilled positions over the next year. We completed this deal during the COVID-19 national lockdown. We provided advice in relation to all funding aspects of the deal. Our corporate team was headed by Jo Nisbet with support from junior members of the team Anisha Kaura and Gemma Sichi.

# Technology

## INVESTMENTS



## Education online

### **Klik2learn Limited**

Lead Partner: Paula Skinner

We advised Klik2learn, an educational software company, on a round of equity investment of £124,000 from existing shareholders Gabriel, current and new investors, and Scottish Investment Bank, and new investors Strathclyde Entrepreneurs Fund. The company also capitalised directors' deferred remuneration and loans with a value of £129,000k, and now has a post money valuation of £606,000. This investment of £253,000 will underwrite the additional software development, data graphics and marketing resource required by the growing demand for the company's products. An initial position in the UK market with demand undoubtedly enhanced by the growing requirements for blended learning during the Covid-19 lockdown will be extended by important developments overseas, principally in India. Our team have acted for Klik2learn since its inception and have advised on a number of matters including pre-investment advice, structuring and three previous investment rounds.

## What they said about us.

"I appreciated the advice and support from Harper Macleod in avoiding the shoals inherent in such a funding round."

**Nick Kuenssberg, Chairman**

# Smokin' deal

### **Exhale Technologies Ltd**

Lead Partner: Jo Nisbet

We advised Exhale Technologies Ltd, a high growth company which manufactures nicotine-alternative products, on an investment from a number of private investors which will help to support the development, manufacturing and distribution of the world's first nicotinic alkaloid blend that mimics the effects of a cigarette. We completed this deal during the COVID-19 national lockdown. We provided advice in relation to all funding aspects of the deal. Our corporate team was headed by Jo Nisbet with support from Natalie Wallace and Gemma Sichi.

## Cutting edge comms

### **Willo Technologies Limited**

Lead Partner: Paula Skinner

We advised Willo Technologies Limited, a video communication technology company, in relation to two rounds of investment. The initial round was for a smaller amount of £20,000, raised by existing shareholders in the business in June 2020. This was then followed up with an investment from 1818 Venture Capital, a London-based VC. 1818's investment is a two tranche deal, with the company receiving £115,000 in August 2020 and the second tranche of £110,000 being due at the end of October 2020. Willo plan to use the investment to allow the business to continue to grow. Our team worked with Willo to ensure the company was investor ready before advising the company on the particulars of the investment and closing the deal in a very tight timescale.

## What they said about us.

"Natalie was excellent. She quickly understood our situation and worked hard to help us though the process of gaining successful investment. She was incredible patient and thorough with her instructions. It gave us confidence that we are now set up for success."

**Euan Cameron, Founder**

## INVESTMENTS



### From spin-out to commercial reality

#### Cutitronics Limited

Lead Partners: Paula Skinner and Tony Cameron

We advised Cutitronics, a multi-award-winning technology company, in relation to funding of £2 million from existing shareholder Croda Europe Limited during COVID-19 lockdown to support it through the next crucial phase of product development towards a functioning prototype and manufacture of devices for initial customer or consumer testing in readiness for a launch to market in the next 18 months. Our team have acted for Cutitronics since 2017 on a number of matters including two previous investment rounds, share options and property matters.

### What they said about us.

"It is always a pleasure working with the team at Harper Macleod. Paula and Gail have been with us on the journey from university spin-out so know us well, and Tony was brought in to seamlessly assist with this transaction. They are first class, do not overly complicate things unnecessarily and focus on getting things done with minimum fuss. They are pragmatic and commercial which is exactly what we need. Thank you!"

**Craig Alexander Rattray, CFO**



### Game on

#### Incentive Holdings Limited

Lead Partner: Jo Nisbet

We advised Incentive Holdings, an Edinburgh-based technology company creating apps for customer acquisition and retention in the media and gambling industry, on a round of equity investment from private investors. Our team have acted for the Incentive Games for a number of years and have advised on a host of matters including a number of previous investment rounds, commercial contracts, intellectual property rights, structure advice, consultancy and adviser arrangements and share options.

### What they said about us.

"Jo and her team have supported us superbly well through some difficult and exciting times. They have helped guide us in a professional and trustworthy manner, always keeping our budget and requirements in sharp focus."

**Stewart Gove, Executive Director**

# Fintech

## INVESTMENTS

### Scaling up

#### **Asura Financial Technologies Limited**

Lead Partner: Paula Skinner

We have assisted scale up Glasgow-based Fintech business Asura Financial Technologies with multiple investment rounds from ESM Investments Limited and associated investors since 2017. The investment rounds have been used to expedite the growth of the business. Asura provides innovative, cost saving technology solutions to the Financial Services Industry, helping customers - primarily stockbrokers and wealth managers - to gain a competitive advantage and make significant savings on operational cost. Their software specialists investigate business processes used by organisations and develop technologies to automate these processes. The company's software provides efficient solutions to Customer Relationship Management (CRM) and front, middle and back office functions. We completed the latest round of investment of in excess of £1 million from ESM Investments Limited in December 2019.

### First time fundraise

#### **Nude Finance Limited**

Lead Partner: Paula Skinner

We advised Nude, a new fintech company that's standing up for first time home buyers ([www.getnude.com](http://www.getnude.com)), on its first round of equity investment of over £1 million from private investors. Our team have acted for Nude almost since its inception and have advised it on a number of matters including pre-investment advice, commercial contracts and employment matters.

## What they said about us.

"This was our first external fundraise. We were well prepared and the deal was completed relatively quickly and easily thanks to Paula and Gail at Harper Macleod. Credit also to our investors who were pragmatic and supportive."

**Crawford Taylor, Founder & CEO**



### Transforming advice

#### **Aveni Ltd**

Lead Partner: Jo Nisbet

We advised Aveni, an Edinburgh based fintech start-up on an investment of £520,000 to develop its ground breaking video- conferencing based AI technology. The investment was led by Tricapital angel syndicate with support from the Scottish Investment Bank, Old College Capital and Wallace Equity. Aveni, which has close ties to the University of Edinburgh, combines cutting edge software engineering with natural language processing, allowing advisers to connect, engage and digitally serve clients with a range of new automated features - from CRM automation to live risk monitoring and adviser prompts. The business is initially focused on the financial services and legal sectors. We provided advice in relation to all funding aspects of the deal. Our corporate team was headed by Jo Nisbet with support from Gail Chalmers.

# Transport

## ACQUISITION



## Big garage sale

### Halfords Autocentres Limited

Lead Partner: James MacGregor

We advised Halfords Autocentres on its acquisition of, Scottish-based, McConechy's Tyre Service Limited, one of the largest independent garage chains in the UK. McConechy's comprises of 60 sites across Scotland and the North of England and employs over 330 skilled employees, all who joined the Halfords family as part of the transaction. The service-led strategic acquisition increases the Halfords services footprint, providing customers with access to over 900 service locations across the UK. Our team was led by James MacGregor and Rachel McNeill, with principal transactional support from Freddie Ward (Corporate), Chris Noble, Paul Greenhill, Rory Paterson (Real Estate) and Tony Cameron (Banking).

## What they said about us.

"We are very excited about this acquisition and I am delighted to welcome McConechy's to the Halfords family. This acquisition is highly complementary to Halfords' service-led strategy, and the addition of McConechy's further strengthens our growing and unique motoring services offer, which includes Autocentres, Halfords Mobile Expert and our weFit services in our stores. The additional garages and vans increase our national presence and takes Halfords to within a 15-minute drivetime to over half of UK households. The vehicle servicing market is a £10bn market, but one which remains highly fragmented, offering significant scope for Halfords' trusted and recognised consumer brand to grow its market share considerably."

**Graham Stapleton, Halfords Chief Executive**

## SALE



## Plant growth

### Northern Forklift (Scotland) Limited

Lead Partners: Chris Kerr and, Stephen Chan

We acted on behalf of the vendor shareholder group of Northern Forklift (Scotland) Limited in relation to the sale of its entire issued share capital to Briggs Equipment UK Limited. Northern Forklift is one of Scotland's largest independent materials handling distributors which has achieved significant success supporting the food and drink sector. This was a highly publicised deal in the plant hire sector with this acquisition enhancing Briggs' position as one of the key providers of materials handling in Scotland. The combination of the two companies will provide a more extensive range of products and services to customers.

Our team advised the vendor shareholder group on all aspects of the acquisition. The Corporate team on this acquisition consisted of Chris Kerr, Stephen Chan, Amy Mackenzie and Jennifer Sillars, with Ross Thomson providing specialist property advice, and Bruce Caldwell and Scott Milligan providing specialist employment advice.

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## What they said about us.

"Amy has carried out some excellent work on behalf of my firm and its Directors over the past 2 to 3 years covering succession planning as well as mergers and acquisition topics. Initially working under the permanent presence of one of the firm's partners, Christopher Kerr, Amy has increasingly taken on the role of our main contact in respect of the legal aspects of our strategic activities and we now mainly work with Amy directly on our various matters with the firm's more senior staff only involved infrequently. We have total trust in Amy's integrity and ability, therefore giving us full confidence in her & the firm's dealings in respect of the matter in hand at any time."

**Andrew Sirel, Managing Director,  
Northern Forklift (Scotland) Limited**

# Healthcare

## INVESTMENTS



## Fertile ground

### Fertility Southwest Limited

Lead Partner: Paula Skinner

We advised Fertility Southwest Limited (FSW) in relation to the opening of a new fertility clinic, CRGW Plymouth. FSW and CRGW Holdings have opened up the new clinic together in Plymouth and due to our extensive experience in the fertility sector, we advised on the relationship between the two companies to get the new company set up. The clinic will be run by Dr Umesh Acharya, a leading fertility doctor. Harper Macleod worked closely with FSW advising on all aspects of the new relationship and getting all of the relevant documentation in place between the two companies.

## What they said about us.

"I was well supported and both Natalie and Paula understood how little I knew and guided me through the full process. They were calm and very understanding and had patience with me and I had full trust in them which is very important when it comes to legal matters."

**Dr Umesh Acharya, Director**



## IVF partnership

### Genus Medical Partnership Limited

Lead Partner: Paula Skinner

We advised Genus Medical Partnership Limited (GMP), an investment company which focuses on the UK reproductive medicine market, on a significant partnership with East Riding Fertility Services Limited t/a Hull IVF. GMP is a family run boutique dedicated to create a small and unique network of IVF clinics across the UK. ERFS is one of the UK's leading fertility clinics providing over 400 treatment cycles for patients every year and has ambitious growth plans. We completed this deal during the COVID-19 national lockdown. We provided advice in relation to all funding aspects of the deal. Our corporate team was headed by Paula Skinner with support from Gemma Sichi. We also had assistance from the banking team, which was headed by Tony Cameron, and property and construction input was provided by Paul Greenhill and Michael Conroy respectively.

## What they said about us.

"Having worked with Paula Skinner and the team at Harper Macleod since opening my first IVF clinic almost 15 years ago, there was no question of who to turn to for assistance with our partnership with ERFS. As well as having built up extensive knowledge of the reproductive medicine market from a legal perspective, it always feels as if you have the full firm on hand no matter what is required in any transaction. Despite this deal taking place during lockdown the personal touch was still there, as it always has been."

**Paul Mitchell, Chairman**

## SUCCESSION PLANNING



## Orkney organisation

### Northvet Holdings Limited

Lead Partner: Jo Nisbet

We advised Northvet, a veterinary practice based in Orkney, on its succession planning. Having worked with Northvet since 2014 the succession work allowed a model to be put in place for shareholders to retire and others to come into the business. Working with the company for a number of months we implemented all legal stages of the succession planning work, which included three different share acquisitions. We worked closely with the Northvet team to complete the work. The transaction was led by Corporate Partner Jo Nisbet with support from Gail Chalmers and Anisha Kaura (Corporate), John Pringle and Ricardo Matteo (Banking) and Scott Milligan (Employment).

### What they said about us.

"Jo & Anisha at HM worked closely with us and our accountants to steer us through the setting up and implementation of a succession plan. They were very helpful in highlighting and avoiding potential pitfalls. The whole process was well coordinated and carried out efficiently and on time."

**Robert Norquay**

## ACQUISITION

## Upwardly mobile

### Redloan Limited

Lead Partner: Donald Munro

We advised Redloan Holdings Limited on the acquisition of The Mobility Centre, a family-owned business specialising in mobility, rehabilitation and disability aids and products. Our role in the transaction was to provide all corporate, banking, property and employment legal advice, including negotiating the share purchase agreement, employment contracts and associated ancillary documents on behalf of Redloan Holdings Limited. Our Corporate team advising on the acquisition was led by Craig Ramsay with assistance from Lamia Al-Lamki. Specialist input on Banking, Property and Employment aspects were provided by Andrew Ronald, Andrew Kerr and Scott Milligan respectively.

### What they said about us.

"I have found the experience of working with Craig Ramsay and Lamia Al-Lamki refreshingly professional and pragmatic through my first business acquisition and I hope it is the start of a long term working relationship."

**Elizabeth Watson, Director, The Mobility Centre**

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## Drug discovery

### Caribou Property Limited

Lead Partner: Paula Skinner

We advised Caribou Property Limited in relation to an investment in Lunac Therapeutics Limited. Lunac Therapeutics is a drug discovery company that is a spin out from the University of Leeds. Caribou invested in the company further to the recent investment by Epidarex Capital. This is the second investment we have worked on with Caribou and we worked closely with their team to ensure the investment could be carried out in the most time efficient manner possible which was in the interests of all parties involved. We provided advice in relation to all aspects of the deal.

# Healthcare

## INVESTMENTS



## Care home helping

### ESM Investments Limited

Lead Partner: Jo Nisbet

We advised Stirling based ESM angel syndicate, on a £350,000 investment in Time for You Care, which has developed software to monitor staff movements in care homes. The investment led by ESM and supported by Investing Women came as innovation in the care sector becomes increasingly vital as more people require support in their own home. Time for You Care uses a sophisticated software platform and smartphone application to monitor the movements of staff and the needs of those requiring care, replacing inefficient back office systems freeing up its workforce to concentrate on caring for people. The new investment will be used to improve the technology leading to service level improvement and operational efficiencies. The Harper Macleod team was led by Jo Nisbet with Gail Chalmers supporting. The HM team were delighted to help get this investment completed, particularly as more than ever it is important to see investments taking place, so innovative Scottish businesses can continue to grow.

### What they said about us.

"The investment experience Jo and the team have was evident from the very start of the transaction, we are delighted with the support and advice received. I found them to be efficient, straight talkers with a great attention to detail."

**Steven Morris, Chairman**

# Security

## ACQUISITION



## Secure partnership

### Connelly Security Systems Ltd

Lead Partner: Donald Munro

We advised security solutions consolidator, Connelly Security Systems Limited (CSS) on its acquisition of Stirling-based Graham Robertson Electrical and Security Limited. Our Senior Associate Paul Macdonald has now advised CSS on six acquisitions.

The deal allows CSS, which is largely based across Ayrshire, the Central Belt and the Lothians - where it provides alarms, CCTV, retail product tagging, access control and monitoring services to both the commercial and residential sectors - to acquire a family business which operates in similar marketplaces. The transaction extends CSS' reach further north in Scotland and adds additional strings to the CSS bow, with the acquired business having electrical and aerial service divisions.

Graham Robertson, who has built the business of Graham Robertson Electrical and Security Ltd over the last 30 years, will remain with the company in a consultancy role.

### What they said about us.

"Paul Macdonald and the team at Harper Macleod worked tirelessly to get this deal done. As always, I was delighted with the service provided and will work with Paul and his colleagues again in the future."

**Paul Connelly, Managing Director,  
Connelly Security Systems Limited**

# Housing

## ACQUISITION

### Power partnership

#### Port of Leith Housing Association

Lead Partners: Chris Kerr and Stephen Chan

We advised the Port of Leith Housing Association (PoLHA) in relation to its acquisition of the entire issued share capital of T B Mackay Energy Services Limited (T B Mackay), an Edinburgh-based company specialising in the provision of specialised energy maintenance and repairs services. PoLHA and T B Mackay have worked together closely for a number of years and the acquisition is considered to be an excellent fit for both parties' visions and values. T B Mackay will continue to trade under the T B Mackay name and all staff will continue in their roles. A new board comprising the original T B Mackay directors and three PoLHA representatives will take the company forward as it continues to grow its services and meet customers' needs. Our team was headed by Chris Kerr and Stephen Chan with support from Bernadette Rutherford (Corporate), Rory Byrom (Employment), Kelly Fraser (Data Protection) and Erin Leyden (Property).

## What they said about us.

"The purchase of the Association's maintenance contractor provided us with the opportunity to protect essential services for our tenants into the future. Having little experience of purchasing a commercial organisation, Harper Macleod provided us with an excellent service, encompassing a wide range of expertise including governance, regulatory compliance, risk management and robust due diligence. The team at HM were professional, patient and went the extra mile to ensure success of what proved to be a very complex deal."

**Gordon Cameron, Director of Property and New Business, Port of Leith Housing Association**

## ACQUISITION

### A new landscape

#### Nurture Landscapes Holding Limited

Lead Partner: Paula Skinner

This was our second deal acting on behalf of multi-award winning landscaping company Nurture Landscapes Holding Limited. On this occasion, we advised on the purchase of the entire issued share capital of Mcdermott Contract Services Ltd. Mcdermott was based in Lesmahagow and set up in 1997 with the majority of their contracts being social housing contracts. This, combined with the company's current sales of £1.3 million, were key factors in Nurture acquiring the company, allowing them to increase their existing portfolio and enhance their presence in Scotland.

Nurture is a national service provider, employing over 1000 staff across the UK. Shortly following the acquisition of Mcdermott, Nurture was listed on The Sunday Times Virgin Atlantic Fast Track 100 league table which annually ranks private companies in Britain based on sales over the previous three years. Since 2014 Nurture has climbed the table and was ranked at number 65 at the end of 2019 with annual sales of £73.1 million, showing a 53.05% increase in sales over the previous three years.

Our team advising on the deal was headed by Paula Skinner with assistance provided by Gail Chalmers and Gemma Sichi. Specialist input on property aspects was provided by Chris Noble and Rory Paterson in our Property team. We worked closely with the Nurture team on all aspects of the acquisition, ensuring that the process ran as smoothly as possible and that the deal completed within the desired timeframe.

## What they said about us.

"This is the second acquisition where I have used Paula and her team. As previously they were a delight to deal with being both professional, prompt and practical. I would recommend them without hesitation."

**Peter Fane, Director of Nurture Landscapes Holding Limited**

# Construction & Engineering

## SALE

### New company, same facade

#### **MSP (Scotland) Limited**

Lead Partner: Donald Munro

We advised on the sale of Cumbernauld-based cladding manufacturer MSP Scotland to Vivalda Group, the UK's largest independent distributor of façades systems. Operating throughout the UK, MSP brings new products, as well as an accredited powder coating facility, to its new parent company. The firm will continue to trade under the brand that was established in 1966. With an annual turnover of approximately £5 million and employing 50 people, MSP brings important manufacturing capabilities to Vivalda, which currently boasts sales of £34m. Most notably, MSP's Qualicoat-accredited powder coating line enables Vivalda Group to offer bespoke aluminium facades in a variety of shapes and colours, all manufactured in the UK.

### What they said about us.

"Paul Macdonald of Harper Macleod worked diligently and was willing to go above and beyond to get the deal done. His deal knowledge and friendly approach helped me to understand the sale process. Paul's guidance and professionalism allowed a good deal to be negotiated and I can retire with peace of mind."

**George Ross, former owner and managing director of MSP (Scotland) Limited**

## MBO



### Designer exit

#### **G3 Consulting Engineers Ltd**

Lead Partner: Donald Munro

We advised the sellers of G3 Consulting Engineers Ltd ("G3") on their exit from G3 through a successful vendor initiated management buyout. We implemented a structured deal enabling the management team to buy out the existing shareholders, whilst ensuring the sellers were protected and the deferred element fully secured. G3 provides civil, structural, geo environmental and principal designer services together with SER certification services on a wide range of projects for both public and private sector clients covering the commercial, industrial, manufacturing, leisure and residential sectors.

### What they said about us.

"Paul Macdonald and the team at Harper Macleod understood the type of transaction we wanted to do and helped plan it from an early stage, guiding the sellers through to completion. I'd recommend them to anyone looking to exit from their business using this form of exit structure."

**Robert Storey, former managing director, G3 Consulting Engineers Ltd**

## REORGANISATION

### Putting family first

#### **Chair Investments Limited**

Lead Partner: Donald Munro

We advised on and helped formulate a business succession driven reorganisation of a family-owned group of companies operating engineering and property businesses. The restructure split the trading activities of the group with one half of the family owning EIS (Engineering Industrial Services) Limited and Chadburns Mollart Pt Ltd and the other half of the family owning Chair Investments Limited. The transaction was highly

complex, involving various transactional methods including multiple share exchanges, culminating in a three-cornered capital reduction demerger.

### What they said about us.

"Without the help and guidance from Harper Macleod this demerger would simply have not been possible. It was a pleasure working with Paul and Lamia, their professionalism and knowledge in this complex area was second to none."

**Mark Austin**

## Food & Drink

### INVESTMENT



## Beer money

### Bellfield Brewery Limited

Lead Partner: Jo Nisbet

We advised Edinburgh based Bellfield Brewery, the UK's first brewery dedicated to gluten-free beer, on its fourth round of equity investment from Equity Gap Limited and Scottish Enterprise during COVID-19 lockdown. Our team have acted for Bellfield Brewery almost since its inception and have advised on a number of matters including 4 investment rounds, share options, intellectual property matters and commercial contracts.

### What they said about us.

We have worked with Harper Macleod from nearly the start of our journey and over the years we have kept the team busy with a host of activities surrounding our growth. We have built a great relationship with Jo and the HM team over the years and always find them to provide wise counsel and deliver work on time. The HM team are diligent, competent and pragmatic.

**Alistair Brown, Co-founder**

## Life Sciences

### INVESTMENT

## Targeting cancer

### Caribou Property Limited

Lead Partner: Paula Skinner

We advised BVI based investor Caribou Property Limited in relation to a £2,500,000 investment in to Edinburgh Molecular Imaging Limited, a life sciences business that develops theragnostic agents targeting cancer. Caribou co-invested alongside Scottish Enterprise, Wren Capital LLP and Epidarex Capital II, LP, with Caribou being the largest investor in this round. Our experience in life sciences and our background in completing a significant number of investments allowed us to provide corporate and banking advice to Caribou in relation to this investment. The team worked closely with Caribou on all aspects of the documentation, advising on the process and any relevant risks and carried out diligence on the investee company. Paula Skinner led, supported by Tony Cameron (Partner, Banking) and Natalie Wallace (Solicitor, Corporate).

### What they said about us.

"We were very happy with the service provided and would definitely recommend Harper Macleod. Paula and her team were very efficient and the service provided was excellent."

**Georges Aboud, Director**

### INVESTMENT

## Chinese trailblazer

### Carbon Science Holdings Group Ltd

Lead Partner: Stephen Chan

We advised Carbon Science Holding Group Limited (Carbon) in its investment in an Edinburgh-based company seeking to exploit advances in optical science and technology in the area of bioscience applications. Carbon is a Manchester-based company who have channelled investment from China into several Scotland-based life science companies, with this investment being its most recent. Carbon's investment was shortlisted for the China-Scotland Business Investor of the Year Award, which is awarded to inward investment that has had a significant positive impact on the Scottish economy and society. The deal was led by Stephen Chan with support from Bernadette Rutherford (Corporate).



Harper Macleod's Paula Skinner and Jo Nisbet, either side of Evelyn McDonald, CEO of Scottish EDGE

## INVESTMENT

# Advising Scottish EDGE on £500,000 prize pot boost

### Scottish EDGE

Lead Partners: Paula Skinner and Jo Nisbet

We advised Scottish EDGE, the funding competition for the country's most ambitious entrepreneurs, on a deal which saw £500,000 added to the prize pot courtesy of Scottish Enterprise. The firm, which has been a supporter of Scottish EDGE since it launched in 2012, has also signed up to be a Gold Partner of EDGE throughout 2020.

Evelyn McDonald, CEO of Scottish EDGE said: "We rely on ongoing support from all of our backers to provide the level of prize-pot on offer to worthy businesses in each round of the competition. That's why the most recent injection from Scottish Enterprise was so important as we continue to scale-up EDGE, just as our entrants and winners try to scale-up their businesses."

## What they said about us.

"The team at Harper Macleod have been our trusted legal advisors since the outset of Scottish EDGE and the firm surpassed itself in terms of getting this deal done against a tight timescale. Jo Nisbet, Paula Skinner and the team have played an important role in the support we provide to all our winners and it's great to have the firm on board as a Gold Partner for yet another year."

**Evelyn McDonald, CEO of Scottish EDGE**

The funding package is the latest in a series of deals that we have completed for EDGE, having supported the competition since before it launched back in 2012. Since then, the firm has also assisted almost 50% of all main EDGE competition winners, among the 1500 entrepreneurial businesses it has advised over the past decade. It has also completed more than 100 different transactions for EDGE alumni.

The Scottish Enterprise deal was the second such transaction, following on from our team advising on a prior £1 million loan and grant funding package from SE back in December 2018.

Paula Skinner, the Partner who leads Harper Macleod extensive practice advising entrepreneurs and growing businesses, said: "We are delighted to have completed this latest transaction for Scottish EDGE and are looking forward to the most exciting year yet in our eight-year relationship. It's great to see such support still coming for a competition that has awarded more than £15m to businesses over the years, and has had a genuinely groundbreaking impact on this part of Scotland's economy."

"EDGE embodies everything that our firm is about when it comes to helping entrepreneurs scale up their businesses. We love nothing more than taking a client through from inception to success, and EDGE is an invaluable staging post on the journey of many of these businesses."

Harper Macleod was the first partner organisation to sign the EDGE Pledge – a commitment to pay something back to the entrepreneurial community – and donates a minimum of 5% of the fees it receives from helping EDGE companies with future legal issues back to EDGE for funding other start-ups.

# Updates.

## Scottish EDGE delivers The One Million Show

Harper With coronavirus changing the way we all do things, the Round 16 Finals and Awards Ceremony of Scottish EDGE was held online for the first time on 7 October. However, as always, the team at Scottish EDGE did not disappoint and with over £1 million pounds being awarded, the ceremony was aptly named 'The One Million Show'.

Hosts Evelyn McDonald and Steven Hamill (move over Alex Jones and Matt Baker!) set the perfect tone for the night - which was one of hope, inspiration and pride and I am sure we would all agree that this was a well-needed breath of fresh air at this time.

Despite all the obstacles that businesses have face, Round 16 attracted the most applicants that Scottish EDGE has ever received. There was a diverse group of pitches in the final and some fantastic, well-deserved winners ranging from skincare companies to rum distilleries - the night had it all!

As a female working closely with businesses, and working in a team of inspiring female solicitors, it was really encouraging to see that 76% of finalists had females in leadership roles.

There were a number of great presentations on the night from: Alison Rose (CEO of NatWest Group); Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture); Poonam Gupta OBE (CEO of PG Paper Company); and, of course, the eagerly anticipated part 2 of Sir Tom Hunter's interview with Professor Sir Christopher Evans.

There was a lot covered in this interview but I think the best takeaway was what Professor Sir Christopher Evans said about never giving up on your business: "Pain is temporary but failure is forever". Like the speakers, we at Harper Macleod would encourage the entrepreneurs of Scotland to be as brave and as bold as ever and I am sure all of the 33 winners would encourage you to do the same.

It was also fantastic to see the first ever STV Growth Award being presented, and as long-time partners with Scottish EDGE Harper Macleod was proud to award BioLiberty the top prize in the Young EDGE competition.

Congratulations to all the winners last night and good luck to those applying at Round 17.

You can find out more about the finals, and the competition in general, on the Scottish EDGE [www.scottishedge.com](http://www.scottishedge.com)



**Harper Macleod Partner Paula Skinner took part in the Finals event, presenting the Young EDGE prize**

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## Harper Macleod and Scottish EDGE

In addition to partnering with Scottish EDGE, Harper Macleod are also EDGE's legal advisers and offer support to all finalists and winners of Scottish EDGE. You can read more about our support packages..

To get a flavour of working with us, here's what Evelyn McDonald, CEO at Scottish EDGE said: "The team at Harper Macleod were there for me every step of the process, they were very supportive and helpful in ensuring we got to the right conclusion. Harper Macleod helped us to establish the company, assisted in putting the funding agreements in place with the various funders and have supported the organisation through every funding round we have taken on board.

"They have helped pull together contracts for our winners and in addition of that, of course, they give a tremendous amount of support to our Alumni - supporting nearly 50% of our winners and assisting our Alumni with dozens of transactions as their businesses have progressed post-EDGE."

"I was recently asked a question about who are my trusted advisers, and Jo Nisbet and Paula Skinner fit that bill. If I was to describe Harper Macleod in three words it would be knowledgeable, supportive and forward-thinking."

# Updates.

## Potential for Covid-19 group claims by Scottish businesses

ON 15 September 2020, the High Court in London handed down its decision in *The Financial Conduct Authority v Arch Insurance (UK) Ltd and Ors*. The judgment provided highly anticipated guidance on the operation of non-damage business interruption insurance, with particular reference to the effects of Covid-19. Although success was mixed, the judgment is likely to be welcomed by those wishing to make claims.

The Financial Conduct Authority (FCA), representing the interests of policyholders (many of whom were small to medium enterprises), raised proceedings against eight insurer defendants. Two classes of litigants were also given permission to intervene in the proceedings. Those classes were formed by a number of policyholders who all had an interest in the outcome of the case.

This type of group action has been a part of English litigation for some time but a change in the law in Scotland which took effect on 31 July 2020 means that group proceedings can now be brought before the Court of Session.

The FCA estimated that the decision could impact as many as 370,000 policies. In the event that insurers seek to avoid paying out, Scottish business owners may find that litigation necessary. If so, affected policyholders could combine their separate claims into a single group-litigation, benefiting from the efficiencies of the new Scottish procedure.

The proceedings were run as a "test case" to determine issues of principle in relation to policy coverage for certain types of business interruption insurance during the pandemic. Many such policies restrict cover to business interruption caused by damage to or destruction of business premises. However, a number of policies extend cover to business interruption caused by, among other things, disease.

The Court considered 21 "lead" policy wordings (eg although each policy will turn on its own words, there were certain common clauses upon which the Court was able to provide useful guidance) and identified three categories of cover: "disease clauses"; "clauses preventing access to premises"; and "hybrid clauses" – a blend of disease and access clauses.

Each insurance policy is a contract between the insurer and the policyholder and the terms of the contract are to be interpreted using the normal rules of contractual construction. Each case turns on its own facts. However, there were some themes emerging from the case that will help establish whether or not your policy applies.

For disease clauses, the insurers argued that the disease (Covid-19) which caused the business interruption required to be within the "vicinity" of the business affected before cover should apply. In general, the Court did not accept the insurers' argument and held



By **E-Ming Fong**  
Partner

E-Ming Fong@  
harpermacleod.co.uk

that individual outbreaks formed an indivisible part of the UK-wide infection.

Generally, the Court interpreted clauses preventing access restrictively. However, where a business was prevented from operating by legislation (or instruction which immediately preceded the legislation) cover should apply from the date when the business was forced to close.

In relation to hybrid clauses, again the court rejected the arguments that cover in relation to these policies should be restricted to local outbreaks. However, where cover was contingent upon "restrictions imposed" a narrow meaning was applied. Thus, cover will extend where the restriction was mandatory but not where the restriction was advisory. The Court also considered that policy wording which required an "inability to use" required more than an "impairment" to use.

Appeals by either or both sides are likely and will seek to skip the Court of Appeal and go straight to the Supreme Court.

## What does this mean for Scottish businesses?

The decision is of only persuasive authority in the Scottish courts however it confirms the need to consider each insurance policy and claim on an individual basis. Policyholders who have already had their claims rejected may need legal assistance to consider the possibility of taking action against insurers for refusing cover. Those who have not already made claims should review their policies without delay.

Any Scottish insurance policy also needs to be construed in line with the Scottish laws and regulations in play at the relevant time. Depending on how the relevant restrictions impact upon interpretation of the policy wording, a different result may ensue depending on which side of the Border a claim is brought.

# Meet the team.

Our Corporate team is led by specialists who ensure you receive the service you deserve.



**Donald Munr, Partner**

Head of Corporate  
donnie.munro@  
harpermacleod.co.uk



**James MacGregor  
Partner**

james.macgregor@  
harpermacleod.co.uk



**Craig McKerracher  
Partner**

craig.mckerracher@  
harpermacleod.co.uk



**Jo Nisbet  
Partner**

jo.nisbet@  
harpermacleod.co.uk



**Craig Ramsay  
Senior Associate**

craig.ramsay@  
harpermacleod.co.uk



**Peter McLuckie  
Senior Associate**

peter.mcluckie@  
harpermacleod.co.uk



**Louise Torr  
Associate**

louise.torr@  
harpermacleod.co.uk



**Bernadette Rutherford  
Solicitor**

bernadette.rutherford@  
harpermacleod.co.uk



**Lamia Al-Lamki  
Solicitor**

lamia.Al-Lamki@  
harpermacleod.co.uk



**Chris Kerr  
Partner**

chris.kerr@  
harpermacleod.co.uk



**David Kaye  
Partner**

david.kaye@  
harpermacleod.co.uk



**Jamie Watt  
Partner**

jamie.watt@  
harpermacleod.co.uk



**Stephen Chan  
Partner**

stephen.chan@  
harpermacleod.co.uk



**Paul Macdonald  
Senior Associate**

paul.macdonald@  
harpermacleod.co.uk



**Rachel McNeill  
Associate**

rachel.mcneill@  
harpermacleod.co.uk



**Fiona Strang  
Senior Solicitor**

fiona.strang@  
harpermacleod.co.uk



**Gayle Hogwood  
Solicitor**

gayle.hogwood@  
harpermacleod.co.uk



**Natalie Wallace  
Solicitor**

natalie.wallace@  
harpermacleod.co.uk



**Paula Skinner  
Partner**

paula.skinner@  
harpermacleod.co.uk



**Tom Thomas  
Partner**

tom.thomas@  
harpermacleod.co.uk



**Scott Kerr  
Partner**

scott.kerr@  
harpermacleod.co.uk



**Fiona Neilson  
Partner**

fiona.neilson@  
harpermacleod.co.uk



**Lesley Wisely  
Senior Associate**

lesley.wisely@  
harpermacleod.co.uk



**Amy Mackenzie  
Associate**

amy.mackenzie@  
harpermacleod.co.uk



**Anisha Kaura  
Solicitor**

anisha.kaura@  
harpermacleod.co.uk



**Jennifer Sillars  
Solicitor**

jennifer.sillars@  
harpermacleod.co.uk



**Gail Chalmers  
Business Support Services  
Manager**

gail.chalmers@  
harpermacleod.co.uk

# Big news.

## INSOLVENCY RISK

### Directors need to act now to avoid 'insolvency' meaning business closure

Gordon Hollerin, one of Scotland's leading restructuring and insolvency lawyers, has urged directors of Scottish businesses to use the full extent of UK insolvency laws to avoid 'inevitable' business closures in the coming months.

Hollerin was part of our team which successfully helped High Street giant M&Co restructure, the latest in a number of such moves in recent months.

He said: "Current and future economic conditions resulting from the devastating effect on many businesses of the Covid pandemic seem very likely to result in a huge increase in the number of insolvencies in the coming months. Throw in the possible disruption to many businesses caused by a no-deal Brexit and it's difficult for even the most optimistic of commentators to see the future for UK businesses as anything but bleak

"Directors of many businesses may already be bracing themselves for the inevitability of insolvency resulting in closure of their business and redundancy for all employees once current Government support measures come to an end. But this outcome is not inevitable and it's vitally important for the UK economy that directors understand this."

Hollerin highlighted the fact that UK insolvency legislation now provides businesses with a menu of options which enable distressed businesses to be restructured and survive rather than be liquidated and close.

Processes such as pre-pack and light touch administrations, company voluntary arrangements, standalone moratoriums and restructuring plans are available can all, in the right circumstances, offer businesses a lifeline to survival and the prospect of future growth and prosperity with business and employment preserved.

Hollerin added: "The prospects of a distressed business being successfully restructured and saved through the use of the right process are particularly strong when, as here, the distress is caused by external factors outwith the control of management rather than any failure in the business itself. The key action for directors is to take expert advice early and then to act on that advice. If directors do that rather than wait for the worst to happen a positive restructuring can be achieved."

## RECOGNITION

### HM team ranked in Top 3 of Scottish dealmakers by

Our team broke into the Top 3 of Scotland's dealmaking league table after a powerful performance throughout the last full calendar year.

The results were published in the leading independent measure of deal activity in Scotland, the Business Insider Deals Table, which showed that overall corporate activity across all sectors was up by 16% during 2019.

The firm reported 125 deals during the year with a combined disclosed value of £4.19 billion – a 69% rise in deal numbers from the previous year.

Donald Munro, Head of Corporate at Harper Macleod and a leading figure in Scotland's dealmaking community, said:

"These results confirm what we had seen on the ground – that 2019 was a great year for our team and for dealmaking in Scotland generally. We are one of a select few Scottish firms who can offer a credible full service to our clients. With a growing, talented team around the country it is no surprise that we are increasingly the firm of choice for clients looking to get deals done.

"We're grateful for the trust our clients place in the team and we are looking forward to yet another positive year in 2020." The 30-strong Corporate team at Harper Macleod, led by 12 Partners, advises in all types of transaction, from M&A to investments and major projects.

## INDEPENDENT RECOGNITION

## Partner Chris Kerr named as one of UK's Hot 100 lawyers



Chris Kerr, a Partner in our Corporate team who has been at the forefront of the firm's growth in the Highlands, Islands and Moray, has been named as one of the UK's "most daring, innovative and creative lawyers" by a leading legal publication. He was one of only two lawyers from a Scottish-headquartered firm to feature in The Lawyer magazine's Hot 100 2020 – a list compiled after research into candidates' client work and contribution to their firms and the profession.

The Lawyer Hot 100 is described as recognising "the lawyers of the moment", stating that "all those on the current list are shaping the legal profession right now".

The magazine said: "When Chris Kerr set up the firm's first office outside the Scottish Central Belt, he seemed to be bucking a trend. Other Scottish firms were turning their eyes towards the south, but Kerr reckoned they were missing a trick.

"For more than a decade, Kerr has quietly built up the Highlands and Islands practice to nearly a fifth of Harper Macleod's corporate work. His Highlands, Islands and Moray team now represents 16 per cent of the firm's workforce.

"Kerr is recognised as the driving force behind Harper Macleod's rural economy initiative, which is by no means confined to forestry or traditional agriculture but includes food, drink, energy and tech. The next 12 months will see Kerr utilise

the firm's Shetland platform and turn his gaze further afield to Norway, where there are exciting trade and commercial opportunities in infrastructure and the marine economy, and to the Republic of Ireland."

Chris, who has been with Harper Macleod since joining as a trainee in 1999, has spearheaded our growth in the north of Scotland since being part of the team which opened the firm's Inverness office in 2004. Since then he has led the integration of offices in Thurso, Lerwick and Elgin – giving us the largest legal team in the Highlands, Islands and Moray.

He specialises in advising family owned and owner managed businesses and has been at the forefront of businesses transitioning to employee ownership. He is a key member of the firm's corporate team which is recognised as one of Scotland's leading dealmakers.

Chris said: "As part of a team it's slightly embarrassing to be singled out, but having dedicated so long to building a legal practice in a part of the UK that literally couldn't be any further removed from the London bubble, it's great to see that effort recognised. I get to work with brilliant people as well as great clients, and being part of a business that is always growing, that encourages you to think outside of the box and be bold, is a fantastic way to spend your career."

## Business Insider magazine

Martin Darroch, Chief Executive at Harper Macleod added: "For a firm of our size, relative to many of our competitors, this is a remarkable achievement. We are particularly proud to have achieved this performance from a Scottish base, unlike almost all of the competition who are either 'global' law firms with a Scottish presence or who themselves have offices south of the Border.

"While we are not be an 'international' firm, we are advising clients with interests around the world, as well as being a trusted partner for other firms looking for Scottish legal advice for their clients on key matters."



# We are Harper Macleod.

Harper Macleod is a leading Scottish independent law firm that is driven to deliver.

Our growth and success is determined by your success, which is why we always try harder. We don't just see ourselves as lawyers, we see ourselves as problem solvers and business advisers, who focus on understanding your needs. We work side by side with you, using law as a tool to provide innovative solutions that are tailored to organisations and individuals.

It's this drive that sets us apart and delivers a better outcome for you or your organisation.



[harpermacleod.co.uk](https://www.harpermacleod.co.uk)



[info@harpermacleod.co.uk](mailto:info@harpermacleod.co.uk)



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