

# irongroup lawyers



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## Business Succession Planning: More Frequently Asked Questions

### Introduction

As business succession planning is becoming increasingly popular as a source of business growth for some Advisers, we are often asked for advice on some of the not so obvious issues. We address some of these in this review.

### What if the spouses also have shares in the business?

In many instances where Buy Sell Agreements are being put in place, the business partners may have spouses who also own shares or units in the business. It's important to address this because there would be little point having the husband for example, transfer his 25% of the shares over to his business partner while his wife still held 25%.

In these instances we often build in a condition to the contract where the wife's shares will also pass over to the remaining business partner on the trigger event. The husband's insurance will obviously need to compensate for their full 50% of the business ownership.

Conversely, if the wife dies, her Will is usually written so that her shares pass automatically to her husband. He will own 50% of the business in his own right at that point. As part of putting a complete succession plan in place it's therefore important to ensure that the wife has a Will to that effect - if she were to die intestate he may find himself sharing ownership of the business with his children!

### Who pays the premiums?

Under the preferred self-ownership model for insurance policies, each individual is responsible for paying the premiums. (Note: these are not deductible)

Clients often ask if the company can pay the premiums. The answer is they can but they must be debited to the owners' or Directors' personal loan accounts or be paid as a benefit, with FBT then payable on the amount.

Why? The insurance is a personal expense - if the proceeds are paid they will be paid to the individual and not to the business, so the individual must ultimately pay the premiums. This funding of the premium from business cashflow however, is often an acceptable solution for most clients.

### When one partner is much older and perhaps not so healthy...

There may sometimes be a large discrepancy in the insurance premium payable by one partner compared to the other e.g. due to age differences, medical conditions or weight.

Some business partners decide to each pay their own while others combine the cost and pay an equal share each. In those cases the rationale is often that the lower risk person is happy to pay more as they have a higher likelihood of benefiting.

Again, this is only an option and you will know whether it's worth suggesting it to the clients.

### Minority equity partners or shareholders

If you are ever confronted with a scenario where there is a large discrepancy in ownership between shareholders, the following recent client solution may help.

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In this instance, one partner owned 80% of the business and had brought on board two junior partners, each with 10% equity.

The risk here was if the 80% partner were to die or suffer a TPD incident - what would happen to the remaining partners? His wife could come in and run the business or she could sell it to a third party. Either way, the two junior partners were vulnerable.

The solution was to take out cover on the 80% partner for his value in the business (plus an amount for CGT of course).

If the insurance was paid out, the Buy Sell Agreement was triggered with his shares transferring to the junior partners ie they would then own 50% each.

In this instance, it was agreed that the two junior partners would pay his insurance premium as they stood to benefit considerably from it being in place.

## **How does Irongroup's Business Succession Planning service work?**

Here's what usually happens...

1. Once you have obtained the clients' agreement to proceed with the insurance applications (they don't need to be finalised), you contact us with their name and phone number. We then call to arrange a meeting, usually at their premises.

Note that if your client is interstate or in a regional area, teleconferencing also works very well.

You are more than welcome to attend that meeting. It's not necessary to invite their accountant although they are also

welcome.

2. During the meeting we explain how the agreement works and discuss their various obligations and options such as top-up funding, handling debt owed to the business on departure, responsibility for premium payments etc.

The key terms of the agreement are usually resolved during this meeting. We also obtain their accountant's details so we can confirm key elements such as ownership structure etc and to keep them informed.

Our drafting work then commences with possible additional client follow-up required through that process.

3. Once the insurance schedules are completed we are able to finalise the Buy Sell Agreement. We then phone the clients to advise them and send it out for signing.

If your clients are not yet sure if they want to proceed we can also meet with them to help identify solutions for their particular issues. If the client proceeds with the Buy Sell Agreement this meeting is included in the fixed price. If not, we will charge them an hourly rate for that meeting.

## **Need advice?**

If you have a query regarding business succession planning please call us on 03 8621 9000.

With our depth of experience, fixed prices and on-site appointments, we can help you look after your clients' business succession planning needs.