THE BUSINESS INSURANCE TRUST AGREEMENT

Need for a Legal Agreement

It is not possible to structure an effective Buy/Sell or Equity Insurance arrangement without a legal agreement between the Proprietors about maintenance of the Insurance Policies and the consequences of Death, Disablement or Traumatisation of a Proprietor.

Purpose of Legal Agreement

The purpose of the Agreement is to provide a mechanism for the ***orderly transition of ownership in the event of Death, Disablement or Traumatisation***.

The Agreement provides for:

(a) the ***establishment*** of the Policies;

(b) the ***maintenance*** of the Policies;

(c) the determination of the ***Sum Insured***;

(d) the ***funding of Premiums*** (including the apportionment of liability for the Premiums between the Proprietors);

(e) the ***obligation of the Outgoing Proprietor to sell their Equity***;

(f) the ***obligation of the Continuing Proprietors to buy the Outgoing Proprietor's Equity***;

(g) the determination of the ***Purchase Price***;

(h) the collection of the ***Proceeds of the Policy*** upon the occurrence of an Insured Event;

(i) the ***distribution of the Insurance Proceeds;***

(j) the ***purchase of the Equity*** by the Continuing Proprietors;

(k) the ***transfer of the Equity by the Outgoing Proprietor and any Related Parties to the Continuing Proprietors***;

(l) the admission of ***new Proprietors***;

(m) a mechanism for ***resolving disputes***; and

(n) the ***termination of the Agreement***.

SUMMARY OF BUSINESS INSURANCE TRUST AGREEMENT

The effect of the Agreement may be summarised as follows:

(a) The Proprietors of the Business arrange for ***Insurance Policies*** to be taken out on the life of each Proprietor (***clause 3***);

(b) The Policies are held on trust by a ***Trustee*** (***clause 2***);

(c) The ***Beneficiaries*** with respect to each component of a Policy are the parties specified in the schedule to the Agreement. In most cases, because of the ATO Statement of Principles, the Beneficiary must be the ***life insured*** or his estate (***clause 2***);

(d) An ***Outgoing Proprietor's Equity*** is defined to ***include any Equity held by a Related Party*** that must be sold upon the occurrence of an Insured Event with respect to the Proprietor (***clause 1.1(r)***);

(e) The amount of the Sum Insured attributable to the ***Purchase Price*** under each Policy will be the ***value of the Outgoing Proprietor's Equity***;

(f) The parties can also include ***Insurance cover to fund other financial needs and liabilities*** (***clauses 3 and 4, Schedules***);

(g) The ***responsibility for payment of the Premiums*** is set out in the schedule. In most cases, the Proprietors will pay a share of the total cost of the Premiums on the Policies proportionate to their Equity in the Business (clause 6, Schedule). Each Proprietor will be responsible for payment of the Premium for their own Personal Cover;

(h) The ***creation of any contract of sale*** under the agreement is ***subject to the deemed creation of a contract (or the exercise of an option)*** upon the occurrence of the ***following conditions precedent***:

   (i) The Outgoing Proprietor dies or suffers an Insured Event;

   (ii) The Outgoing Proprietor is survived by one or more Continuing Proprietors;

   (iii) The Insurer pays the Net Proceeds of the Policy on the life of the Outgoing Proprietor to the Trustee; and

   (iv) The Net Proceeds of the Policy are not less than the amount of the Purchase Price of the Outgoing Proprietor's Equity that the parties have agreed to insure (***clause 13.1***);

(i) Only once these conditions precedent have occurred (or the option has been exercised), is there ***deemed to be a contract of sale*** pursuant to which:

   (i) the Outgoing Proprietor (or his estate) and any Related Parties must ***sell the Outgoing Proprietor's Equity*** to the Continuing Proprietors and any Related Parties; and

   (ii) the Continuing Proprietors and any Related Parties must ***purchase the Outgoing Proprietor's Equity*** (***clause 13.2***);

(j) Once these conditions precedent have been satisfied (or the option has been exercised), the ***Trustee will collect the net Proceeds of the Policy attributable to the Purchase Price and pay them to the Outgoing Proprietor or his estate*** (***clause 10, clause 9***);

(k) The ***payment reduces the Purchase Price otherwise payable by the Purchasers for the Outgoing Proprietor's Equity*** (***clause 17***). Any shortfall is payable in accordance with clause 17 or any Vendor Finance Provisions in the Schedules;

(l) ***The Trustee also collects the other components of the cover*** and ***pays them to the appropriate Beneficiaries or Recipients*** (***clause 9***);

(m) A Beneficiary may direct the Trustee to pay part of the Insurance Proceeds to a ***Third Party Recipient*** on their behalf. An example of such a Recipient is a Related Party Vendor who might own part of the Outgoing Proprietor's Equity or a Creditor of the Business (***clause 9***);

(n) As ***new Proprietors*** acquire an interest in the Business, they become parties to the Agreement. However, for capital gains tax reasons, ***clause 23.3*** expressly prohibits any payment by Incoming Proprietors for their interest in the Agreement or the Policies, notwithstanding that there may be consideration for the acquisition of their interest in the Business itself; and

(o) If a ***Proprietor retires from the business***, the Policy with respect to the Proprietor will automatically vest in the Retiring Proprietor. The Retiring Proprietor's interest in the Policies over the Continuing Proprietors' lives also ceases. In both cases, there is no consideration for the "assignment" which effects this vesting (***clause 11.1***). Again, this is for capital gains tax reasons.