

Let's chat

Business succession and buy sell deeds – October 2020

With:

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Information provided is general in nature; precise application depends on specific circumstances

Issues to consider

- Why have business succession documents?
- Shareholders/partnership agreement
- Benefit of a buy sell deed arrangement
- Types of buy sell deed arrangements

Why have business succession documents?

- Deceased business owner
 - Ensuring surviving family receives fair value
 - Continuing business owner commencing a competing business
- Continuing business owner
 - Ensuring deceased's family does not interfere with the business

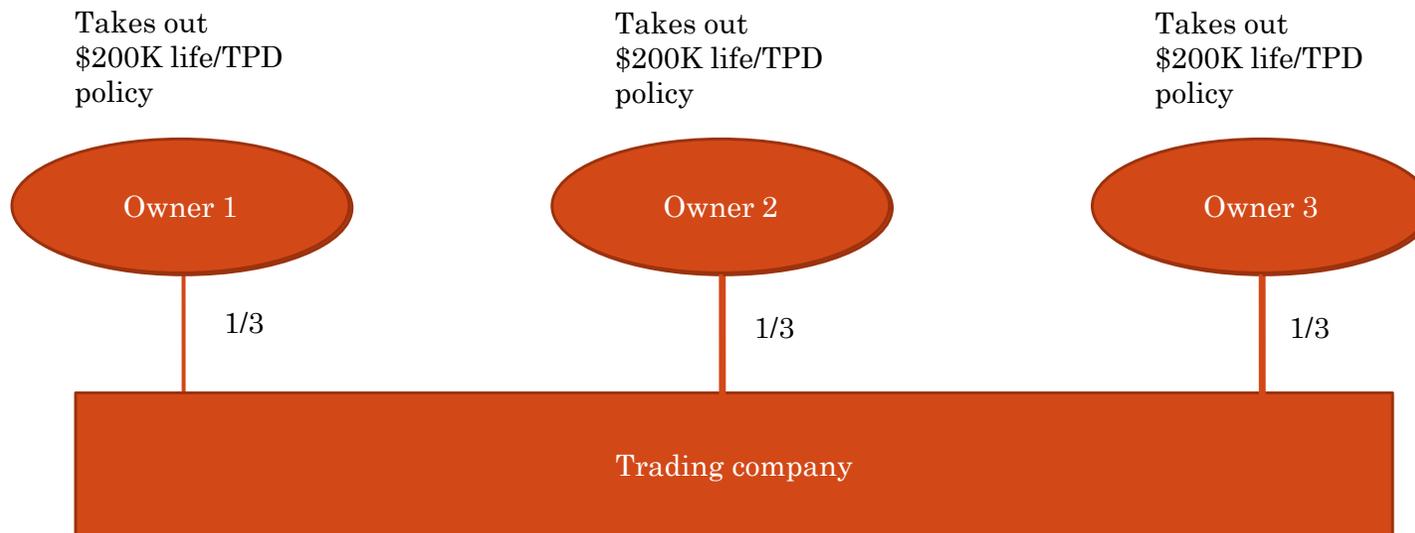
Shareholders/partnership agreement

- How business owners make decision
- Rules in relation to who can acquire an interest in the business
- First right to purchase rules
- Valuation mechanisms
- Rules in relation to mechanisms upon the retirement/ 'AWOL'/ death/ lose of capacity of business owner
- Continuing business owner first right to acquire (and fixating a valuation mechanism)
- Dispute resolution mechanisms

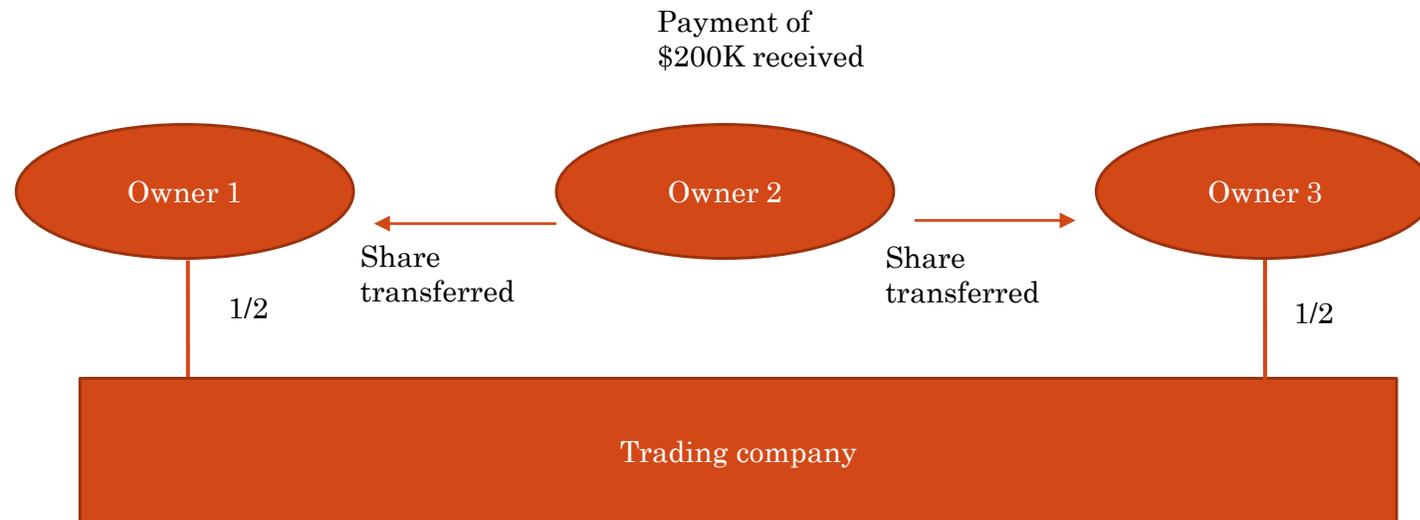
Shareholders/partnership agreement

- Recent examples:
 - Real estate agents
 - Ultrasound business
 - IT firm
- How to fund?
 - Bank
 - Equity
 - Other method?

Buy sell deed



Buy sell deed



Buy sell deed

- Applies for any of:
 - Death
 - TPD
 - Trauma (less common)
- Options rather than forced purchase/sales – managing tax issues
- All parties incentivised to exercise options – see initial reasons for not exercising options
- Ability to keep things as is, however
- Valuation
- Mechanisms for business interest change occurs in an automated manner with already agreed settlement and repayment terms

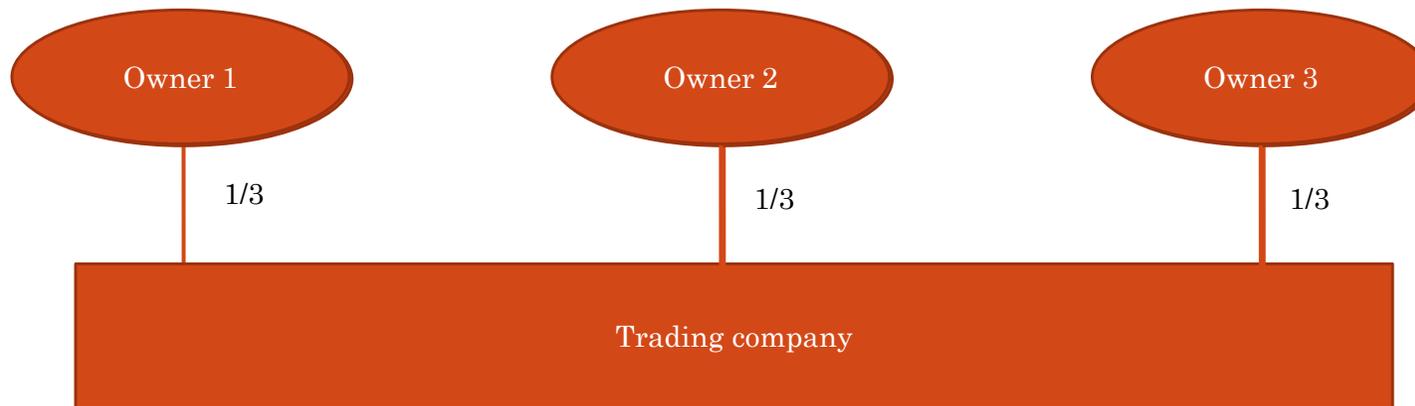
Buy sell deed – self-funded insurance

- Business owners take out insurance in their own name equal to market value of their interest
- Sometimes can also consider for any debt in the business
- What happens if there is a change in market value of interest between taking out insurance and ‘default event’?
 - Market value is greater – continuing business owners ‘top-up’
 - Market value is lower – deceased business owner’s family keeps excess
 - No insurance paid out – initial options cannot be exercised; rather the continuing business owners offered option to purchase (provided that can find funding) and on longer repayment terms

Buy sell deed – other options

<i>Model</i>	<i>Why not</i>
Cross insurance	Unable to receive TPD insurance proceeds tax free unless Principals are related Premiums are not deductible on revenue account and must be paid by Principals
Company-owned insurance	Unable to receive TPD insurance proceeds tax free unless Principals are related Unable to have continuing Principals acquire a cost base uplift in acquired interest Premiums are not deductible and other issues in paying TPD insurance proceeds to exiting Principal
Special purpose trust	Additional trust structure required with specific tailoring (linking entitlements) to ensure TPD insurance proceeds can be received tax free Premiums are not deductible on revenue account and must be paid by Principals
Superannuation	Unable to obtain 'own' occupation TPD policies Additional superannuation law issues to satisfy

Buy sell deed - diagrammatic



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