Business Succession Agreement

Why A Business Sucession Agreement?

The prime purpose of a Business Succession Agreement (BSA) or buy/sell agreement is to ensure the efficient withdrawal of a partner from a business. Put simply it makes good business sense.

Following the death, disablement or trauma of a partner two needs immediately arise:

- the continuing partners need to take quick control at a reasonable price to protect the ongoing business, and
- the dependants of the deceased, disabled or traumatised partner need protection from the concerns of the business and the ability to receive full value for that partner's business interests.

A BSA meets these needs. All too often we devote our efforts to wealth creation, wealth preservation and wealth distribution but ignore wealth succession.

A BSA protects your control and the value of your business if your partner dies, or is disabled or becomes traumatised, and enables the Estate and dependants of the affected partner to obtain full value of that partner's share in the business.

BSA over what?

The more common form of BSA is expressed to apply over a business jointly owned by various persons or entities. However, there is no reason why a BSA could not also be over property or even exist between two separate and distinct businesses that are reliant upon each other for joint business or raw material.

Death only?

Death is the most common trigger for a BSA but there are others. Total and permanent disablement is also very common, as is trauma insurance, especially because these events can be covered by appropriate insurance policies.

What Form of Agreement?

It is universally accepted that the only option is options. The form of those options should be put and call; that is, the right to force another to buy or sell should co-exist with each party. This will ensure your full protection; after all, you do not know whether you need to force the Estate of your partner to sell (call option) or if it will be your Estate that will force your partners to buy (a put option).

Where does the money come from?

This is your choice and is usually dependent upon the trigger event. As stated earlier for death or total and permanent disablement or trauma, insurance is the most common source of funding the obligations to buy under the BSA; commonly, this is life insurance. It is usually in the best interests of all if all are required to hold life insurance. This will remove any doubt that one or another party can meet his or her obligation to purchase.

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What type of Life Insurance?

This is your choice; however, your decision may be influenced by a number of factors including, for example, your cash flow to support premiums. Once you have determined the type of policy the question becomes who should hold the policy. The simplest is for a partner to own a policy on the life of each of his/her other partners (cross-owned policies) An alternate to this is where a group policy on various lives is held jointly by the partners. Another strategy is to organise it so that the insurance is held by a trust of which the partners are beneficiaries.

Tax

There are tax issues involved in transferring policies taken out pursuant to a BSA, and on a business transfer; in particular Capital Gains Tax. As tax laws change from time to time it is important that these issues be borne in mind and advice is taken from your tax advisor at the relevant time.

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