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BUSINESS SUCCESSION PLANNING AND BUSINESS INSURANCE

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IAN GRAY SOLICITOR

(Profile)

Ian Gray is a specialist in Business Succession Planning, Exit Strategy Advice and Business Risk Management.

He is the proprietor of Ian Gray Solicitor, a legal firm based in Brisbane that services Advisers, Accountants and Clients in every state and territory of Australia.

In 1987, Ian developed the Business Insurance Trust Agreement, a unique structure that allows business people and high net worth individuals to deal with all business, personal and self-managed superannuation insurance needs on one Insurance Policy (the "One Page, One Policy Strategy").

The Agreement conveys insurance proceeds from an insurance company to the intended recipients via an independent Trustee, both securely and tax-effectively.

Equally importantly, the Agreement simplifies insurance arrangements that might otherwise have complex commercial, legal and taxation implications.

The Business Insurance Trust Agreement is unique in that it is the only Buy/Sell Agreement that has been submitted to and approved by the CGT Cell of the Australian Taxation Office.

Ian was Dux of St Paul's School in Brisbane in 1974, and received a National Undergraduate Scholarship to study at the Australian National University, Canberra.

He was first admitted as a solicitor in 1981. He was employed as a solicitor at Cannan and Peterson (now Deacons Graham and James, Brisbane) and Feez Ruthning (now Allens Arthur Robinson, Brisbane), before establishing the firm Holmans (which later became part of the interstate firm Middletons Moore and Bevins) in 1987.

Ian was a partner of the national firm Phillips Fox from 1995 to 1997, when he established Ian Gray Solicitor as a specialist Succession Planning practice.

Ian has had extensive experience in commercial, banking, insolvency, taxation, intellectual property and insurance law. He has acted for banks and financial institutions such as Commonwealth Bank of Australia and Australian European Finance Corporation, multinational companies such as Tamrock, national companies such as Ampol, and semi-government bodies such as the Pacific Film and Television Commission.

He has also had business experience as the General Manager, Production and Industry Development, Pacific Film and Television Commission and the Chief Executive Officer of a privately owned animation and visual effects company based at the Warner Roadshow Movieworld Studios.

As a journalist and writer, he has also interviewed many artists, including Graham Chapman of Monty Python fame.

He has had extensive experience as a Board Member of arts organisations such as Institute of Modern Art Limited, La Boite Theatre and Film Events Queensland (formerly Brisbane International Film Festival Limited).

Ian has conducted presentations about Succession Planning at numerous industry conferences and seminars since 1987.

THE “COMPLETE SUCCESSION PLAN”

The purpose of a Business Succession Plan is to pre-agree a strategy that will enable a Business Person to exit a Business upon retirement or the occurrence of an insured event.

The traditional approach to insurance-funded Succession Planning has focused primarily on the funding of the Purchase Price of a Business Person’s Equity in the Business.

It often overlooks the need to extinguish personal liabilities (i.e., personal guarantees and mortgages over personal property) with respect to any Debt or other Liabilities of the Business.

Business People also have Personal (or Estate Planning) needs as well as Business (or Succession Planning) needs. The Purchase Price of their Equity might only meet part of these needs. Personal cover meets the shortfall.

The “Three Needs”

A Complete Succession Plan should identify and prioritise three separate needs:

Buy/Sell or Equity Insurance (Asset Needs)

The purpose of Buy/Sell or Equity Insurance is to:

- fund the Purchase Price of any Equity that needs to be sold by an Outgoing Proprietor (and any Related Parties) to the Continuing Proprietors upon the occurrence of an insured event with respect to the Outgoing Proprietor;
- ensure that the Vendors receive full value for their Equity; and
- enable the Purchasers to purchase the Equity without having to borrow from a bank.

Debt Reduction and Key Person Insurance (Liability Needs)

The purpose of Key Person Insurance is to:

- allow the business to repay any external debt, (so that the Outgoing Proprietor can be released from any personal guarantees and securities over personal assets for business debt);
- repay loan accounts owing to or by the Outgoing Proprietor;
- compensate the Business for any loss of income (revenue) resulting from the loss of the Key Person; and
- compensate the Business for loss of goodwill (capital) resulting from the loss of the Key Person.

Personal or Estate Planning Insurance (Personal Needs)

If your Personal Needs exceed the Purchase Price of your Equity in the Business, it may be necessary to obtain additional Personal Insurance to meet your needs.

The following issues should be taken into account in determining your Personal Needs:

- the personal debts and liabilities you wish to repay;
- the anticipated living expenses of your family after your death;
- any income from other sources (salaries, wages, rental, dividends, other investment returns) would contribute to meeting this need;
- the amount of any income shortfall;
- the amount of capital that would be required to meet the income shortfall;
- any capital from other sources (the sale price of your Equity in the Business, the repayment of any loan accounts, superannuation, other investment strategies) would be available to meet the capital need; and
- the capital shortfall that could be funded by additional Personal Insurance (if appropriate).

Retirement Strategies

Similar issues arise in the case of retirement. However, funding mechanisms other than insurance are required (e.g. Bank or Vendor Finance). It is helpful to estimate or pre-agree the Sale Price of the Retiree’s Equity. For example, if its value is now \$400,000 and might be \$600,000 at the time of retirement, the Proprietors can examine the cash flow implications of a future Loan or Vendor Finance when there is less emotion involved.

The Purchasers can also examine the commercial implications of taking out a significant Loan shortly before their own retirement. If they can’t identify a Purchaser for their equity (now 100%) before or after their own retirement, it might be more feasible to sell the whole Business at the time of the first Proprietor’s retirement.

THE “ONE PAGE, ONE POLICY” STRATEGY

Because your needs change over time, the insurance and legal arrangements for your Succession Plan should also facilitate change.

A Complete Succession Plan achieves this by adopting a “One Page, One Policy Strategy”.

The “One Page Strategy”

The “One Page Strategy” uses a copyrighted Risk Analysis Worksheet that allows you and your Adviser to:

- Design a comprehensive one page Business Succession Plan that addresses Asset, Liability and Personal needs at the same time (during meeting);
- Scope the amount of insurable risk involved in a worst case scenario (during meeting);
- Determine the premium cost of insurance required to address the worst case scenario (after meeting);
- Prioritise what risks should be addressed within a premium cost affordable and acceptable to you (after meeting); and
- Arrange the preparation of a Business Succession Agreement (after meeting).

The Traditional “Multiple Policy Approach”

Traditionally, Advisers have written one Policy for each separate need, often resulting in four or five different Policies for each person, usually in the name of different owners.

These arrangements were often difficult to understand and required Policy changes and medical tests each time one of the person’s needs changed.

The “One Policy Strategy”

The “One Policy Strategy” uses a simple Business Insurance Trust structure that has been approved by the ATO to aggregate Asset, Liability and Personal needs onto one Insurance Policy with respect to each Life Insured or Proprietor.

While originally designed for Multiple Proprietor Businesses, the Strategy also allows individual Lives Insured and Sole Traders to aggregate Personal Cover (some of which might be beneficially owned by the Life Insured and the rest by a Self-Managed Superannuation Fund) onto the one Policy.

One or more existing Self-Owned Policies can be transferred or “parked” under the roof of the Trust, if there are health issues with respect to any of the Lives Insured. (The Life Insured continues to be the “original beneficial owner” of the Policy for CGT purposes.)

If the Lives Insured wish to place some of the cover in a Public Offer Super Fund in order to obtain a tax deduction, it is possible to design a “One Page, Two Policy Strategy” using a Hybrid or Multiple Policy-Owner Insurance Trust Agreement.

Security and Tax-Effectiveness

The One Policy Strategy ensures that each component of the insurance proceeds is paid to the intended Recipient securely and tax-effectively by the Policy Owner as Trustee.

Traditional Self-Ownership Buy/Sell Agreements fail to deal with the taxation implications of any element of the Succession Plan other than the Purchase Price. They therefore:

- increase the risk that related insurance and payments might not be structured securely or tax-effectively.
- expose business people and Advisers to disputes and legal claims that can be easily avoided by a “One Page, One Policy” Succession Plan driven by a Business Insurance Trust Agreement.

Fixed Purchase Price and Distributions of Total Sum Insured

Unlike most other Business Succession Agreements, the standard IGS Agreements allow the parties to “lock in” a specific Purchase Price (and any other distributions out of the total Sum Insured), until the Agreement is subsequently varied.

At the time of a claim, the initial Agreement and subsequent Variation Agreements therefore avoid expensive valuations, legal and accounting advice, and disputes with respect to the Purchase Price.

If the total Sum Insured has increased as a result of a CPI adjustment, the default Recipient of the Surplus is the Life Insured. Similarly, if the amount of any Debt reduces before a Variation, the default Recipient of any Excess is the Business. If this is the intention of the parties, there is no need for a Variation Agreement at the time.

Flexibility (Changing Your Succession Plan and Agreement)

The One Policy Strategy makes it easier to deal with your needs as they change over time.

The Risk Analysis Worksheet on page 6 illustrates how needs can change in a five-year period.

Typically, Bank Debt and Personal Needs decrease over time, but the net value of the Business increases.

“Multiple Policy Approach”

If the cover was written on separate Policies:

- as the Debt reduces, the Debt Reduction Cover should be reduced, to avoid any risk that it might be treated as Key Person Revenue Cover (and taxed upon the payment of a claim);
- as the Purchase Price increases, the Buy/Sell Cover should be increased; and
- as Personal Needs reduce, the Personal Cover should be reduced.

These steps involve the administrative burden of dealings with the Insurance Company. In addition, the increase might require new underwriting and medical tests, which can take up valuable management time. If the Life Insured cannot satisfy the Insurer’s requirements, an increase might not even be possible.

“One Policy Strategy”

In contrast, the One Policy Strategy is designed to place all of the cover under the one roof. Once it is under the roof, you might find that you have the right total Sum Insured for the indefinite future. All that needs to be changed is the mix or allocation of the cover.

It is not necessary to deal with the Insurance Company or do medical tests in the future, unless additional cover is required over and above the original total Sum Insured. Thus, changes become a management issue, not an Insurance Company issue.

Rather than changing your Policies, the One Page, One Policy Strategy simply requires a change of the Schedules to your Business Insurance Trust Agreement.

Cost Savings

In most cases, the One Policy Strategy and the Business Insurance Trust structure will result in:

- reduced Policy Application Fees every year (usually between \$50 and \$100 per Policy per annum); and
- significant Volume Discounts with respect to the annual Premium for higher sums insured (see the Table “Insurance Trust Premium Savings”).

While a Multiple Policy-Owner Agreement might result in a tax deduction for some of the Premium, it can also reduce the other cost savings and compromise some of the other benefits of a Single Policy Strategy.

Cost Savings Fund the Cost of Changing Your Agreement

Regardless of the type of Agreement that documents your Succession Plan or Buy/Sell arrangements, there would be costs associated with any future variation of the Agreement.

However, the cost of variations of the Business Insurance Trust Agreement is designed to be funded as far as practicable within the scope of the savings in Policy Fees and Premiums.

In summary, the Business Insurance Trust structure is designed to save money, some of which is then used to fund the cost of keeping your Succession Plan up-to-date.

COMPLETE SUCCESSION RISK ANALYSIS WORKSHEET

Illustration of Changes of Apportionment of Sum Insured to Reflect Changes of Needs Over Five Years

Insurance Company Pays Total Sum Insured to Trustee (Policy Owner) →					Trustee Pays↓	
	PURPOSE	AMOUNT OF EACH COMPONENT			NOTES	RECIPIENTS
		Year 1	Year 3	Year 5		
ASSETS +	Pre-agreed Sale Price of Equity	\$400,000	\$500,000	\$700,000	Funds 100% of Pre-agreed Sale Price	Vendors
	CGT on Pre-agreed Sale Price	\$100,000	\$125,000	\$175,000	Funds CGT liability of Vendors	Vendors
	Stamp Duty, Legal & Accounting Fees	\$32,000	\$37,000	\$55,000	Funds transactional costs	Business
LIABILITIES +	Bank Debt, Lease & Other Liabilities	\$200,000	\$100,000	Nil	Facilitates release of Personal Guarantees and Securities	Creditor
	Loan Account	\$100,000	\$100,000	\$100,000	Repays debt owing between Business and Insured Person	Creditor
	Key Person (Income)	\$100,000	\$100,000	\$100,000	Funds costs of replacement or loss of income	Business
	Key Person (Capital)	\$150,000	\$150,000	\$150,000	Compensates Purchasers for loss of capital value	Continuing Proprietors
PERSONAL =	Personal Loans (Home Loan, Equity Loan, Other Liabilities)	\$101,000	\$91,000	\$81,000	Repays personal debts	Insured Person (Debts)
	Living Expenses (See Personal Needs Analysis Worksheet)	\$600,000	\$580,000	\$422,000	Capital required to fund living expenses less Net Sale Price (after CGT) and other investments	Insured Person (Living Expenses)
	Self-Managed Super Fund Needs	Nil	N/A	N/A	Personal Cover in Super Fund	Self-Managed Super Fund
	Future Sale Price Provision	N/A	N/A	N/A	Provision for anticipated growth of Sale Price in short-term (if Personal Cover not sufficient to fund growth)	Insured Person
TOTAL		\$1,783,000	\$1,783,000	\$1,783,000	Total is collected by Trustee and distributed to Recipients.	

COMPLETE SUCCESSION RISK ANALYSIS WORKSHEET

Explanation of Each Component of the Total Sum Insured Held on One Policy

Insurance Company Pays Total Sum Insured to Trustee (Policy Owner) →			Trustee Pays↓
	PURPOSE	NOTES	RECIPIENTS
ASSETS +	Pre-agreed Sale Price of Equity	Price of share of total value of Business held by Life Insured and Related Parties. Equity is Vendor's "Jewel in the Crown". Most Purchasers are "asset rich, cash poor" and can't afford Sale Price of new Equity. Insurance funds 100% of Pre-agreed Price, so no need to negotiate Sale Price or borrow. Price plus Personal meets Personal Needs Capital Requirement.	Vendors
	CGT on Pre-agreed Sale Price	Personal cover earmarked to pay CGT liability on Sale Price of Equity (not CGT on insurance proceeds). Ensures total Sale Price available for Personal Needs. Half Marginal Rate (or Full Company Rate) on Sale Price less Cost Base. Assuming nominal Cost Base and top Marginal Rate of approx 50%, allow 25% of Sale Price (or 30% if Company Vendor).	Vendors
	Stamp Duty, Legal & Accounting Fees	Funds stamp duty payable by Purchasers and transactional costs of both Vendors and Purchasers. For shares, allow 0.6% of Sale Price. For other property, allow 4% up to \$200K, 5% up to \$500K, 5.5% up to \$1M, 6% over \$1M. Units dutiable on gross value, not net value. Vendor's Lawyer and Accountant plus Purchaser's Lawyer and Accountant = 4 x Professional Fees. Allow Total Professional Fees of \$12K up to \$500K and \$20K over \$500K.	Business
LIABILITIES +	Bank Debt, Lease & Other Liabilities	Need to extinguish Life Insured's personal guarantees and securities for Business Debt when exit. Must exit asset and liability side of ledger. Normally proportionate amount of debt. Can be 100% of debt, if bank/creditor regards Life Insured as vital key person. Excess Debt reduction cover can be re-apportioned to Purchase Price, as debt reduces and Sale Price increases.	Creditor
	Loan Account	Need to repay debt owing by Business to Life Insured (or vice versa).	Creditor
	Key Person (Income)	Compensates for temporary, once-off loss of income, say, for three to six months. Alternatively, compensates for increased expenses of replacement staff, say, for 12 months. Premium deductible, but proceeds taxable.	Business
	Key Person (Capital)	Compensates for permanent loss of income stream, profitability, goodwill. Loss of capital value of business or Equity in the business. Will the business be worth less without Life Insured? Premium non-deductible, but proceeds not taxable.	Continuing Proprietors
PERSONAL =	Personal Loans	Funds repayment of Personal Home Loan, Business Equity Loan and Other Liabilities.	Insured Person (Debts)
	Living Expenses	Funds any shortfall in capital required to fund Personal Needs and Living Expenses (after deduction of Sale Price of Equity (after CGT), repayment of any Loan Account and capital value of other assets of estate. Excess Personal Cover can be re-apportioned to Purchase Price, as Sale Price increases and Personal Needs reduce (or Life Insured becomes uninsurable). Premium for cover beneficially owned by Super Fund may be tax-deductible.	Insured Person (Living Expenses)
	Self-Managed Super Fund Needs	Provision for any of the above Personal Needs that are appropriately dealt with in the superannuation environment.	Self-Managed Super Fund
	Future Sale Price Provision	Provision for anticipated growth of Sale Price in short-term (if Personal Cover not sufficient to fund growth)	Insured Person
TOTAL	<p>Distribution on Claim: Trustee distributes Total Insurance Proceeds tax-effectively and securely to intended Recipients in right-hand column in accordance with Business Insurance Trust Agreement.</p> <p>Payment of Premiums:</p> <ul style="list-style-type: none"> • Business pays Total Liability Premium. • Proprietors pay Total Asset Premium proportionately. • Each Life Insured/SMSF pays own Personal Premium. 		

THE ROLE OF BUSINESS SUCCESSION AGREEMENTS

The primary role of a Business Succession Agreement is to regulate the sale and purchase of a Business Person's Equity in a Business when an insured event occurs and the insurance proceeds fund the agreed Purchase Price.

Traditionally, there have been very basic provisions dealing with this issue in standard Shareholders Agreements and Partnership Agreements.

However, the introduction of Capital Gains Tax resulted in potential tax liabilities for all forms of Business Insurance (including Buy/Sell Insurance) under the Income Tax Assessment Act 1997 and earlier legislation.

As a result, it is now common practice to prepare a dedicated Business Succession Agreement, in order to minimise the Capital Gains Tax liabilities. These liabilities are often not addressed in standard Shareholders Agreements and Partnership Agreements.

Solving the Capital Gains Tax Problem

The underlying Capital Gains Tax problem is that insurance proceeds are taxed differently according to:

- the insured event that gives rise to the claim; and
- the owner of the Policy.

The Insured Events fall into two categories:

- Death Benefits; and
- Non-Death Benefits (such as Total and Permanent Disablement, Trauma and Terminal Illness Benefits).

Care must be taken to ensure that the method of ownership does not incur an unnecessary Capital Gains Tax liability.

“Death Benefits”:

Under Section 118-300, Death Benefits will only be exempt from CGT, if the Owner of the Policy is any person or entity that:

- is the “original beneficial owner” of the Policy; or
- did not give any consideration for the acquisition of the Policy.

“Non-Death Benefits”:

Under Section 118-37, Non-Death Benefits (such as Total and Permanent Disablement, Trauma and Terminal Illness Benefits) will only be exempt from CGT, if the Owner of the Policy is:

- The Life Insured (**“Self-Ownership”**); or
- The Trustee of an Insurance Trust under which the Life Insured is “absolutely entitled” against the Trustee under Section 106-50 (**“Trust Ownership”**).

The Non-Death exemption is limited to direct or indirect Self-Ownership and is therefore much narrower than the Death exemption.

Implications for Buy/Sell Cover

Because Non-Death Benefits are usually bundled with a Death Benefit under the one Policy, the normal method of ownership of all Buy/Sell Insurance is now Self-Ownership or Trust Ownership.

It is no longer normal for the Business or the Purchasers to own Buy/Sell Insurance (**“Cross-Ownership”**), because of the CGT liability with respect to Non-Death Benefits.

Implications for Debt Reduction Cover

Debt Reduction Cover has traditionally been owned by the Company or Business. However, this method of ownership will now result in a CGT liability in the case of Non-Death Benefits.

Unfortunately, while the receipt of Death Benefits by a Company would be CGT-free, there would be no franking credits. Therefore, any subsequent dividends would be taxable at the full marginal rate of the shareholders.

The CGT liability of the Non-Death Benefits and the income tax liability of subsequent dividends attributable to the Death Benefits can both be avoided by the use of a Business Insurance Trust Agreement.

Businesses can use this component of a Business Insurance Trust Agreement, even if no Buy/Sell Cover is required.

TYPES OF BUSINESS SUCCESSION AGREEMENT

In general, there are now two alternative types of Business Succession Agreement:

- Self-Ownership Agreements; and
- Trust Ownership Agreements.

The type of Agreement reflects the ownership of the Buy/Sell Policies. However, it also has implications for the scope of the Succession Plan and the ownership of other Business Insurance (such as Debt Reduction and Key Person Insurance).

Self-Ownership Agreement

A Self-Ownership Agreement requires each person to own their own Buy/Sell Policy.

This legitimately avoids CGT on the insurance proceeds (not the Sale Price of the Equity) in all of the events that might give rise to a claim under the Policy.

Because the Life Insured owns the Policy, the Insurance Proceeds attributable to the Purchase Price must be paid to the Life Insured or their Estate, even if they own the Equity in the Business through a Company or Family Trust.

In addition, it is normal for the Policy to fund only the Purchase Price of your Equity in the Business.

If other Business or Personal Insurance is required:

- this cover would normally be included on separate Policies for each Life Insured (“**the Multiple Policy Strategy**”); and
- the Self-Ownership Agreement would not normally deal with the commercial, legal and tax implications of this cover (including Key Person Insurance).

As a result, there is a risk that the CGT implications of the ownership and other arrangements with respect to this cover might not be adequately addressed by a Legal Agreement.

Trust Ownership Agreement

A Trust Ownership Agreement requires each Policy to be owned by a Trustee on behalf of the relevant Life Insured.

Because the Life Insured is the beneficial owner of the Policy:

- the Business Insurance Trust Agreement used by IGS legitimately avoids CGT on the insurance proceeds (not the Sale Price of the Equity) in all of the events that might give rise to a claim under the Policy; and
- The Life Insured can direct the Trustee to pay:
 - ✓ the **Purchase Price** to the appropriate Vendor (including a company or family trust);
 - ✓ any **Debt Reduction Cover** to the appropriate Creditor;
 - ✓ any other **Key Person Cover** to the Business or the Continuing Proprietors; and
 - ✓ any **Personal Cover** to the Life Insured, their Estate, a Nominated Recipient or a Self-Managed Superannuation Fund.

In addition, instead of having separate Policies for Buy/Sell Insurance, Key Person Insurance and Personal Insurance, a Trust Ownership Agreement is the most appropriate vehicle to aggregate different cover onto one Policy (the “One Policy Strategy”).

A Trust Ownership Agreement also ensures that the CGT implications with respect to every component of the Policy are adequately addressed by a legal agreement.

The Business Insurance Trust Agreement used by IGS has been approved by the CGT Cell of the ATO.

BENEFITS OF IGS BUSINESS INSURANCE TRUST AGREEMENT

The IGS Business Insurance Trust Agreement is a unique Agreement that:

Simple

- is the legal and tax foundation of a One-Page Succession Plan;
- helps business people to see the Big Picture on one worksheet;
- allows all Business and Personal Insurance Cover to be included on One Policy held by just One Owner for each Life Insured (rather than Multiple Policies owned by Multiple Owners);

Comprehensive

- enables a Business to combine Asset (Purchase Price), Liability (Key Person) and Personal Needs/Cover on one Policy for each Life Insured;
- allows Personal and Self-Managed Superannuation Fund-owned Cover to be held on one Policy;
- allows the legal strategy to become secondary to the commercial and insurance strategy of the Succession Plan;

Flexible

- can place a “Roof” over one new Policy or a number of existing Policies;
- creates an “Insurance Facility” within which Cover can be re-allocated within the Policy as individual needs change;
- allows future increases in the Purchase Price to be funded by Insurance Cover that was previously allocated to other needs that might have reduced (such as Debt Reduction or Personal Cover);
- maximises Future Insurability of the Purchase Price;

Secure

- is a “Legal Engine” that securely drives all components of the Policy to the appropriate Recipient;
- places a “Roof of Security” over the Insurance Cover that minimises the risk of default;

Tax-effective

- has obtained a positive opinion from the CGT Cell of the ATO;
- solves all relevant insurance ownership and tax issues;
- addresses tax issues with respect to the payment of the insurance proceeds by the Insurance Company to the Policy Owner or Beneficial Owner of the Policy;
- addresses tax issues with respect to payments to the appropriate Recipients;

Cost-effective

- reduces Policy Application Fees;
- maximises Volume Discounts with respect to the Premiums;
- provides greater protection for a comparable legal fee.

INSURANCE TRUST PREMIUM SAVINGS

(Comminsure 2002)

PURPOSE OF COVER	SUM INSURED	SEPARATE POLICIES			ONE POLICY		
		Sum Insured	Death Premium	Death/TPD Premium	Sum Insured	Death Premium	Death/TPD Premium
Purchase Price	\$400,000	\$500,000	\$751	\$1,186	N/A	N/A	N/A
CGT	\$100,000						
Personal / Self-Managed Super Fund	\$701,000	\$701,000	\$903	\$1,512	N/A	N/A	N/A
Debt Reduction	\$200,000	\$382,000	\$611	\$1,005	N/A	N/A	N/A
Key Person Capital	\$150,000						
Stamp Duty, etc	\$32,000						
Loan Account	\$100,000	\$100,000	\$250	\$297	N/A	N/A	N/A
Key Person Income	\$100,000	\$100,000	\$250	\$260	N/A	N/A	N/A
TOTAL	\$1,783,000	\$1,783,000	\$2,765	\$4,297	\$1,783,000	\$1,982	\$3,533
\$ SAVING	N/A	N/A	N/A	N/A	N/A	\$783	\$764
% SAVING	N/A	N/A	N/A	N/A	N/A	28.31%	17.77%

IGS LEGAL FEE POLICY

General Terms of Fee Policy

IGS quotes a Fixed Legal Fee (which includes disbursements and GST), if the Business and Adviser use the Questionnaire, Procedure and standard Agreement.

The standard Agreement is designed to accommodate most normal business structures involving arm's length Proprietors within the standard Fee.

The standard Fee allows for up to two (2) hours' consultation with the Adviser or Client with respect to the Client's needs and the completion of the Questionnaire.

The Fee assumes that no substantive amendments to the standard Agreement are required. However, IGS will quote a fixed Fee with respect to more complex matters if the standard Agreement must be amended to meet the needs of particular business structures or Clients.

The Concessional Fees only apply to Clients of Advisers with a current Licence to use the IGS Adviser Support System.

The Concessional Fee must be paid within three months of the initial Meeting or Advice. Alternatively, the Concession may be extended for an additional three months by payment of the appropriate Meeting and Advice Fee (which will be credited against the Documentation Fee for the Agreement, if the Business proceeds).

IGS may quote different Meeting, Advice, Documentation and Variation Fees for a Business, if the Adviser does not have a current Marketing Licence.

Alternative Business Succession Agreements

IGS offers a number of alternative Business Succession Agreements:

- Business Insurance Trust Agreement (Single Policy Owner) (preferred option);
- Hybrid Business Insurance Trust Agreement (Multiple Policy-Owner); and
- Self-Ownership Business Succession Agreement.

Content of All IGS Business Succession Agreements

All standard IGS Agreements are intended to give a Business greater functionality, security, tax-effectiveness and cost-effectiveness than a Business Succession Agreement prepared by other Lawyers.

In each case, the Fixed Legal Fee entitles the Business to the cost of drafting:

- A Succession Strategy for all Insured Events (i.e., Death, TPD and Trauma) wholly funded by Insurance Proceeds;
- A Succession Strategy for all Insured Events (i.e., Death, TPD and Trauma) partly funded by Insurance Proceeds and partly funded by Instalments or Vendor Finance; and
- A Retirement or other Exit Strategy funded by one Upfront Payment, Instalments or Vendor Finance.

Variation Agreements

IGS will quote a Fixed Fee with respect to future Variation Agreements.

Un-funded Purchase Price Provisions

In the case of post-2005 Agreements, there is normally no charge for the drafting of Un-funded Purchase Price or Vendor Finance provisions other than the standard Fixed Fee for a Variation Agreement.

Fees are chargeable for any Meetings or Advice with respect to the structure of the commercial arrangements.

Legal Consultancies

IGS is prepared to provide documentation and advice to other Lawyers on a consultancy basis.

Change of Fee Policy

IGS reserves the right to change the fee structure from time to time.

Any change will not affect any Fixed Fee Quotation for the preparation of an Agreement that has been accepted in accordance with the Quotation.

ALTERNATIVE BUSINESS SUCCESSION AGREEMENTS

Business Insurance Trust Agreement (Single Policy Owner)

This Agreement allows all Business and Personal Cover to be included on one Policy with respect to each Life Insured.

It deals with all Cover (including Debt Reduction and Key Person Capital Cover) securely and tax-effectively.

One or more existing Self-Owned Policies can be transferred or “parked” under the roof of the Trust, if there are health issues with respect to any of the Lives Insured.

In these cases, the Life Insured continues to be the “original beneficial owner” of the Policy for CGT purposes and there is no CGT liability with respect to the Insurance Proceeds on a claim.

The Trustee is usually the Business itself or one of the entities within the business structure (preferably a company).

Under the Trust Structure, the Business does not hold the Policy or the Insurance Proceeds for its own benefit.

The Insurance Proceeds are not available to a creditor of the Business while it holds them in its capacity as the Policy Owner or Trustee.

Instead, the Business holds the Insurance Proceeds on the trusts set out in the Trust Agreement and must distribute them to the Recipients nominated in the Agreement.

Hybrid Insurance Trust Agreement (Multiple Policy-Owner)

In some cases, the Business might wish to obtain the benefit of a "One Page Succession Plan". However, the Lives Insured may require some of the Buy/Sell or Personal Cover to be owned by a Public Offer Super Fund, where considered appropriate by the Adviser and Business.

Alternatively, they might require the Buy/Sell or Personal Cover to be owned by a Related Party of each Life Insured and the Debt Reduction or Key Person Cover to be owned by the Business.

In these cases, the Hybrid Insurance Trust Agreement can be used to document a “One Page, Two Policy Succession Plan”.

It enables the cover for each Life Insured to be split between two or more separate Policies owned by different parties:

- the Purchase Price and/or Personal Cover might be owned by the Life Insured or a Related Party (or a Super Fund, where appropriate); and
- the Debt Reduction and Key Person Cover might be owned by the Business (on the terms of the current tax-effective Trust Structure).

Self-Ownership Business Succession Agreement

This is a more traditional Buy/Sell Agreement which:

- does not utilise the unique Trust Structure developed by IGS;
- deals only with the Buy/Sell or Equity Insurance Cover;
- requires the Buy/Sell or Equity Insurance Cover to be written on a separate Policy to any other Business or Personal Cover;
- requires the Life Insured to own the Policy;
- pays the Buy/Sell or Equity Insurance proceeds to the Life Insured (or their Estate), regardless of whether they are the actual owners of the Equity;
- might leave the actual owner of the Equity with an un-funded CGT liability;
- does not deal with any Debt Reduction or Key Person Capital Cover required by the parties; and
- leaves all other cover to be dealt with outside the framework of an Agreement.

Complete Succession Legal Fees

July 2008

Initial Business Succession Agreements

Agreement	Policy Ownership	Notes	Concessional Fee	Non-Concessional Fee
Complete Succession Agreement* (includes Business Insurance Trust Agreement* and Hybrid Insurance Trust Agreement*)	Single Policy Owner (as Trustee) ("One Page, One Policy Succession Plan") or Multiple Policy Owners (Self, Trust and/or Super Fund Ownership) ("One Page, Two Policy Succession Plan")	Standard Fee #	\$2,970*	\$3,410*
		Reduced Fee # (Must be paid <i>before</i> Policy Owners apply for Cover)	\$2,530*	\$2,970*
Self-Ownership Business Succession or Buy/Sell Agreement *	Buy / Sell Cover owned by Life Insured or Super Fund (If Meeting required, add \$770 Meeting Fee)	Two individuals	\$1,540*	\$1,870*
		Three individuals	\$2,200*	\$2,420*
		Four individuals	\$2,640*	\$2,970*
Debt Reduction Agreement* (Repayment of Debts funded by tax-effective Loan Accounts)	Business owns Debt Reduction Cover (as Trustee)	One individual	\$770	\$880
		Two individuals	\$990	\$1,100
		Three individuals	\$1,100	\$1,320
Assignment of Policy*	Security for Lender	Plus Succession Agreement Fee	\$550	\$550
Declaration of Trust or Original Beneficial Ownership Agreement*	Single or Multiple Policy Owners (including Trustee)	Required if apply for Cover <i>before</i> instructions and payment	\$550	\$550
Geared Premium Funding Agreement*	Lives Insured borrow Premium from Business	Plus Succession Agreement Fee	\$1,100	\$1,320
* For each individual exceeding four individuals			\$275	
* Special Conditions and Requirements			Fixed Fee quoted in advance	
# CGT and Stamp Duty issues make Reduced Fee subject to receipt of instructions and payment <i>before</i> Policy Owners apply for Cover				

Variation Agreements

Agreement	Notes	Standard Legal Fee
Multiple or Single Individual Agreements (Assumes no Teleconferences, Meetings or Advice (other than Procedural Advice of up to 30 minutes))	Less than three years since previous invoice (Minimum Fee: \$550)	\$275 per individual
	More than three years since previous invoice (Minimum Fee: \$550)	\$385 per individual
Unfunded Purchase Price Provisions (Any Teleconferences, Meetings and Advice with respect to Strategy and Provisions are additional)	Pre-2005 Agreements (Drafting Fee)	Standard Variation Fee + \$550
	Post 2004 Agreements (Drafting Fee)	Included in Standard Variation Fee
Any Variation of Incomplete Draft Agreement (includes information omitted from Questionnaire)	After 6 months	\$440 (Minimum Fee)
	After 12 months	As per initial Agreement
Post-Claim Variation Agreement and Legal Advice		As quoted at time of claim

Meetings, Advice, Business Structure Analysis and Fact-Finding

Meeting/Advice Type	Notes	Standard Legal Fee
Initial Client Teleconference	Payable before Meeting or Advice (Additional to Fee for Self-Ownership Business Succession Agreement) (up to two hours)	\$440
Initial Client Meeting and Advice		\$770
Second Meeting	After initial Teleconference or Meeting (up to two hours)	\$550
Multiple Policy-Ownership Meeting or Advice	Payable before Meeting or Advice (up to two hours)	\$770
Post-Meeting Business Fact-Finding	Plus Succession Agreement Fee	\$440 (Minimum Fee)
Any additional Meetings, Advice or Travel Time		\$330 per hour
Travel and Accommodation (outside scheduled trips and/or cities)		As quoted