

Business continuity – the buy and sell arrangement

Business owners have the need to ensure that there will be continuation of the business upon the death or disability of a co-owner. They further want security in knowing that the disposal of their business interests will be dealt with in an orderly manner.

The risks upon the death or disability of a co-owner

- The remaining owners may not have sufficient cash available to buy the deceased's business interests.
- The heirs do not have the security that they will be paid a fair price for the deceased's business interests, if sold in the open market.
- The remaining business owners may not have immediate and clear ownership of the business; and negotiating with heirs or delays relating to winding-up of the estate might complicate matters.
- In funding the purchase of the deceased's interest, the capital resources of the business might be drained, jeopardising the continuation of business.

The solution

The co-owners of the business enter into a buy-and-sell agreement. Upon the death or disability of one of the parties, the remaining owners buy the deceased's business interest at a pre-determined price. The purchase price is funded by life insurance policies affected by the co-owners on each other's lives.

The importance of the agreement

The agreement contains all the terms and conditions applicable to the sale transaction. It secures the following:

- The obligation on the remaining parties to buy the deceased's interest in the business;
- The obligation on the disabled party or the deceased's estate to sell the interest to the remaining parties;
- The actual purchase price or the method for determining the price;
- The method of funding this buy-and-sell transaction;
- The consequences should the business relationship between the parties be terminated; and
- The procedure to follow in the event of the simultaneous death of all or some of the business owners.

Benefits for the co-owners

- The seamless continuation of the business is ensured;
- No outsiders will be involved in the business and they can continue unhindered; and
- The funds are available to ensure that the transaction can be concluded swiftly.

Benefits for the dependants/beneficiaries

- They will inherit a capital amount instead of an interest in a business they have no knowledge of;
- The capital received can be invested to replace the loss of income experienced; and
- The capital can assist with the overall estate planning of the co-owners and their families.