

Life Assurance for your Business Clients

For Financial Brokers & Advisors Only



taking care of you...



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Introduction

Many problems can arise for a business when an owner or key employee dies prematurely or becomes seriously ill.

Surviving business owners may have insufficient funds to purchase a deceased owner's share of the business, or in some cases, a business could get into financial difficulty because of a key employee's death. Many business owners believe their business partners will look after their families if they die. However, what would happen if the surviving business owners were unwilling, or unable, to do this?

Ensuring the survival of a business, either when it passes to the family of the business owners or in the event of a key employee or co-owner dying, requires careful planning.

Having life assurance and/or serious illness cover on the lives of people who are essential to a client's business can form part of that plan and can assist in ensuring the continued survival of the business.

In the following sections, we will take a look at some of the options available with a view to protecting a business:

- **Life Assurance for a Keyperson**
- **Life Assurance for a Partnership**
- **Life Assurance for Limited Companies**



Life Assurance for a Keyperson

The future success of a business is often dependent on a few key people. A keyperson is any “key” employee, director or consultant (i.e. a fixed term employee brought in to consult on or develop a particular project e.g. - new IT system etc.) on whom the business depends for its continued success or existence. A business may be financially impacted by the loss of a key person - if they die or become seriously ill the business may lose:

- Unique skills
- Business contacts
- Management expertise
- Intimate knowledge of the business

Is there a solution?

Putting life assurance in place on a keyperson can help a business overcome the financial repercussions of losing a valued member of staff. The keyperson life assurance policy can provide a lump sum to the business as policy owner on the death or serious illness of an insured keyperson. This lump sum benefit can help compensate the business for any loss of profit, or it can be used to repay loans and/or recruit a suitable replacement.

Description of arrangement

- The employer takes out cover on the life of the keyperson
- The life cover policy is owned by the employer
- The employer pays the premiums
- Any proceeds from the policy are owned by and are paid directly to the employer

Benefits of arrangement

- The employer pays for cover
- In the event of the death or serious illness of a keyperson, the company receives a lump sum from the life assurance policy
- The policy proceeds can be used to repay loans* (commercial loans and also keyperson's loans)
- The proceeds can be used replace the profits generated by the keyperson
- The proceeds can be used to recruit a replacement for the keyperson

* The keyperson doesn't have to be guarantor for the loan; if he/she is generating income for the company, that income is servicing the loan, therefore the company has an insurable interest on the keyperson for the amount of the loan.

Putting life assurance in place on a keyperson can help a business overcome the financial repercussions of losing a valued member of staff

Who can be considered a keyperson?

- Shareholders, directors and/or business owners
- Key employees
- Consultants (i.e. a fixed term employee brought in to consult on or develop a particular project e.g. - new IT system etc.)

How much cover should be put in place?

When an employer has determined who their key people are, the next question is how much cover they should put in place on each key employee.

Businesses can value their keyperson in general by using a multiple of their current gross salary (typically a figure of 5 to 10 times salary is used). However, the salary a keyperson is drawing (if they are also a business owner) may not be representative of their worth to the business. The keyperson may be drawing a low salary to keep costs down, or may be keeping their income within limits so that standard tax rates apply. In this situation, a multiple of the profits attributable to the keyperson may be more appropriate (2 x gross profit or 5 x net profit are figures sometimes used).

Definite amounts of cover should be decided upon by the accountant or auditor of the business. If cover is intended to repay outstanding business loans, the level of cover should equal the loan amounts. Note that loans made by a director to a business can be covered, as can loans from commercial lending institutions.



Are premiums allowable against tax for a limited company?

Generally speaking premiums are not deductible for corporation tax purposes however if the following 4 conditions are in place tax relief may be available on premiums paid to a keyperson policy.

- The sole relationship between the company and the insured keyperson must be an employer/employee relationship
- The life assured must own less than 15% of the shares in the company
- The cover must be for loss of profits only
- The policy must be a short period fixed term assurance policy (typically a 5 year term)

It is quite unusual for a keyperson arrangement to meet all these criteria. The company accountant can confirm for definite whether premiums paid on a life assurance policy for keyperson cover are allowable against the company tax bill.

Are profits normally taxable in the hands of the company?

- The proceeds of a policy taken out for loan cover are seen as a capital receipt and are normally not taxed
- The proceeds of a policy taken out to replace profits are seen as profits and are normally taxed

We would recommend that separate policies should be taken out for each type to minimise the risk that Revenue would view all cover taken out as replacing profits.

If cover is intended to repay outstanding business loans, the level of cover should equal the loan amounts

Keyperson Case Study

(for illustration purposes only)

Joe B Limited is a small manufacturing company that produces highly specialised components for industrial printing machinery.

Joe B, the only shareholder, works on a full time basis in the business. He used to work as a printer and saw a niche in the market for these highly specialised components. He used his expertise to set up as the only company in Ireland which manufactures these items and, from his connections within the industry he was able to build up a substantial bank of clients.

The company has been trading for 3 years. The company took out a bank loan last year for an amount of €150,000 to purchase machinery. There was no requirement from the bank to put life cover in place for this loan.

There are now 20 people working for Joe. As Joe is out selling and networking for a large proportion of his time, he employs a factory foreman – Mark. Joe relies on Mark to ensure that the specialised components are produced to order.

Mark does not have any shareholding in the company. He has extensive experience as a printer and is being paid a salary of €50,000 a year. As he has been working with Joe for the last 2 years, he now has significant experience in all parts of the process of producing these components.

Questions

1) Who could be considered a Keyperson?

2) In quantifying cover, which figures should be ascertained?



Case Study Recommendations

Points to consider

Joe and Mark could both be considered keypersons. Joe is the business owner, so would be highly motivated in his role, and Mark fills an important role in the company. If Mark died, Joe would either have to recruit a replacement, or work himself as factory foreman and hire a salesperson in his own place.

Cover on both Joe and Mark should be put in place. A multiple of salary could be used to calculate the amount of cover required for each of them. Or, if Joe is generating a lot of profit for the company, a multiple of the profit he is responsible for could be used.

The bank loan is unsecured. If Joe dies, the company might have great difficulty in continuing to service the loan – as the income Joe brings in currently might reduce or cease. Therefore, the company could take out cover on Joe for the amount of the loan (€150,000).

Cover recommended:

Joe Life Assurance to replace profits (use a multiple of salary or the profit related to Joe to quantify amount).

Life Assurance to ensure the bank loan would be repaid in the event of Joe's death.

Mark Life Assurance to enable a replacement to be recruited (use a multiple of annual salary to quantify amount).

Life Assurance for a Partnership

The importance of Life Assurance for business partners

The death or serious illness of a business partner can have major repercussions for the future of the partnership and can have implications for the remaining partners. Often a partner's share of the business will be the single largest financial asset he/she owns. On their death, their next of kin may expect a substantial and immediate payment from the remaining partners. This payment might include:

- Any capital that the partner had invested in the business
- The deceased partner's share of undrawn profits
- Payment for the partner's share of the goodwill

What are the consequences of not having Life Assurance in place?

- The remaining partners may not have the capital required to buy back the shares of the deceased from the next of kin. They may be forced to take out substantial personal loans in order to retain ownership of the business.
- If the remaining partners are unable to acquire the required capital sum to buy out the next of kin of the deceased, they will be forced to take on the next of kin as new partners in the business.
- The next of kin may wish to sell their share of the business. If the remaining partners are not able to afford to buy their share from them then the next of kin may seek to sell their share to a third party.
- The next of kin may be unable to get a fair price for the share of the business on the open market.
- A competitor of the business may purchase the shares from the next of kin.

What are the advantages of this arrangement?

This can benefit both the remaining partners and the deceased partner's next of kin:

- A capital lump sum is provided (from the proceeds of the Life Assurance policy) to the remaining partners to enable them to buy back the deceased partner's share of the business
- Provided the remaining partners have the right to buy back the deceased partner's share no new partners come into the business
- The deceased's next of kin can realise the value of the deceased's share of the business – they have a ready buyer at market value
- The deceased's next of kin do not have to enter into a business in which they may have no expertise in or knowledge about

It is important that your clients seek tax advice on this, as arrangements such as these can be structured in a tax efficient manner. It is important to note that Revenue terms and conditions apply.

One option

One solution is for the individuals involved to take out a life assurance policy on the life of each partner, and for this policy to form part of a share buy back arrangement entered into by the individual partners. The arrangement will likely involve:

- A legal agreement (usually a Double Options Agreement or a Buy & Sell Agreement). All participating partners enter into this agreement. It normally states that on the death of a partner the remaining partners will buy back the deceased's share of the partnership from the next of kin.
- A life assurance policy, to provide the financial capital required by the remaining partners to buy back the deceased's share from the next of kin. The arrangement should be put in place on a reciprocal basis i.e. all partners should be given the option to join the arrangement and any partner not covered by the arrangement should not benefit from it.

In the following sections, we have outlined two possible ways to structure this arrangement.

The life assurance policy is usually put in trust with all partners as both trustees and beneficiaries



Own life in trust

- Can be used where there are 2 or more partners
- All policies are taken out personally by the individual partners, on their own life
- Each partner pays the premium on his or her own policy
- The cover on each policy should match the value of each partner's share in the business
- Each policy is put in trust for the other partners by completing an appropriate trust form
- This trust form ensures that the proceeds of the policy are paid directly to the other partners
- The trust arrangement used is typically flexible/revocable
- All parties sign a legal agreement commonly called a Buy & Sell or Double Options Agreement
- The legal agreement gives the remaining partners an option to buy the shares back from the deceased's next of kin using the proceeds of the life policy
- It also gives the next of kin an option to sell the shares to the remaining partners at market value

Life of another

- More suitable with only 2 partners
- Each policy is taken out personally by each individual partner, on the life of the other partner
- Each partner pays the premium on the policy he or she owns, which covers the life of the other partner
- The cover on each policy should match the value of each partner's share in the business
- No trust form is needed
- All parties sign a legal agreement commonly called a Buy & Sell or Double Options Agreement
- The legal agreement gives the remaining partner an option to buy the share of the business back from the deceased's next of kin
- It also gives the next of kin an option to sell the shares to the remaining partner at market value

This structure may not work efficiently with partners joining or leaving the business.

Points to note

1. If neither party exercises their option under the Double Options Agreement then the shares go through the deceased partner's/shareholder's estate to their next of kin, and the policy proceeds remain in the hands of the surviving partners. The proceeds of the policy may then be subject to Capital Acquisitions Tax/Inheritance Tax (CAT) if the arrangement is own life in trust.
2. In the event of a dispute about the value of the shares, the Double Options Agreement may provide that the shares are bought back at a value equal to the policy value and if there is any disagreement between the two parties, at a price as determined by the partnership's/company's own auditors or accountants (usually the value of the share at date of death of the partner/shareholder).
3. If a partner/shareholder retires and sells his/her share in the business and if the arrangement is own life in trust, the trust can be revoked and the partner can then take over the life policy as a personal policy.
4. If there is a surplus left over after buying shares at market value, the surplus is taxed in the hands of the remaining partners/shareholders as though it were an inheritance (if the arrangement is own life in trust). There is no tax on a surplus for life of another.
5. If the value of the policy proceeds is less than the value of the share of the business, the remaining partners/shareholders must find the remaining funds from elsewhere, in order to pay the market value price.
6. Under normal CAT rules, the deceased partner's/shareholder's next of kin may be taxed on the share of the business that they inherit and then sell back.



Partnership Case Study

(for illustration purposes only)

All are concerned about protecting their business and their next of kin in the event of one of them dying prematurely

Peter, Paul and Patricia own an accountancy partnership worth €1,000,000 in the following proportions:

Partner	Share	Value	Share of profits (last accounting year)
Peter	50%	€500,000	€100,000
Paul	30%	€300,000	€60,000
Patricia	20%	€200,000	€40,000

Peter and Paul are accountants and work on a full time basis within the partnership. Patricia manages the office, supervises 3 members of staff and works 4 days a week.

Peter is 55 and is married to a nurse. His daughter has qualified as an accountant and has been working for another accountancy firm for the past 5 years. Paul is 40 and is unmarried. Patricia is also married.

All are concerned about protecting their business and their next of kin in the event of one of them dying prematurely.

Questions:

1) Do all individuals need cover?

2) Does anyone have a next of kin who:

- Would be interested in replacing a deceased partner?
- Would be acceptable to the remaining partners?

3) If a buy back does not happen, what would happen to any proceeds?

4) In quantifying cover, which figures should be used?

Case Study Recommendations

All partners should put life assurance in place for their share of the partnership – it should be a reciprocal arrangement (i.e. only those who decide to participate can benefit from the arrangement).

Peter's daughter, if she gains more experience, might be potentially interested in replacing her father in the business in the event of his death. The other partners would have to agree to this at the time. If this is agreeable to all parties, the payout from the policy in the event of Peter's death could remain in the hands of the other partners, Peter's daughter could inherit his share and then come into the business.

With regards to quantifying the level of cover required – the amount of profit per partner is not relevant. The value of the share held by each is the amount of cover needed for each.

Cover recommended:

Peter €500,000 cover on an own life in trust basis.

Paul €300,000 cover on an own life in trust basis.

Patricia €200,000 cover on an own life in trust basis.

All should sign a Buy & Sell or Double Options Agreement to define what is to happen to his/her share of the business on death.

Points to consider:

Peter's daughter may have an inheritance tax liability (CAT) on his death if she inherits his share of the partnership plus other assets.

If she inherits his share of the partnership and the proceeds of the policy on his life remain with the other partners, they will be taxed on these as though they are an inheritance. As they are not related, the €15,075 CAT threshold will apply – anything in excess of that amount will be taxed at 33% (2016 threshold and CAT rate).

The value of the share held by each partner is the amount of cover needed for each

Life Assurance for Limited Companies

The importance of life assurance for shareholders

The death or serious illness of a shareholder can cause immediate financial hardship for the remaining shareholders and maybe even a loss of control of the company.

On death, a shareholder's shares normally pass to their next of kin and the next of kin become the new shareholders in the company. The change in share ownership can lead to potential problems for both the next of kin and the remaining shareholders. The next of kin may not want to become involved in the company and may want to sell their shares as soon as possible. The remaining shareholders may want to retain full control and ownership of the company and may not want to work with a new shareholder. Putting life cover in place can help avoid these problems.

What are the consequences of not having life assurance in place?

- The remaining shareholders may not have the capital required to buy back the shares of the deceased from the next of kin. They may be forced to take out substantial personal loans in order to retain ownership of the company.
- If the remaining shareholders are unable to acquire the required capital sum to buy out the next of kin of the deceased, they will be forced to accept the next of kin as new shareholders in the company.
- The next of kin may wish to sell their shares, however the remaining shareholders may not be able to afford to buy them.
- The next of kin may be unable to get a fair price for the shares on the open market.
- A competitor of the company may acquire the shares of the next of kin.

What are the advantages of putting in place a shareholder's life assurance arrangement?

This can benefit both the remaining shareholders of the company and the deceased shareholder's next of kin:

- A capital lump sum is provided (from the proceeds of the life assurance policy) to the remaining shareholders to enable them to buy back the deceased shareholder's share of the business from the deceased's next of kin
- No new owners come into the business
- The deceased's next of kin can realise the value of the deceased's share of the business – they have a ready buyer at market value
- The deceased's next of kin do not have to become involved with a business in which they may have no expertise in or knowledge about

It is important that your clients seek independent tax advice on this matter, as arrangements such as these can be structured in a tax efficient manner. It is important to note that Revenue terms and conditions apply.

Personally Owned Policies

One option

One solution is for the individuals involved to take out a series of life assurance policies on the life of each shareholder, and for these policies to form part of a share buy back arrangement entered into by the individual shareholders. The arrangement will likely involve:

- A legal agreement (usually called a Double Options Agreement or Buy & Sell Agreement).*
- All participating shareholders enter into this agreement. It normally states that on the death of a shareholder the remaining shareholders will buy back the deceased's share of the company from the next of kin.
- A life assurance policy, to provide the financial capital required by the remaining shareholders to buy back the deceased's share from the next of kin.

The life assurance policy should be put in place on a reciprocal basis i.e. all shareholders should be given the option to join the arrangement and any shareholder not covered by the arrangement should not benefit from it.

The following sections outline two possible structures for this arrangement.

Own life in trust

- Can be used where there are 2 or more shareholders
- All policies are taken out personally by each of the individual shareholders, on their own life, each shareholder pays the premium on his or her own policy
- The cover on each policy should match the value of each shareholder's share in the business
- Each policy is put in trust using a bespoke trust form commonly called a Shareholders Trust Form
- This trust form is designed to ensure that the proceeds of the policy are paid directly to the other shareholders and that the proceeds don't have to go through the estate of the deceased shareholders
- All parties sign a legal agreement commonly called a Buy & Sell or Double Options Agreement
- The legal agreement gives the remaining shareholders an option to buy the shares back from the deceased shareholder's next of kin using the proceeds of the life policy
- It also gives the next of kin of the deceased shareholder an option to sell the shares to the remaining shareholders at market value

*A Double Options Agreement gives the option to both parties to activate the arrangement – therefore if both sides agree, the arrangement need not be activated. A Buy & Sell Agreement obliges both parties to proceed with the buyback – this agreement has less flexibility.

The legal agreement gives the remaining shareholder an option to buy the share of the business back from the deceased shareholder's next of kin

Life of another

- More suitable with only 2 shareholders
- Each policy is taken out personally by each individual shareholder, on the life of the other shareholder
- Each shareholder pays the premium on the policy he or she owns, which covers the life of the other shareholder
- The cover on each policy should match the value of each shareholder's share in the business
- No trust form is needed
- All parties sign a legal agreement commonly called a Buy & Sell or Double Options Agreement*
- The legal agreement is intended to give the remaining shareholder an option to buy the share of the business back from the deceased shareholder's next of kin
- It also gives the deceased shareholder's next of kin an option to sell the shares to the remaining shareholder at market value

This structure may not work efficiently with shareholders joining or leaving the business.

Points to note: Please refer to page 13 of this brochure.

*A Double Options Agreement gives the option to both parties to activate the arrangement – therefore if both sides agree, the arrangement need not be activated. A Buy & Sell Agreement obliges both parties to proceed with the buyback – this agreement has less flexibility.





Company Case Study A

(for illustration purposes only)

Dermot, Simon and Craig are brothers. They own a small haulage company in equal shares, which was incorporated 1 year ago. It is worth €450,000.

All work full time for the company. Dermot is single, and Simon is married to a photographer, they have three young children. Craig is married to a teacher and they have two teenage children.

During your conversation with the shareholders, it is clear that none of the shareholders has a next of kin who would want to come into the business in their place if one of them died.

All are concerned about protecting their business and their next of kin in the event of one of them dying prematurely.

Questions:

- 1) Do all individuals need cover?
- 2) Does anyone have a next of kin who:
 - a. Would be interested in replacing a deceased partner
 - b. Would be acceptable to the remaining partners?
- 3) How should they structure their succession planning arrangement?



Case Study Recommendations

Cover recommended:

Each of the shareholders will need to put life assurance in place for an amount of €150,000 each on an own life in trust basis (using a bespoke trust form commonly called a Shareholder's Trust Form).

They will have to enter into a legal agreement so that if one of them dies, the proceeds of the policy on his life will be used by the remaining shareholders to purchase his share from his next of kin.



Points to consider:

None of the shareholders has a next of kin who is willing or able to take their place in the business.

As the company has only been incorporated for a year, each has only held their shares for a year. Therefore personally owned cover is a more suitable arrangement than corporately owned cover.

Premiums should be paid from their own personal accounts.

Corporately Owned Policies

One option

One solution is for the company involved to take out a life insurance policy on the life of each shareholder, and for this policy to form part of a share buy back arrangement entered into by the shareholders and the company. The arrangement will likely involve:

- A legal agreement (usually called a Contingent Purchase agreement).
- All participating shareholders enter into this agreement with the company. The legal agreement gives the company an option to buy the shares back from the deceased shareholder's next of kin using the proceeds of the life policy. It also gives the next of kin an option to sell the shares back to the company at market value.
- A life assurance policy, to provide the financial capital required by the company to buy back the deceased's share from the next of kin. All policies are taken out and paid for by the company, with each shareholder as the life insured. The cover on each policy should match the value of each shareholder's share in the company.

The life assurance policy should be put in place on a reciprocal basis i.e. all shareholders should be given the option to join the arrangement and any shareholder not covered by the arrangement should not benefit from it.

Shareholders should own their shares for at least three years, and be resident in the Republic of Ireland. To participate in this arrangement, a company must be able to buy back its own shares (see appendix – Company Law Provisions, please see page 32).



Points to note

1. If neither party exercises their option under the Contingent Purchase Agreement then the shares remain with the beneficiaries, and the policy proceeds remain in the hands of the company. The proceeds of the policy may then be subject to Corporation Tax (2016 Corporation Tax at 12.5% would apply).
2. In the event of a dispute about the value of the shares, the draft Contingent Purchase Agreement may provide that the shares are bought back at a value equal to the policy value and if there is any disagreement between the two parties, at a price as determined by the company auditor or accountant (usually the value of the share at date of death of the shareholder).
3. If the value of the policy proceeds is less than the value of the share of the business, the company must find the remaining funds from elsewhere, in order to pay market value.
4. Under normal CAT rules, the deceased shareholder's next of kin are taxed on the shares that they inherit and then sell back to the company.
5. If a shareholder retires and sells his/her shares and if the life cover policy has a conversion option, he/ she can convert the ownership of policy to his/ her name. In this incidence, the shareholder would then take over payment of the premiums and no further medical underwriting would be required (although financial underwriting would apply).
6. If there is a surplus left over after buying shares at market value, the surplus is taxed in the hands of the company as though it were profits of the company (2016 Corporation Tax at 12.5% would apply).

Company Case Study B

(for illustration purposes only)

Bridget, Fionnuala and Claire started their own beauty salon together and formed a limited company 7 years ago. The company is worth €300,000.

They all work on a full time basis in the business. None of them are related to each other.

They all have partners and children, however none of their partners or children would be interested in becoming involved in the company if one of them were to die prematurely.

They wish to put some form of shareholder protection in place, and would like the company to bear the expense.

Bridget is concerned that as the business grows, the cover they put in place now might not be sufficient in the future. She is worried that her next of kin would end up being bought out at today's valuation rather than the actual valuation of the share at that time.

Questions:

- 1) What arrangement could be put in place in this situation?
- 2) How can the arrangement address the point raised by Bridget?



Case Study Recommendations

Cover recommended:

The company takes out a policy on each shareholder to the value of their holding (in this case €100,000 each).

Premiums can be paid by the company with no Benefit in Kind for the individuals.

Each individual signs a legal agreement commonly called a Contingent Purchase agreement with the company.

Points to consider:

With regards to Bridget's concern about the valuation of the company at the time of death, the Contingent Purchase agreement can contain a clause defining the company valuation that is to apply at the date of death. (e.g. "valuation as determined by the company's own accountants at the date of death"). This will ensure that the shares are bought back from the next of kin at market value rather than at the present value of the shares.

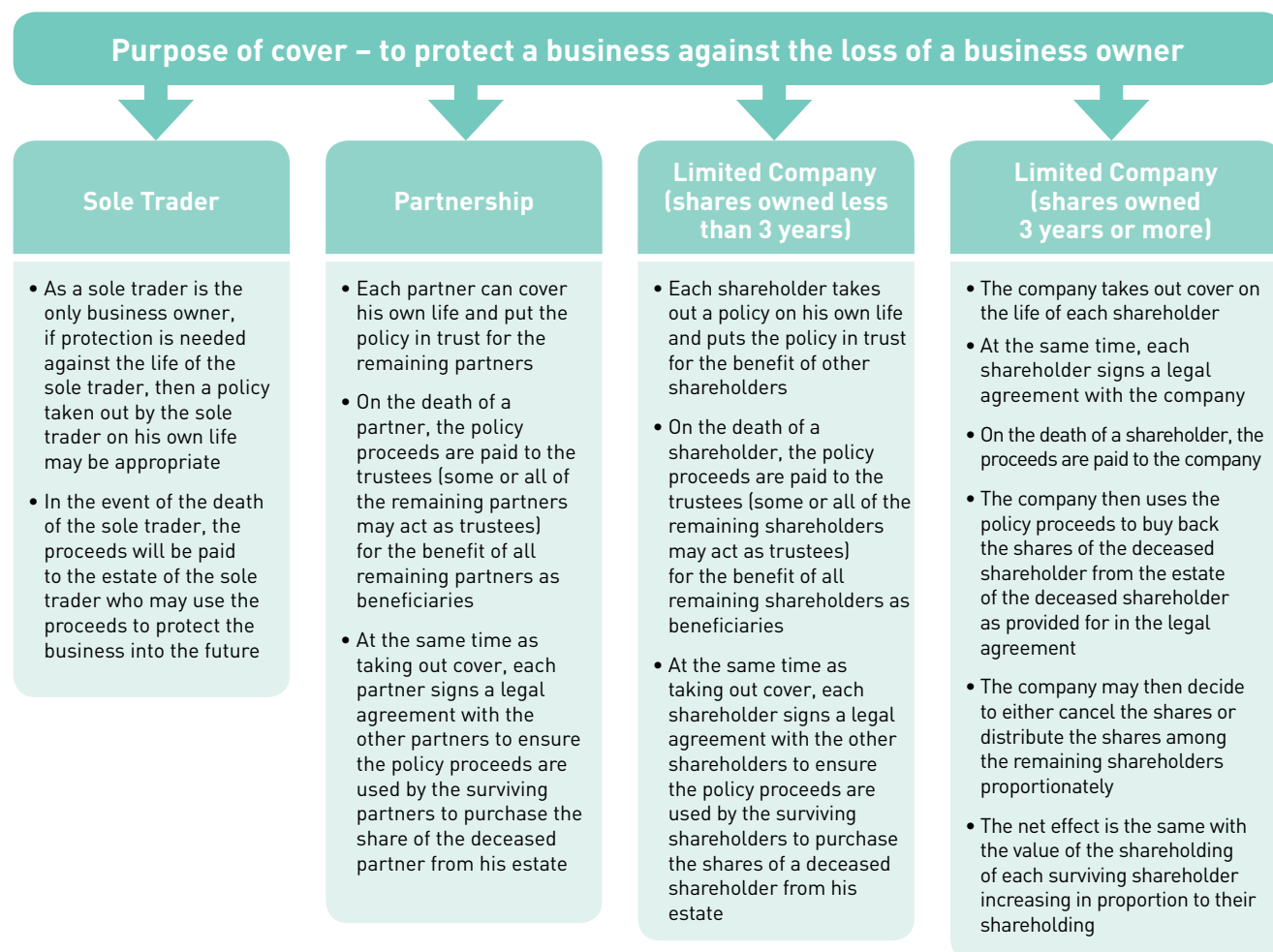
To ensure the policy values remain in line with the company valuation, the premium/benefit increasing option may be included on the policies and also a regular review scheduled, for example every 2-3 years. Please refer to Capital Gains Tax Conditions on page 33 for further details.



Appendices

Business Protection Arrangements for Different Business Structures





It is important that appropriate independent advice be obtained before deciding to proceed on any proposed course of action.

Life Assurance for Businesses - Overview

Type of Cover	Keyperson Loan Related	Keyperson Loss of Profits	Life Assurance for a Partnership	Life Assurance for Shareholders (Personally Owned)	Life Assurance for Shareholders (Corporately Owned)
Purpose	Pays off company loans in the event of the death/ specified illness of a keyperson	Replaces the profits attributable to a keyperson and can provide cash to recruit a replacement on death/critical illness	Provides cash to surviving partners to allow them to purchase the share of a deceased partner from their next of kin	Provides cash to surviving shareholders to allow them to purchase the share of a deceased shareholder from their next of kin	Provides cash to the company to allow it to purchase the share of a deceased shareholder from their next of kin
Who benefits directly?	Company - proceeds of loan related policies treated as capital receipts – not subject to Corporation Tax <u>Keep loan related & loss of profit policies separate</u>	Company - proceeds of loss of profit policies treated as replacement of profits so subject to Corporation Tax <u>Keep loan related & loss of profit policies separate</u>	Surviving partners (their share of the business increases) Deceased's next of kin (they receive cash for the share of the business that they sell)	Surviving shareholders (their share of the company increases) Deceased's next of kin (they receive cash for the share of the business that they sell)	Surviving shareholders (their share of the company increases) Deceased's next of kin (they receive cash for the share of the business that they sell)
Who benefits indirectly?	Business owners (the business they own gets a loan repaid)	Business owners (the business they own receives a cash injection)			
Policy owned by	Company	Company	Individual partners	Individual shareholders	Company
Policy pays out to	Company	Company	Surviving partners	Surviving shareholders	Company
Is policy issued in trust?	No	No	<u>Yes - if own life in trust structure</u> Partners/Shareholders Trust Form required where all partners are trustees & beneficiaries <u>No - if life of another structure</u> When there are only 2 business owners and each insures the other, no trust form is required	<u>Yes - if own life in trust structure</u> Partners/Shareholders Trust Form required where all shareholders are trustees & beneficiaries <u>No - if life of another structure</u> When there are only 2 business owners and each insures the other, no trust form is required	No
Is a legal agreement needed?	No	No	Buy/Sell or Double Options Agreement is required	Buy/Sell or Double Options Agreement is required	Contingent Purchase Agreement is required

Please note the information set out above is intended as a general guide only and is not to be relied on or acted on without first obtaining appropriate independent tax and/or legal advice.

Requirements	For New Ireland	For client company
Life Assurance for a Keyperson	<ol style="list-style-type: none"> 1. Proposal Form The Keyperson completes the proposal as the Life Assured, the Company is the Proposer. 2. Keyperson Questionnaire Required to establish insurable interest between the Company and the Keyperson. 	<ol style="list-style-type: none"> 1. Pass a Board Resolution The decision to effect cover should be minuted at a Company board meeting and the reason for cover should be stated (i.e. to replace profits or to repay a loan).
Life Assurance for a Partnership / Limited Company (Personally Owned Policies)	<ol style="list-style-type: none"> 1. Proposal Form An own life proposal form on each life should be completed. 2. Director's/Partner's Trust Form This should be completed at the same time as the proposal. A separate trust form is needed for each proposal. All shareholders should be trustees on each trust form. 3. Double Options Agreement Copy of agreement required – partners/ shareholders hold on to the original. 4. Business Protection Cover Questionnaire May be required if total life cover is above the financial underwriting limit. 	<ol style="list-style-type: none"> 1. Double Options Agreement One single agreement is entered into which is signed off by all the participating directors/partners, this is a legal agreement which allows the purchase and sale of the shares of the business to take place. The agreement is required for the partners/ shareholders own protection. Normally a personally owned policy, which pays out to others, is subject to inheritance tax in the hands of the recipients. If the policy is being used for a share buy back arrangement, Revenue have confirmed in a 1992 letter that the proceeds, once used for this, will be exempt from Inheritance Tax.
Life Assurance For A Limited Company (Corporately Owned Policies)	<ol style="list-style-type: none"> 1. Proposal Form A separate proposal is required for each shareholder. Each shareholder completes the proposal as the Life Assured and the Company is the Proposer. 2. Contingent Purchase Agreement Copy of agreement required – shareholders hold on to the original. 3. Business Protection Cover Questionnaire May be required if total life cover is above the financial underwriting limit. 	<ol style="list-style-type: none"> 1. Confirm Capital Gains Tax Treatment (CGT) Client needs to confirm that the CGT treatment on the policy proceeds will apply. 2. Check Company's Constitution The Company must be authorised to buy back its shares in its Constitution. If this is not allowed by the Constitution, a Special Resolution must be passed by the Board to allow this. 3. Pass a Special Resolution A Special Resolution is also required to authorise the Company to enter into the Contingent Purchase Agreement with each shareholder. 4. Contingent Purchase Agreement This is a "Put & Call" agreement between the company and each shareholder participating in the arrangement.

Note: We recommend that all draft Trust Forms and Agreements are prepared by the client's own legal advisor to ensure their appropriateness in individual circumstances.

Please note the information set out above is intended as a general guide only and is not to be relied on or acted on without first obtaining appropriate independent tax and/or legal advice.

Life Assurance for a Partnership/Shareholders - Inheritance Tax Rules

Revenue clarified their position with regard to the taxation treatment of Partnership/Shareholder Protection. Revenue guidance states that if certain circumstances are met the proceeds of the life assurance policy will be exempt from CAT/Inheritance Tax.

“The policies in question are life assurance policies which are effected purely for commercial purposes and agreed between the individual partners/shareholders on an arms length basis without any intention to make a gift.

The Revenue approach to such policies, written in the form of own life in trust for others, is to treat the proceeds as exempt from Inheritance Tax in the following circumstances: -

- (i) Proceeds on death will be used to purchase the deceased's shareholding. Any surplus arising will be liable to Inheritance Tax.
- (ii) The capital sum under each policy will reflect the policyholder's shareholding.
- (iii) Payment of premiums will be made by the individual members, or on their behalf by the company or partnership out of the individual's own company or partnership account.
- (iv) New partner(s)/shareholder(s) can join the arrangement at any time, subject to the conditions applicable to the existing members of the plan.
- (v) On withdrawal from the firm or on retirement, the policy of the partner who leaves will revert to himself and he will no longer benefit in the continuing arrangement, provided he sells his shareholding/interest on withdrawal, otherwise he can remain a party to the arrangement. Such policy will be as asset in his estate on his death and will not be exempt from Inheritance Tax.
- (vi) On the death of a sole surviving partner or shareholder the policy on his life will be an asset in his estate and will not be exempt from Inheritance Tax. Similarly, if a partnership breaks up or a company is wound up, policies which do not lapse will be liable on a death to Inheritance tax.
- (vii) Where a partner refuses to join the arrangement or is unable to effect Life Assurance on medical grounds, then he will be precluded from benefiting from the policies of his co-shareholders.
- (viii) The insurance policies can either be Term Insurance, Endowment, or Whole of Life policies, with the Death Benefit only passing to the surviving shareholders.
- (ix) Company Directors/Partnership Insurance using Own Life in Trust must be supported by relevant documentation:
 - a. Buy/Sell or Double Options Agreement
 - b. Reciprocal Agreement
 - c. Trust Document.”

The above is a summary only of the taxation treatment of Partnership/Shareholder Protection. It is important that appropriate independent tax advice be obtained before deciding to proceed on any course of action.

Life Assurance for Shareholders

- Company Law Provisions

Statutory conditions laid down in the Companies Act 2014 and the Taxes Consolidation Act 1997 must be met to allow a shareholder's shares to be bought back by the company and in a tax efficient manner.

The Companies Act, 2014 provides that a company must meet all the following conditions in order to be in a position to buy back its own shares: -

- (i) The company must be authorised by its Constitution to purchase its own shares. If the Constitution does not already allow a company to purchase its own shares their Constitution should be amended.
- (ii) The company must effect a Share Buy Back Agreement. A company meeting should be called to authorise the passing of a Special Resolution to allow the Agreement to be effected.
- (iii) Only fully paid up shares can be purchased by the company.
- (iv) A company cannot buy back all its own shares.
- (v) The company must pay in full for the shares at the time of purchase.
- (vi) The shares must be purchased by the company out of "profits available for distribution". This includes the proceeds of a Company Share Purchase Plan Policy. Provided the company is in profit over a period of time this condition should not pose any difficulty to the success of the Plan.

The above is a summary only of the detailed provisions set out in the Companies Act 2014. It is important that appropriate independent legal advice be obtained before deciding to proceed on any proposed course of action.

Life Assurance for Shareholders - Capital Gains Tax Conditions

Taxes Consolidation Act 1997 (as amended) provides that the purchase by an unquoted trading company of its own shares after 1st July 1991 will not be treated as a distribution but as a disposal by the vendor of the shares giving rise to a low or non-existent Capital Gains Tax liability rather than an Income Tax Liability for the vendor.

The vendor of the shares must meet all the following requirements to qualify for Capital Gains Tax treatment: -

- (i) The company must be an unquoted trading company or unquoted holding company of a trading group.
- (ii) Payments made on or after 26 March 1997 by a quoted company on the purchase of its own shares will also fall within the new provisions.
- (iii) The purchase of the shares must be for the benefit of the trade.
- (iv) The purchase of shares must not be part of a scheme to allow the shareholders to benefit from the profits of the company without taking a dividend.
- (v) The vendor must be resident and ordinarily resident in the State.
- (vi) The vendor must have owned the shares for at least five years in the case of an inter vivos transfer of shares. If the shares are acquired by the spouse or family of a director/shareholder as a result of the death of a director/shareholder the required time period is reduced to three years and includes the time that the shares are held by the personal representatives and spouse or next of kin of a deceased director/shareholder.
- (vii) The vendor, his/her spouse and minor children (under 18 years) must reduce their share holding by at least 25%.
- (viii) The vendor, his/her spouse and minor children must hold less than 30% of the equity of the company after the buy back (directly or indirectly).

The above is a summary only of the provisions set out in the Taxes Consolidation Act 1997. It is important that appropriate independent taxation advice be obtained before deciding to proceed on a particular course of action.

The case studies set out in this brochure are for illustration purposes only.

While great care has been taken in its preparation, this brochure is of a general nature and should not be relied on in relation to a specific issue without first taking appropriate financial, insurance, investment, legal, tax or other appropriate advice.

The information set out is intended as a guide only for financial brokers & advisors and is not to be taken as advice or recommendations. Certain information/explanations contained in the brochure have been condensed or summarised for brevity purposes. Revenue and other rules apply.

Terms and conditions apply to all life assurance policies and benefits are subject to underwriting and acceptance by New Ireland Assurance. If there is any conflict between this brochure and the relevant policy conditions, the policy conditions will apply.

A Government levy (currently 1%) applies to all premiums paid to life assurance policies.



NEW IRELAND
ASSURANCE

New Ireland Assurance Company plc.

11-12 Dawson Street, Dublin 2

T: 01 617 2000 F: 01 617 2075

E: info@newireland.ie W: www.newireland.ie

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