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TECHNICAL GUIDE TO BUSINESS PROTECTION

This is a technical guide for financial advisers only and is not intended as an advertisement.

FOREWORD

This document provides an outline of the taxation issues to be considered when you are putting together putting together a business protection arrangement for your clients and is based on our understanding of current legislation and Revenue practice.

In all cases we would recommend that your customers obtain professional legal and tax advice to ensure that any arrangement they put in place is appropriate to their personal and corporate circumstances.

Information is correct as at January 2021 but is subject to change.

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Business Protection Pathfinder

HOW TO COMPLETE

- How to complete the paperwork for a company owned plan.
- Shareholder Trust - How to complete
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BUSINESS PROTECTION

TYPES OF BUSINESSES, BUSINESS INSURANCE, BUSINESS TAXATION

The first thing to understand in respect of business protection is the different ways in which a business can be established. They are:

- Limited company
- Partnership
- Sole trader.

LIMITED COMPANY

Once established, a limited company is a separate legal entity to the individual(s) who set it up: the shareholders. The term 'limited' refers to the fact that shareholders' liability for company debts is limited to the value of their shareholding. So, any creditors would only generally be able to claim against the company, not against the individual shareholders.

PARTNERSHIP

A partnership is where two or more people arrange to run a business in partnership with each other and will have a legal agreement in place. The partners are jointly responsible for running the business and if it fails all partners are jointly responsible for the debt.

SOLE TRADER

A sole trader is exactly what the title states it is. It is one person who is running a business and that individual is personally responsible for the debts of that business.

BUSINESS INSURANCE

The types of business that would require what is regarded as business insurance would typically be the limited company and the partnership. While standard life assurance policies are used for this type of protection, the way in which it is arranged is important.

Type of Business	Potential business protection need
Limited Company	Personal Shareholder Protection Corporate Shareholder Protection Key Person Cover
Partnership	Partnership Insurance
Sole Trader	Personal Cover

KEY PERSON COVER

NEED FOR KEY PERSON COVER

Key person cover is life assurance effected by an employer on the life of a key employee, who may also be a shareholder or director, to protect the company against the financial consequences of that individual's sudden death or serious illness.

Key person cover is designed to protect the value of the company's human assets in much the same way as fire insurance protects a company's physical assets.

The sudden death or serious illness of a key person could give rise to a number of immediate financial pressures for a company:

- The 'calling in' of company loans, in particular any to which the 'key person' had given a personal guarantee
- A costly interruption in business
- A loss of business contacts
- Extra resources may have to be committed to the recruitment and replacement of the key individual.

WHO IS A KEY PERSON?

A key person might be a business owner or an employee, whose sudden absence from the business would have a financial impact.

WHAT CAN THE PROCEEDS OF A KEY PERSON PLAN BE USED FOR?

The company would use these funds in any way it chooses:

- Repayment of bank loans, particularly any to which the key individual has given a personal guarantee
- Repayment of any loans the key person may have made to the company
- Recruitment of a successor
- Investment in the business.

HOW MUCH COVER IS NEEDED FOR A KEY PERSON?

The cover required is the estimated financial loss that the business would suffer plus the costs of replacing the key individual. The level of cover is normally related to either the person's salary or to the company's profitability.

In assessing the amount of cover two important factors to consider are:

1. Loan Repayment: any loans personally guaranteed by a key person or any loans made by him or her to the company.
2. Loss of profits cover: the death or serious illness of a key individual could jeopardise the trading position and profitability of the company.

In Irish Life, we would recommend, that the typical maximum cover levels should **not exceed ten times salary, or if the calculation is in relation to profit then the key person's percentage contribution to profit to a maximum of twice gross profit or 2.5 times net profit (i.e. profit after expenses but before tax).**

DO I NEED TO CONFIRM AT THE OUTSET WHAT THE COVER IS FOR?

It is recommended that a company taking out key person cover pass a board resolution recording their intention to affect key person insurance cover.

The resolution should cover the purpose for which the policy, or each policy, is being taken out.

"That the company shall effect a life assurance policy on the life of Mr/Ms X in the sum of €XXX,XXX. The purpose of this insurance is to (meet the financial loss which the company is likely to suffer) / (protect company borrowing which may be repayable) in the event of his/her death whilst in the service of the company".

This ensures:

- The correct tax treatment of the premiums
- That the key person knows that the cover is not his or her sum assured personally or for the benefit of his / her family.

ARE PREMIUMS TAX DEDUCTIBLE?

Generally speaking key person cover premiums are not admissible deductions for corporation tax purposes. However the Revenue Commissioners have outlined the circumstances in which such premiums may qualify as admissible deductions:

a) the sole relationship is that of employer and employee,

b) the employee has no substantial proprietary interest in the business,

c) the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss, and

d) the plan is a short term insurance, providing only for a sum to be paid in the event of death.

Therefore premiums on key person cover life assurance plans that do not meet all of the above requirements are not admissible deductions for corporation tax purposes.

On this basis, key person cover life assurance premiums for plans taken out to repay loans or other outstanding debts are not admissible deductions for corporation tax purposes.

REVENUE CLARIFICATION ON TAX TREATMENT OF KEY PERSON INSURANCE POLICIES

The following is an extract from a circular issued by the Superintending Inspector of Taxes, dated July 1986, with regard to the admissibility of key person insurance premiums as an allowable deduction for corporation tax purposes.

"..the term 'Key man' may be applied to a range of policies not all of which may give rise to admissible tax deductions and the allowability or otherwise of premiums paid will be determined by reference to the terms and purposes of the policy, rather than any description which the Insurance Company may give it.

In applying the conditions (a), (b), (c), (d) '(see Section 4.2)' the following guidelines are followed:

a) "Employee" is taken as including a Director.

b) A person who, directly or indirectly, owns or is able to control more than 15% of the ordinary share capital of a company is regarded as having a substantial proprietary interest in the company.

c) The policy must be for a fixed term with no surrender value and no endowment or other investment content; it must not contain provisions whereby benefits could be paid to any person other than the employer.

d) The insurance must be related to loss of profits only and it will be necessary to satisfy the Inspector of Taxes that the contingency insured against will genuinely have an adverse effect on the employer's business.

Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions…."

ARE THE BENEFITS TAXABLE?

This depends on the purpose of the key person insurance.

Purpose	Tax treatment
To protect a company loan	Capital receipt, exempt from capital gains tax. No tax liability arises for the company.
To replace "loss of profit" or other "revenue items" (if the profits were earned they would be subject to corporation tax) such as replacement costs	Likely to be treated as a "revenue receipt" and **subject to corporation tax.**

The Revenue clarification on the taxation of key person insurance policies says:

"While the allowability of a premium or the chargeability of a benefit are strictly separate issues, it will usually be the case that, if the premiums are allowable for tax purposes, the benefit is chargeable to tax and, if the premiums are not allowable, the benefit is not chargeable.

Therefore if it is perfectly clear from the circumstances that the sole purpose in effecting the key person insurance policy is capital in nature, i.e. to enable the company to pay off a loan in the event of the death of a key person, then the premium is clearly not deductible for tax purposes.

Therefore the proceeds of the policy payable on death or surrender would, under current Revenue practice and law, be treated for tax purposes as a capital rather than a taxable trading receipt.

Section 593 of the Taxes Consolidation Act 1997, exempts the proceeds of life assurance policies from capital gains tax, where the policy has remained in the beneficial ownership of the Company throughout its term. No tax liability on the proceeds should therefore arise under current legislation.

The above refers to the payment of policy proceeds in the event of death or disablement of a key man.

Here once the proceeds are treated as a capital as opposed to a revenue receipt for the Company the proceeds will be exempt from capital gains tax on death or disablement."

WHERE A CUSTOMER IS CONTRIBUTING TO PROFIT AND IS ALSO THE MAIN SIGNATORY ON A LOAN HOW DO I STRUCTURE THAT COVER?

Where the cover is required for two different purposes, it is recommended that two separate plans should be taken out. Where both loan cover (capital) and loss of profit cover (revenue) are required, because of the different tax treatment, you don't want the loan cover piece mistakenly to be subject to corporation tax.

WHAT DOCUMENTATION DO I NEED TO PUT A KEY PERSON PLAN IN PLACE?

Key person Cover	Irish Life Requirements	Company Requirements
The company takes out a plan on a 'key' person to provide for loss of profits / calling in of loans on his / her death or serious illness. **Life assured = key person** **Proposer / plan owner = company i.e. ABC Ltd** **Payer of premium = company i.e. ABC Ltd** The plan is NOT issued in trust. No trust form is required. (See how to complete the paperwork here)	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual keyperson. He / she signs declaration as life assured –'the first person'. The company is the 'proposer'/plan owner. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd' • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the company. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd'. This is not signed by the life assured. It is recommended that someone other than the "Keyperson" sign the application "for and on behalf of the company" as the proposer / plan owner. **Underwriting Questionnaire** - Keyperson and Business Loan Cover Questionnaire • **Key Person Cover – if** cover to protect loss of profit or replacement cost. • **Business Loan Cover** – where cover is to protect company borrowings **Anti-Money Laundering Requirements** – Please refer to your account manager	**Board Resolution** The decision to effect cover should be minuted at a board meeting of the company. (See Sample Board Resolution)
Keyperson Applications: It is recommended that someone other than the "Keyperson" sign the application "for and on behalf of the company" as the proposer / plan owner.		

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY?

Where a key person arrangement is put in place and the sum assured paid from the policy is in excess of the profits to be replaced or the loan to be paid off, the original need for the policy, then any excess will be taxed depending on what that excess is used for.

If they use it to pay off a company loan then the proceeds are likely to be treated as a capital receipt for the company. So no liability to corporation tax arises for the company on that excess.

If the money is used to replace lost profits or other "revenue items", for example if the shareholder also worked in the business the money might be used to replace him or her, the excess is likely to be treated as a "revenue receipt" and subject to corporation tax.

UNDERWRITING CONSIDERATIONS – KEY PERSON INSURANCE

UNDERWRITING CONSIDERATIONS – KEY PERSON INSURANCE

These are general guidelines, based on Irish Life Assurance procedures. Please check with one of our underwriters, they will be happy to advise you of requirements on specific cases.

What do underwriting need to know?

- Most importantly, what is the reason for the key person cover?
- Is it to cover:
  - Business loan?
  - Expected loss of profits?
  - Replacement and recruitment costs?
  - Investment made into the business?
  - Venture capital investment?

WHAT FINANCIAL EVIDENCE WILL BE REQUIRED?

- The financial questionnaire will provide sufficient information in majority of cases.
- The financial limits for each company will determine the level of life cover, while a questionnaire just needs to be completed by you and the customer.
- Key pieces of information to cover include:
  - Background information on company and key person's role in the business
  - Why the person is considered key to the business?
  - How has the sum assured been calculated?
  - Salary over the past three years

- Trading figures for the business for the past three years
- Details of and reasons for other cover in the market on the key person.

WHEN WILL THIRD PARTY FINANCIAL EVIDENCE BE REQUIRED?

- For higher sums assured the financial questionnaire may need to be countersigned by the company secretary or a director. These are are detailed on the questionnaire.
- There may also be a requirement for a copy of the last two years' company accounts on certain higher sums assured.

ARE THERE ANY GUIDELINES FOR APPROPRIATE LEVELS OF KEY PERSON COVER?

- Loss of Profits: average of the last two years' gross profit (attributable to the key person).
- Replacement Costs: 2 - 5 x income; however up to 10 x income is generally acceptable.
- Business Loan: consider up to the full amount of the new business loan.
- Investor Protection: the amount of cover should not automatically match the level of investment, in an investor protection scenario.
- The sum of cover for all key persons should not exceed these multiples.

DO THE REQUIREMENTS DIFFER WHEN APPLYING FOR KEY PERSON COVER ON AN EXISTING UNSECURED LOAN?

- Yes, it is important to realise that a more detailed financial summary may be required.
- Clear explanation as to why the cover is being put in place now?
- Up-to-date details of the existing loan
- Reason for loan
- Current balance outstanding
- Term remaining
- Repayment history.
- An overall financial profile with clear reasoning as to why the cover is being put in place now will deliver the best results.
- Talk to an underwriter in advance of submitting the application.

WHEN WOULD YOU CONSIDER A TERM BEYOND TEN YEARS OR COVER WITH A CONVERSION OPTION?

- In a family run or small business, the key person(s) may have longer term commitments to the business.
- A business loan may be for longer than ten years, and the loan offer specifies cover to be in place on a key person(s).
- In both scenarios there is a justification either for a term beyond ten years, or shorter term cover with a conversion option.

WHAT IF THERE HAVE BEEN RECENT LOSSES IN THE BUSINESS?

- This does not automatically mean that we will not offer cover.
- Clear understanding as to the reasons for the cover now are very important.
- Provide a clear explanation as to the reasons for the financial loss in that year.
- A copy of the last two years' accounts would be helpful in these circumstances.
- Also recent trading figures, if business has returned to profit since last set of audited accounts.

WHAT IF THE KEY PERSON COVER INVOLVES A START-UP COMPANY?

- Background information (CV perhaps) on the customer's key skills would be very helpful
- Clear explanation as to how the sum assured has been calculated
- If there has been investment into the company, a copy of the investor agreement would be very helpful
- Summary of the business plan if available.

HERE ARE SOME MORE USEFUL LINKS:

Advisers guide to keyperson cover

Digital Client Checklist

Keyperson/business loan cover questionnaire

Advisers Quick Guide to Business Protection

Client Quick Guide to Business Protection

Documentation required to place business protection

WHAT IS SHAREHOLDER PROTECTION?

Shareholder protection is life assurance that is taken out to protect both business owners and their families in the event of the death of one of the business owners.

Life cover is effected on the shareholders. The proceeds of this life cover are intended to enable the surviving owners to buy back the share of a business that belonged to the deceased shareholder. This enables the surviving shareholders to retain control of the business. An agreement is put in place to ensure that this is what happens.

WHY IS THERE A NEED FOR SHAREHOLDER PROTECTION?

The sudden death of a shareholder in a private limited company can cause problems for both the surviving shareholders and the deceased's next of kin.

For the surviving shareholders the problems that can arise are:

LOSS OF CONTROL

If the deceased owned more than 50% of the company the other shareholders would now find themselves having to work with a new controlling shareholder, possibly the deceased's spouse or one of his or her children. There could be disagreements about how the business should be run, particularly if the new shareholder has no experience of the business.

REFUSAL TO SELL

The ideal outcome for the surviving shareholders may be to buy back the deceased's shareholding from his or her next of kin. But what happens if they refuse to sell?

LACK OF LIQUID CAPITAL

Even if the deceased's next of kin are willing to sell the surviving shareholders simply may not have sufficient liquid capital to buy the shares from them.

The surviving shareholders could borrow the necessary funds but they would then be faced with the burden of loan repayments for years to come.

SHARES PASS TO OUTSIDE PARTY

If the deceased's next of kin want to sell and the other shareholders are financially unable to buy then the deceased's next of kin may have to sell the shares to an outside third party, possibly a competitor or someone totally inexperienced in the business.

For the deceased shareholder's next of kin the problems that can arise are:

AN ILLIQUID ASSET

If the shares are not sold the next of kin may be left holding a 'paper asset' producing little or no income. The position could be even more serious if the shares also give rise to an immediate inheritance tax liability for the dependants.

NO READY MARKET FOR SHARES

The company's Constitution may give the other shareholders the right to block the sale of the shares to any outside party. The next of kin could therefore be forced into a 'fire sale' of the shares to the other shareholders at a low price in the absence of any other realistic offer for the shares.

A SOLUTION

Life assurance protection can provide a solution to the problems outlined above by providing liquid capital on the death of a shareholder to enable

- the deceased's shares to be bought back from his estate or next of kin, and
- the surviving shareholders to maintain ownership and control of the business going forward.

HOW IS SHAREHOLDER PROTECTION SET UP?

There are two ways to set up shareholder protection. The cover can be paid for personally by the shareholders: personal shareholder protection; or it can be paid for by the company: corporate shareholder protection.

The benefits of both the personal and corporate shareholder arrangements are the same:

- On a death the surviving shareholders retain control of the company
- The dependants of a deceased shareholder can realise their shares for cash shortly after death.

Each company's individual circumstances will determine which option, either personal or corporate shareholder protection, meets their needs, but whichever route you chose, all it's really about is putting life cover in place to ensure that the necessary funds will end up in the right hands at the right time, in both a cost efficient and a tax efficient manner.

PERSONAL SHAREHOLDER PROTECTION

The shareholders enter into a personal agreement with each other to buy out a deceased shareholder's shares in the event of his death.

Each shareholder personally effects life assurance cover, which is payable to the surviving shareholders on his death.

The surviving shareholders can then use the proceeds of the life assurance policy to buy out the deceased's next of kin in line with the agreement.

The 'personal' arrangement is relatively simple to arrange and the legal and taxation issues are more straightforward.

The main drawback of this solution is that the cost of the arrangement is borne personally by the individual shareholders out of after tax income. If the company funds a 'personal' arrangement, the cost is treated as a benefit in kind for each shareholder.

HOW DO I SET UP PERSONAL SHAREHOLDER PROTECTION?

There are two steps involved.

1. A shareholders' legal agreement, and
2. Life insurance plans must be effected on the shareholders.

SHAREHOLDERS' LEGAL AGREEMENT

With regard to the shareholders' legal agreement, this is usually a double option agreement. This means that it can be enforced by either party. It provides that, in the event of the death of a shareholder, either the surviving shareholders can exercise an option to compel the deceased's personal representatives to sell the shares to them at market value, or the deceased's personal representatives can compel the shareholders to buy the shares back at market value.

Some protection providers can provide draft agreements but it is recommended that the company shareholders consult their legal and tax advisers to draw up an agreement suitable to their particular circumstances.

STRUCTURING THE LIFE INSURANCE

There are two possible ways to set this up for personal shareholder protection. The method chosen will depend on the company's circumstances.

1. LIFE OF ANOTHER

- Each shareholder covered by the agreement effects life cover under a protection plan on the life of each of the other shareholders, for a sum assured equal to the estimated current value of their shareholding.
- Example: owners A and B share a business equally. A effects a plan (as proposer) on B's life for a sum assured equal to half the value of the business, and vice versa.
- The proposer / owner of each policy will pay the premium on the plan.
- The proceeds of the plan are, under current legislation, free from personal tax in the hands of the plan owner provided they have paid the premiumthe plan owner has paid the premium.
- This method can be cumbersome where there are more than two or three shareholders and can be inflexible if circumstances change, i.e. if a shareholder leaves the company.

2. OWN LIFE IN TRUST

- Each shareholder covered by the agreement effects a life assurance protection plan on their own life for a sum assured equal to the estimated current value of their share of the company.
- Each policy is written under trust for the benefit of the other shareholders covered by the legal agreement.
- Example: owners A, B and C have different sized shareholdings in a business. Each of them takes out a plan on his own life for the value of his own shareholding, in trust, for the benefit of "the surviving owners of ABC Ltd".
- Each shareholder pays the premium on his own plan.
- The 'own life in trust' method is flexible, in that the beneficiaries can be changed if the business protection agreement ceases or if a shareholder leaves the business.
- The plan proceeds will be exempt from tax in the hands of the surviving shareholders provided certain Revenue conditions are met.

TAXATION OF PLAN PROCEEDS – LIFE OF ANOTHER

CAPITAL GAINS TAX

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to capital gains tax under current legislation.

INHERITANCE TAX

On death the proceeds of the plan are paid to the plan owner where the arrangement has been made on a 'life of another' basis. There is currently no inheritance tax liability for the surviving shareholder provided he has paid the premium for the benefit he will receive.

TAXATION OF PLAN PROCEEDS – OWN LIFE IN TRUST

CAPITAL GAINS TAX

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to capital gains tax under current legislation.

INHERITANCE TAX

On death the proceeds of the plan are paid to the trustee(s) of the policy for the benefit of the surviving shareholders who are party to the arrangement.

The Revenue Commissioners have clarified that the proceeds of such a plan are exempt from inheritance tax in the hands of the surviving shareholders in certain circumstances, to the extent that they use the proceeds to purchase the deceased's shareholding.

SALE OF SHARES BY PERSONAL REPRESENTATIVES

The proceeds from the disposal of shares would be liable to capital gains tax in the hands of the personal representatives of the deceased. However, a liability to tax would only arise on any increase in the value of the shares from the date of death to the date of sale and as such is likely to be small.

It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

POSITION OF SURVIVING SHAREHOLDERS

Following the buy back, the total number of shares held by the survivor, and hence the total value of his shareholding, will increase. On a subsequent sale of shares by the survivor it is this increased value that will apply for the purposes of capital gains tax on such a disposal. Any chargeable gain arising will of course be reduced by the consideration paid for the shares at the time of death.

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHAREHOLDING?

How the excess is treated depends on whether the arrangement is set up as an 'own life in trust' arrangement or a 'life of another' arrangement.

Where a 'life of another' arrangement is used, because the plan owner paid the premium for the 'benefit' he/she received, the proceeds are completely tax free in his/her hands.

Where an 'own life in trust' arrangement is used, in line with the Revenue clarification, any surplus arising on the death of a shareholder will be liable to inheritance tax in the hands of the surviving shareholders who are beneficiaries of the life assurance policy.

PERSONAL SHAREHOLDER PROTECTION

WHAT HAPPENS AFTER THE BUY BACK?

The following example shows the position of the surviving shareholders following the buy back

Example

The company ABC Ltd is valued at €1,000,000 with 3 shareholders as follows

- Alan 40% €400,000 Life Cover
- James 40% €400,000 Life Cover
- Leanne 20% €200,000 Life Cover

3 own life in trust plans are effected.

The premiums are paid by each shareholder personally.

Alan dies - What happens?

The sum assured on Alans plan of €400,000

- pays €266,667 to James who buys shares from Alan's estate

AND

- pays €133,333 to Leanne who buys shares from Alan's estate

In line with the Legal Agreement.

The total number of shares held by the survivor, (the total value of his / her shareholding), will increase.

Shareholding after the buy back.

James's shares have increased 26.6 to 66.6

Leanne's shares have increased by 13.3 to 33.3

On a subsequent sale of shares by the survivor it is this increased value which will apply for the purposes of Capital Gains Tax. Any chargeable gain arising will of course be reduced by the money from the plan used to pay for the shares at the time of Alan's death.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

Sample Irish Life Agreements and Trust Forms.

1. Sample Personal Shareholder Legal Agreement

2. Sample Personal Shareholder Trust Form

CORPORATE SHAREHOLDER PROTECTION

Corporate shareholder protection is an arrangement between a private trading company and one or more of its shareholders whereby:

- The company enters into a legal agreement with a shareholder to buy back his shares from his personal representatives on death,

and

- The company effects a life assurance plan on each shareholder covered by such an agreement to provide funds on death to enable the company to complete the buy back. The company pays the premiums on each plan

HOW DO I SET UP CORPORATE SHAREHOLDER PROTECTION?

There are two steps:

- The legal agreement.
- The life assurance plans.

THE LEGAL AGREEMENT

With regard to the legal agreement there are three steps:

1. **Check the company's Constitution** to see if they allow the company to buy back its own shares. Amend them if necessary in order to proceed.
2. **Prepare the put/call option agreement** according to the company's particular circumstances.
3. **Have a meeting of the board** to approve the entering into of the agreements by the company and the shareholders.

1. CHECK CONSTITUTION

Power of a company to buy back its own shares

Before the company enters into a legal agreement to purchase the shares of a deceased shareholder, it needs to check its Constitution to ensure it is allowed to do this.

If the company's Constitution do not currently authorise the company to purchase its own shares then an amendment will be needed to include a provision authorising the company to purchase its own shares in accordance with the provisions of Part 3 Chapter 4 of the Companies Act 2014.

A special resolution of the members of the company may be necessary to amend its Constitution.

2. PREPARE PUT/CALL OPTION AGREEMENT

Once the Constitution have been amended, the company, in conjunction with its own legal and taxation advisers, then prepares a put/call option agreement suitable to its own particular circumstances. A separate agreement is required in respect of each shareholder whose shares are to be bought back on death.

On the death of a shareholder covered by such an agreement:

- The company can exercise a 'call' option to compel the deceased's personal representatives to sell the shares back to it at market value,

or

- The deceased's personal representatives can exercise a 'put' option to compel the company to buy the shares back from them at market value.

While Irish Life can provide you with a sample draft agreement it is recommended that the company and its shareholders should consult with its own legal and taxation advisers before drawing up an agreement appropriate to their own particular circumstances.

3. A MEETING OF THE COMPANY TO AUTHORISE THE PUT/CALL OPTION AGREEMENT

The authorisation for the company to enter each Agreement may need to be approved by a special resolution of the company. Section 105 of the Companies Act 2014 contains specific requirements in relation to the passing of a resolution in relation to the acquisition by a company of its own shares and should be consulted before the acquisition proceeds.

Under section 105 (5) of the Companies Act 2014 the special resolution will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote. Therefore to pass such a resolution in such circumstances, that shareholder would need to absent himself from that meeting, and allow the other shareholders to vote through the special resolution with regard to his/her shareholding.

COMPANIES ACT 2014

Part 3, Chapter 6 of the Companies Act 2014 allows a company to buy back its own shares in certain circumstances and subject to certain conditions. The information below is a summary only of the provisions of Part 3, Chapter 6 of the Companies Act 2014 and we recommend that you take appropriate legal advice before you proceed.

KEY PROVISIONS OF PART 3, CHAPTER 6 OF THE COMPANIES ACT 2014

- A company can only acquire its own shares 'out of profits available for distribution', or in certain cases, from the proceeds of a fresh issue of shares made for the purposes of the acquisition;
- The company must be authorised to acquire its own shares by-
  - the Company's constitution;
  - the rights attaching to the shares in question; or
  - a special resolution of the Company.
- A company cannot buy back all its own shares;
- A company can buy back its own shares under a contingent purchase contract, provided the contract has been authorised by a special resolution (e.g. a Put and Call Option Agreement under which the company could exercise a Put option on the death of a shareholder to buy back his shares would be considered to be a contingent purchase contract, the contingency being the death of the shareholder.); and
- Where a purchase of shares is proposed to be authorised by way of special resolution, the following provisions apply;
  - the proposed purchase contract must be made available to any members who request it or alternatively made

available for inspection by the members at the registered office of the Company from the date of the notice of the meeting at which the resolution to purchase the shares is proposed to be approved, and at the meeting itself;

- under section 105(5) of the Companies Act 2014 the special resolution will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote; and
- the terms of such a contract to purchase its own shares may only be subsequently varied revoked, or renewed by a further special resolution.

STRUCTURING THE LIFE ASSURANCE

- To put itself in funds to meet its potential obligations under the legal agreement, the company proposes for a protection plan on the life of each shareholder to be covered by such an agreement.
- The sum assured would normally be equal to the estimated market value of that individual's shareholding.
- The decision to propose for these plans would normally be minuted at a board meeting of the company, specifying the reason for effecting the plan, i.e. to buy back a shareholder's shares on death.

THE BENEFITS OF THIS ARRANGEMENT FOR THE SHAREHOLDERS ARE AS FOLLOWS:

- On a death the surviving shareholders retain control of the company, as the deceased's shares are bought back by the company and cancelled.
- The dependants of a deceased shareholder can realise their shares for cash shortly after death.
- The cost of the life assurance plans is borne totally by the company, and not by the shareholders personally.

WHAT ARE THE TAXATION IMPLICATIONS OF CORPORATE SHAREHOLDER PROTECTION?

TAXATION OF ARRANGEMENT

The life assurance plans are issued to the company who pays the premiums.

Under current legislation and Revenue practice it is the authors' opinion that the premiums would not be tax deductible for corporation tax purposes, while the proceeds are likely to be exempt from corporation tax.

TAXATION OF PLAN PROCEEDS

The purpose for which the plan is taken out, whether to cover a 'capital' or 'revenue' type loss, is the main consideration in establishing whether or not the proceeds will be taxed.

If the plan is part of a corporate share buy back arrangement then the proceeds are likely to be treated as a capital receipt for the company. The proceeds of a company owned plan, paid out on death or disablement, are exempt from capital gains tax. So no tax liability arises for the company on the proceeds of the life assurance plan.

TAX DEDUCTION FOR PREMIUMS

Generally speaking key person insurance premiums are not admissible deductions for corporation tax purposes. However the Revenue Commissioners have outlined the circumstances in which such premiums may qualify as admissible deductions:

a) the sole relationship is that of employer and employee,

b) the employee has no substantial proprietary interest in the business,

c) the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss, and

d) the plan is a short term insurance, providing only for a sum to be paid in the event of death.

Therefore premiums on key person insurance plans which do not meet all of the above requirements are not admissible deductions for corporation tax purposes.

On this basis, corporate shareholder insurance premiums for plans taken out as part of a shareholder protection arrangement are not admissible deductions for corporation tax purposes.

Premiums

Premiums paid by the company on corporate co-director's insurance will, under current Revenue practice, not be an allowable deduction for corporation tax purposes.

Revenue clarification on the taxation of key man insurance* policies, issued in July 1986, require four separate conditions to be met in order for premiums to be an admissible deduction for corporation tax purposes:

(i) The relationship between the company and the insured life is that of employer and employee. The term 'employee' in this context is taken as including a director.

(ii) The employee must have no substantial proprietary interest in the business. A person is regarded as having a substantial proprietary interest in a company if he has more than 15% of the ordinary share capital.

(iii) The life assurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss. Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions.

(iv) The life policy must be for a fixed short term, usually less than five years, and have no surrender value or investment content.

*The term 'key man' in the Revenue's clarification is taken as applying to a wide range of policies, where an employer takes out 'in his own favour' a policy insuring against death, sickness, or injury of an employee.

In this context life assurance policies effected by a company as part of a corporate shareholder protection arrangement can be taken as 'key man' policies.

In the case of premiums paid by a company as part of a corporate co-director's insurance it is likely that requirements (ii) and (iii) will not be met in most cases and hence the premiums will not be admissible deductions for corporation tax purposes.

TAXATION OF THE SALE OF SHARES BACK TO THE COMPANY BY PERSONAL REPRESENTATIVES - CAPITAL GAINS TAX TREATMENT

In certain circumstances, where a company buys back its own shares, any amount paid by the company in excess of the original issue price is treated as a 'distribution' rather than a capital gain.

The implications of this treatment with regard to a company purchasing its own shares would be that:

- **The vendor of the shares would be liable to income tax under Schedule F on the amount of the distribution plus attaching tax credit.**
- **The company would be obliged to pay advance corporation tax (ACT) to the Revenue on the payment.**

This income tax treatment would obviously make the purchase of shares by the company unattractive to most vendors.

However, provided certain conditions are met, for income tax purposes the sale of shares in an unquoted trading company back to that company can be treated as a disposal by the seller and subject to capital gains tax treatment, rather than as a distribution received from the company.

It is important that all parties are satisfied, before the put/call option agreement is entered into, that the sale of the shares by a deceased shareholder's personal representatives back to the company under the agreement is likely to qualify for capital gains tax treatment under Section 61, Finance Act 1991. This will involve checking that all seven conditions are likely to apply.

If capital gains tax (CGT) treatment does apply on the sale of shares to the company by a deceased shareholder's personal representatives, then any CGT liability would only arise in respect of any increase in value of the shares from the date of death to the date of sale.

As this period is unlikely to be more than a few months in most cases, with the time frame set out in the put/call agreement, no material capital gains tax liability is likely to arise in such circumstances.

It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

Section 176 of the Tax Consolidation Act 1997 provides that the purchase by an unquoted trading company of its own shares will not be treated as a distribution, subject to certain requirements being fulfilled. In this case the sale of the shares by the vendor to the company would instead be treated as a disposal for capital gains tax purposes.

The vendor must meet seven separate requirements to obtain the capital gains tax treatment on the sale of his/her shares to the company.

These can be summarised as follows:

(1) The company must be an unquoted (not publicly traded) trading company or the unquoted holding company of a trading group.

(2) The purchase of the shares by the company must be for the benefit of the trade.

(3) The purchase of the shares by the company must not be part of any scheme to enable the shareholders to benefit from the profits of the company without taking a dividend.

(4) The vendor of the shares must be resident and ordinarily resident in the State for the year when the shares are purchased. As of July 2014, the following rules apply in relation to residency.

- **a.** A person is resident for tax purposes in Ireland if they spend (a) 183 days in Ireland or (b) 280 days over two years i.e. current and preceding tax year, with a minimum of 30 days in each year. A day for residence purposes is one on which the person is in Ireland at any time in a day.
- **b.** The term ordinarily resident as distinct from resident refers to an individual's pattern of residence over a number of years. If you come to Ireland for the first time and remain resident for three consecutive tax years, you will become ordinarily resident from the beginning of the fourth tax year.

(5) The shares must be owned by the vendor for at least five years before the shares are purchased, or three years if the shares are being purchased on death. If the company is a relatively new company, less than three years old, then the pay-out by the company in respect of the shares may be treated as a distribution and therefore subject to income tax. The directors may be advised to proceed down the personal route in this case.

(6) The vendor and his/her associates - i.e. spouse or civil partner and children under 18 living with their parents - must reduce their shareholding by at least 25% as a result of the purchase.

(7) The vendor and his/her associates combined must have less than 30% of the equity of the company after the purchase.

All tests must be met to qualify for capital gains tax treatment

POSITION OF SURVIVING SHAREHOLDERS

Following the buy back, the shares bought by the company are cancelled. Thus, the number of shares held by the survivors will not increase, but their percentage ownership of the company will.

On a subsequent sale of shares by any of the survivors, it is this increased value that will apply for the purposes of capital gains tax on such a disposal. However, as the buy back of the shares was funded by the company and not the shareholders personally, any chargeable gain will not be reduced by the amount paid for the shares by the company at the time of the buy back.

Below is a quick comparison of both arrangements that may assist you.

	Personal Shareholder Protection	Corporate Shareholder Protection
Premiums paid by	The shareholder personally	The company
Plan owned / proceeds payable to	The shareholder personally / the trustee of the life assurance plan	The company
Suitable for 'young' start-up companies?	Yes	No – 7 rules for capital gains tax treatment on sale of shares back to the company
Suitable for Investment Companies?	Yes	No – 7 rules for capital gains tax treatment on the sale of shares back to the company
Suitable where non resident	Yes	No – 7 rules for capital gains tax treatment on the sale of shares back to the company
Suitable if all shareholders not participating?	Only shareholders who participate can benefit	Company can effect such cover on just one of its shareholders

CORPORATE SHAREHOLDER PROTECTION

WHAT HAPPENS AFTER THE BUY BACK?

The following example shows the position of the surviving shareholders following the buy back

Example

The company ABC Ltd is valued at €1,000,000 with 3 shareholders as follows. Issued share capital 100 shares.

ABC Ltd effects 3 protection plans. ABC Ltd is the plan owner. Premiums are paid by ABC Ltd.

- Alan 40 shares (40%) €400,000 Life Cover
- James 40 shares (40%) €400,000 Life Cover
- Leanne 20 shares (20%) €200,000 Life Cover

Alan dies - What happens?

Life cover on Alan of €400,000 is paid to ABC Ltd who buy shares from Alan's estate in line with the Legal Agreement.

RESULT - The shares bought back by the company are cancelled.

	Before		After	
	Shares %	Ownership	Shares %	Ownership
James	40	40%	40	67%
Alan	40	40%	-	-
Leanne	20	20%	420	33%

The shares bought by the company are cancelled. Thus, the number of shares held by the survivors will not increase, but, their percentage ownership of the company will. For example, James owned 40 of 100 shares, now he owns 40 of 60 shares of the business.

On a subsequent sale of shares by any of the survivors, it is this increased value which will applyfor the purposes of Capital Gains Tax. However, as the buyback of the shares was funded by the company and not the shareholders personally, any chargeable gain will not be reduced by theamount paid for the shares by the company at the time of the buy back.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHAREHOLDING?

Where the sum assured from the life assurance policy is greater than the value of the deceased's share in the business any excess over the amount paid to the next of kin goes back into the company. How this excess is taxed will depend on what the company uses it for.

If they use it to pay off a company loan then the proceeds are likely to be treated as a capital receipt for the company. So no liability to corporation tax arises for the company.

If the money is used to replace lost profits or other "revenue items", for example if the shareholder also worked in the business the money might be used to replace him or her, the excess is likely to be treated as a "revenue receipt" and subject to corporation tax.

WHAT DOCUMENTATION DO I NEED TO SET UP SHAREHOLDER PROTECTION?

This is for illustration purposes only. You should check requirements Irish Life underwriting department on 01 7041888.

Corporate Shareholder Protection	Irish Life Requirements	Company Requirements
The company takes out an individual protection plan on the shareholder and the company pays the premium.. **Life assured = shareholder** **Proposer / plan owner = company i.e. ABC Ltd** **Payer of premium = company i.e. ABC Ltd** The plan is NOT issued in trust. No trust form is required. (See how to complete the paperwork here)	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual shareholder. He / she signs declaration as life assured –'the first person'. The company is the 'proposer'/plan owner. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd' • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the company. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd'. This is not signed by the life assured. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**1. Company Law - Check Company's Constitution** – the company must be authorised to buy back its shares in its constitution, so it may need to be changed. A special resolution is required to change the company's constitution **2. Confirm Capital Gains Tax Treatment** – is likely to apply to the proceeds from the sale of shares back to the company **3. Corporate Share Purchase Agreement** – a separate "Put and Call" agreement must be prepared and completed between the company and each shareholder involved. **4. Pass a Special Resolution** - to authorise the company to enter into the share purchase contract with each shareholder. The special resolutions must be passed before each agreement can be signed.
Corporate Shareholder Protection: It is recommended that someone other than the "Life Assured" in each case should sign each of the applications "for and on behalf of the company" as the proposer / plan owner.		

SHAREHOLDER AND PARTNERSHIP PROTECTION: Where share purchase cover or partnership cover is being put in place, it is very important that the clients own legal advisor should advise on the suitability of our draft agreements for the clients own particular circumstances. In particular to ensure that any agreements are not in conflict with the company's constitution or the firms partnership agreement.

Personal Shareholder Protection	Irish Life Requirements	Company Requirements
OPTION 1 - Own Life in Trust		
The plan is put in trust for the 'other shareholders in the business' using a special shareholders trust form. **Life assured = shareholder personally** **Proposer / plan owner = shareholder personally** **Payer of premium = shareholder personally**	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual shareholder, he / she signs the declaration personally, <u>no separate proposer.</u> • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is individual shareholder, he / she signs the declaration personally. No separate proposer. **Shareholder Trust Form** - shareholder is settlor and trustee. He / she signs the trust form personally. The form must be signed and dated before the plan is issued. The beneficiaries are the 'other shareholders in the business named ABC Ltd'. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Shareholder Buy / Sell Double Option Agreement** – <u>one single agreement which is to be signed by all the participating shareholders.</u> *This draft agreement is available on www.bline.ie*
OPTION 2 - Life of Another		
A plan is required on the life of each individual shareholder. The proposer / plan owner in each case is the 'other shareholders of the business. The proposer pays the premium personally. **Life assured = shareholder personally** **Proposer / plan owner = other shareholders in the business** **Payer of premium = other shareholders in the business (the proposers)** The plan is NOT issued in trust. No trust form is required.	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – the shareholder who is the life assured signs the declaration personally as the 'first person'. The other shareholders are the proposers of the plan and sign as separate proposer / plan owner. • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the 'other' shareholders; they sign the declaration personally as a separate proposer. This is not signed by the life assured. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Shareholder Buy / Sell Double Option Agreement** – <u>one single agreement which is to be signed by all the participating shareholders.</u> *This draft agreement is available on www.bline.ie*

SAMPLE LEGAL AGREEMENT

Irish Life Sample Shareholder Legal Agreement

Some Useful links:

Advisers Quick Guide to Business Protection

Passing On Business Assets

Client Quick Guide to Business Protection

Retirement Relief from CGT

Shareholder Protection - An Advisers Guide

Corporate Shareholder tax treatment on sale of shares to a company

You and Your Business Booklet

Documentation required to place business protection

Digital Client Checklist

Keyperson Cover An Advisers Guide

Money Laundering - New Business requirements

PARTNERSHIP INSURANCE

NEED FOR PARTNERSHIP INSURANCE

A number of problems can arise for a partnership upon the death of one of the partners.

For the **surviving partners** the problems that can arise are:

The partners may be legally bound, either under their own partnership agreement or under the Partnership Act 1890, to pay an immediate capital sum to the deceased partner's estate in respect of:

- The deceased partner's share of undrawn profits for the year in which he/she died.
- The deceased partner's share of any partnership fixed assets, such as the office building.
- The balance of his/her capital or loan account.
- A payment in respect of the deceased partner's share of partnership goodwill.

The partners could, therefore, be faced with the prospect of finding an immediate capital sum to meet their obligations to the deceased partner's next of kin.

If they do not have sufficient liquid capital available, the surviving partners might have to borrow the necessary funds, but they would then be faced with the prospect of loan repayments for years to come.

If borrowing is not a realistic option at the time the partners might be forced to pay a pension to the deceased partner's dependants. This would also be a long term financial drain on the partnership.

For the **next of kin** the problems are:

The surviving partners may not be able to find the necessary capital immediately. In addition, some partnership agreements allow surviving partners to spread payments to a deceased partner's estate over a number of years, up to ten years in some cases, which may not be suitable to their needs. The problem is compounded by the fact that the next of kin cannot sell their partnership share to any other third party. They must therefore wait for payment from the surviving partners.

HOW DO I SET UP PARTNERSHIP INSURANCE?

A solution to the above problems is partnership insurance. It is arranged in two steps:

1. Partnership legal agreement

2. Life assurance

PARTNERSHIP LEGAL AGREEMENT

Most partnerships have a written partnership agreement covering the conduct of the business, and the rights and obligations of each partner. This agreement should ideally outline the precise entitlement of each partner's estate in the event of a partner's death.

LIFE ASSURANCE

The agreement would also normally include an obligation on each partner to effect a life assurance plan on his / her own life for the benefit of the other partners. This is to provide the necessary funds on death to enable them to make an immediate payment to his / her estate.

The life assurance may be arranged in one of two ways:

A) LIFE OF ANOTHER

Each partner covered by the agreement effects a protection plan on the life of the other partner/s. The cover on the policy should be equal to the estimated current value of the life assured's share of the partnership.

The owner of each plan will pay the premium on the plan.

- Example: Owners A and B share a business equally. A effects a plan (as proposer) on B's life for a sum assured equal to half the value of the business, and vice versa.

The proceeds of the plan are, under current legislation, free from personal tax in the hands of the plan owner provided he/she has paid the premium. This method can be cumbersome where there are more than two or three partners and can be inflexible if circumstances change, i.e. if a partner leaves the company.

B) OWN LIFE IN TRUST

Each partner covered by the agreement effects a protection plan on their own life for a sum assured equal to the estimated current value of their share of the partnership. Each plan is written under trust for the benefit of the other partners covered by the agreement.

Each partner pays the premium on his / her own plan.

The 'own life in trust' method is flexible, in that the beneficiaries can be changed if the business protection agreement ceases. The plan proceeds will be exempt from tax in the hands of the surviving partners provided certain Revenue conditions are met.

The correct approach will depend on each partnership's particular circumstances.

WHAT ARE THE BENEFITS OF PARTNERSHIP INSURANCE?

- Survivors have funds to buy the deceased's share in the firm without having to resort to borrowing or selling assets
- Survivors retain control of the business
- The dependants of a deceased partner are financially compensated.

WHAT DOCUMENTATION IS NEEDED TO EFFECT A PARTNERSHIP INSURANCE ARRANGEMENT?

This guideline is for illustration purposes only.

<table>
<tr><th>Partnership Insurance</th><th>Irish Life Requirements</th><th>Company Requirements</th></tr>
<tr><td colspan="3">OPTION 1 - Own Life in Trust</td></tr>
<tr><td>The plan is put in trust for the 'other shareholders in the business' using a special shareholders trust form.

Life assured = partner personally

Proposer / plan owner = partner personally

Payer of premium = partner personally</td><td>Protection Application Form / Declarations and Consents

• Declaration to Irish Life Assurance plc – life assured is individual partner, he / she signs the declaration personally, <u>no separate proposer.</u>
• Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001 – customer is individual partner, he / she signs the declaration personally. No separate proposer.

Partner Trust Form - partner is settlor and trustee. He / she signs the trust form personally. The form must be signed and dated before the plan is issued. The beneficiaries are the 'other shareholders in the firm named ABC'.

Underwriting Questionnaire - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire

Anti-Money Laundering Requirements – Please refer to your account manager</td><td>Partnership Buy / Sell Double Option Agreement – <u>one single agreement which is to be signed by all the participating partners.</u></td></tr>
<tr><td colspan="3">OPTION 2 - Life of Another</td></tr>
<tr><td>A plan is required on the life of each individual partner. The proposer / plan owner in each case is the 'other partners of the firm. The proposer pays the premium personally.

Life assured = partner personally

Proposer / plan owner = other partners in the firm

Payer of premium = other partners in the firm (the proposers)

The plan is NOT issued in trust.
No trust form is required.</td><td>Protection Application Form / Declarations and Consents

• Declaration to Irish Life Assurance plc – the partner who is the life assured signs the declaration personally as the 'first person'. The other partners are the proposers of the plan and sign as separate proposer / plan owner.
• Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001 – customer is the 'other' partners; they sign the declaration personally as a separate proposer. This is not signed by the life assured.

Underwriting Questionnaire - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire

Anti-Money Laundering Requirements – Please refer to your account manager</td><td>Partnership Buy / Sell Double Option Agreement – <u>one single agreement which is to be signed by all the participating partners.</u></td></tr>
</table>

WHAT ARE THE TAXATION IMPLICATIONS OF A PARTNERSHIP INSURANCE ARRANGEMENT?

TAXATION OF PLAN PROCEEDS – LIFE OF ANOTHER

Capital Gains Tax

The proceeds of the partnership life assurance arrangement payable on death are not liable to capital gains tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the plan owner where the arrangement has been made on a 'life of another' basis. Where the plan is arranged on a 'life of another' basis under current legislation there will be no inheritance tax liability for the surviving partner provided he/she has paid the premium for the benefit he/she will receive.

TAXATION OF PLAN PROCEEDS – OWN LIFE IN TRUST

Capital Gains Tax

The proceeds of the partnership protection arrangement payable on death or disablement are not liable to capital gains tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the trustee(s) of the plan for the benefit of the surviving partners.

The Revenue Commissioners have clarified that the proceeds of such a plan are exempt from inheritance tax in the hands of surviving partners in certain circumstances, to the extent that they use the proceeds to purchase the deceased's share of the business.

TAXATION ON SALE OF SHARES BY PERSONAL REPRESENTATIVES

The proceeds from the disposal of the share in the partnership would be liable to capital gains tax in the hands of the personal representatives of the deceased. However a liability to tax would only arise on any increase in the value of the business from the date of death to the date of sale and, as such, is likely to be small.

It is important to remember that the value received for the deceased partner's share in the business could give rise to an inheritance tax liability for the deceased's family.

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHARE OF THE BUSINESS?

How the excess is treated depends on whether the arrangement is set up as an 'own life in trust' arrangement or a 'life of another' arrangement.

Where an 'own life in trust' arrangement is used, any surplus arising on the death of a partner will be liable to inheritance tax in the hands of the surviving partners who are beneficiaries of the life assurance policy.

Where a 'life of another' arrangement is used, because the plan owner paid the premium for the 'benefit' he/she received, the proceeds are completely tax free in his/her hands.

Irish Life Sample documents:

1. Sample Partnership Insurance Legal Agreement
2. Sample Partnership Insurance Trust Form

WHAT FINANCIAL EVIDENCE WILL BE REQUIRED TO UNDERWRITE A SHAREHOLDER/PARTNERSHIP COVER PLAN?

- Irish Life have a specific partnership / share purchase cover questionnaire that once completed will provide sufficient information in the majority of cases.
- Depending on the financial limits, this questionnaire should be completed by you and your customer. Check limits and requirements with your account manager or with underwriting. The limits are printed on the questionnaire.
- Key pieces of information to cover include
  - A clearly outlined reason for the partnership protection
  - Levels of cover that are appropriate to their % share and value of the business
  - Details of and reasons for all other cover on the partners
  - General background information on the business
  - How the valuation of the business has been calculated
  - Trading figures for the previous three years.

WHEN WILL THIRD PARTY FINANCIAL EVIDENCE BE REQUIRED?

- For life cover in excess of a certain limits, the underwriters will require the financial questionnaire to be countersigned by the company secretary or a company director. These limits are printed on the questionnaire.
- There may also be a requirement for a copy of the last two years' business accounts.

DO UNDERWRITERS USUALLY REQUIRE SIGHT OF PARTNERSHIP AGREEMENTS?

No, once it is confirmed that there is one in place or being arranged that is generally sufficient for underwriting.

WHAT IF THE LEVEL OF COVER DOES NOT MATCH THE VALUE OF THEIR SHARE OF THE PARTNERSHIP?

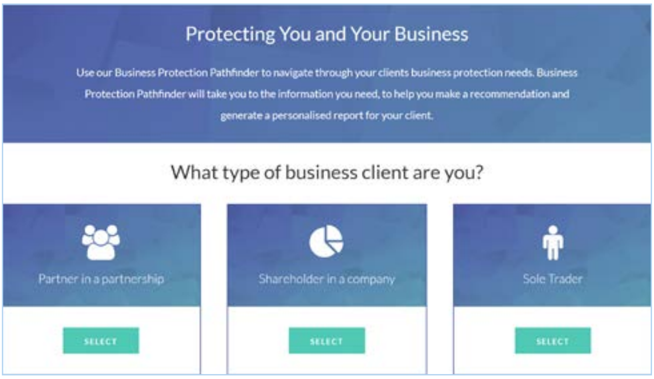
- If the cover is less than the valuation of their share of the partnership a brief explanation should suffice, but check with the underwriting department.
- Cover of up to 110% of the value of the shareholding may be acceptable in circumstances where there is clear evidence that the value of the business is likely to grow.

WHAT IF THERE HAVE BEEN RECENT LOSSES IN THE BUSINESS?

- This does not automatically mean that we cannot offer cover.
- Provide a clear explanation as to the reasons for the financial loss in that year(s).
- A copy of the last two years' accounts would be helpful in these circumstances. Also recent trading figures, if business has returned to profit since last set of audited accounts.

BUSINESS PROTECTION PATHFINDER

This unique, easy to use tool helps you to determine the most appropriate business protection structure for your clients, so that you can put in place any required cover with as much ease as possible. You can choose to use our supporting legal agreement templates.



It will:

1. Help you **identify the protection needs** for your business clients,
2. Guide you through the steps to **select the most tax efficient business protection arrangement** to suit those needs,
3. Provide you with the **necessary information and the relevant paperwork** to effect the contract with Irish Life, and;
4. Generate a **personalised report** for your clients.

With a simple step by step approach and minimal data required the Business Protection Pathfinder will allow you to create a detailed, personalised and professional report for your client. Each of the reports detail:

- the structure,
- the life assurance,
- the legal agreement requirements and;
- the tax implications for that arrangement.

The Business Protection Pathfinder's flexibility ensures that you can further tailor the report by giving you the option to add details such as;

- the exact needs and objectives for the business, and;
- a summary of your overall recommendation.

The Business Protection Pathfinder will assist you in making recommendations for your client and create a personalised report to meet your clients specific business circumstances.

SUPPORTS FROM IRISH LIFE

Through our supports and tools we can assist you in easily providing:

- A complete review of your business clients' circumstances.
- A tailored solution for your clients, suited to their business and their circumstances.
- A personalised report which outlines all of their legal and taxation issues.
- Sample legal documents and all the paperwork needed to complete the arrangement.

Within our Business Protection Supports you will find a broad suite of options to help you to advise your business clients.

- A streamlined underwriting approach for business protection to ensure a quick and easy service for your valued clients, with direct access to senior underwriters.
- Access to our Advisory Services Team to assist you on all aspects of structuring and planning business protection and other protection issues.
- Business Protection Adviser Guides: Comprehensive guides for you on Shareholder Protection, Keyperson Insurance and Partnership Insurance.

HOW TO COMPLETE

1. How to complete the paperwork for a company owned plan.
2. Shareholder Trust - How to complete
3. Partners Trust - How to complete
4. Sample Board Resolution

1. HOW TO COMPLETE THE PAPERWORK FOR A COMPANY OWNED PLAN.

This document outlines how to complete the Protection application and declarations for a Corporate Shareholder Protection plan or a KeyPerson Protection plan where the proposer is a corporate entity.

Where the company is the plan owner on a Business Protection arrangement you need to clearly show this in the application form and plan declarations.

In this document we will deal with how to complete the 'Person to be Covered' and the 'Plan Owner Details' sections of the application form, together with help on how to complete the plan Declarations.

The other sections of the application form relate to FATCA / CRS reporting and advice on these sections, and any additional forms you might need, can be obtained from your Account Manager.

Protection Application Details

Firstly select your product in the Product Selection section, then, in Section 1(a) Personal Details First Person to be Covered fill in the details for the key individual or the shareholder who is to be the life assured under the plan.

This person is NOT the plan owner. This is the person on who's death or serious illness the company require funds.

1(a). Personal Details First Person to be Covered

Title (Mr/Mrs/Ms etc)

First Name

Surname

Date of Birth (dd/mm/yyyy) / / Age Next Birthday

Gender Male Female

Relationship Status Single Married Widowed Separated

Divorced Registered Civil Partner

Country of Birth

During the last 12 months, which of the following best describes your smoking habits:

> Smoker Occasional smoker Used nicotine replacement products or E-cigarettes Non Smoker

Previous Surname (if any)

Occupation

> Level of Earnings € each year

Address

Mobile Number

Next move to Section 1(c) this is the Plan Owner Details section

Insert the name and address of the company in this section, together with the reason for the cover i.e. Keyperson Cover or Shareholder Protection

If there are no separate 'plan owner' details inserted then it will be assumed that the contract is to be owned by the named life / lives assured personally.

Remember The lives assured will not be the legal owners of the plan. The company is the legal owner of the plan.

1(c). Plan Owner Details

Will the owner of this plan be different from the life/s covered? Yes ◯ No ◯

Plan Owner Title (Mr/Mrs/Ms etc)

Plan Owner First Name

Plan Owner Surname

Date of Birth (dd/mm/yyyy) / /

Mobile Number

Home/Work Number

Email

> Nationality

Insurable interest / Reason for Cover

Company Name (if owner is a company)

Plan Owner Address

Is the plan to be issued in trust? Yes ◯ No ◯

Protection Plan Declarations
Section A.

This person is NOT the plan owner. This is the person on who's death or serious illness the company require funds.

A. Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001

WARNING

If you propose to take out this plan in complete or partial replacement of an existing plan, please take special care to satisfy yourself that this plan meets your needs. In particular, please make sure you are aware of the financial consequences of replacing your existing plan. If you are in doubt about this, please contact your insurer or insurance adviser.

Please complete this section by ticking the appropriate box:

> Yes, this plan is replacing an Irish Life plan ◯

Yes, this plan is replacing a plan from another life company ◯

No, this plan is not replacing another plan ◯

Existing Plan Number

Declaration of Insurer/Financial Adviser

I hereby declare that in accordance with Regulation 6(1) of the Life Assurance (Provision of Information) Regulations, 2001

(Customer name and address)

has been provided with the information specified in Schedule 1 (Customer Information Notice) to those Regulations and that I have advised the customer as to the financial consequences of replacing an existing plan with this plan by cancellation or reduction, and of possible financial loss as a result of such replacement.

> Signature of Financial Adviser ✗

Date (dd/mm/yyyy) / /

The "Declaration of Customer" needs to be signed by an authorised signatory "for and on behalf of" the company

Declaration of Customer:

I confirm that I have received in writing the information specified in the above declaration.

> Plan Owner 1 ✗ Plan Owner 2 ✗

Date (dd/mm/yyyy) / / Date (dd/mm/yyyy) / /

Section B.

The "Declaration of Customer" in the Plan Declaration section also needs to be signed by an authorised signatory "for and on behalf of" the company

Declaration of Customer(s)

I have read and understood the Plan Declaration and have also received the product booklet.

> Plan Owner 1 ✗ Plan Owner 2 ✗

Date (dd/mm/yyyy) / / Date (dd/mm/yyyy) / /

The "Life Assured" Declaration in the Plan Declaration section must be signed by the life assured, the key individual or the shareholder to be covered.

If different from above:

> Life Assured 1 ✗ Life Assured 2 ✗

Date (dd/mm/yyyy) / / Date (dd/mm/yyyy) / /

2. SHAREHOLDERS TRUST FORM - HOW TO COMPLETE

For use on a plan taken out as part of a personal shareholder protection arrangement

Insert the name and address of the Settlor (plan owner / life assured) along with the date of the protection application CAB and data protection form and the type of plan being proposed for e.g Term Life Cover plan. This information is to ensure that the trust can be linked to the plan.

I (shareholders name) ____________of (address) ____________________ have submitted a proposal

dated (date of proposal) _______________to Irish Life Assurance plc

Next the name and address of the business on which the personal shareholder protection arrangement is being put in place. (not the individual shareholders)

(a) the shareholders for the time being of (name of company) __________________________

having its registered office at (address of company)

____

and,

The name of the individual with the power to appoint a trustee after the death of the settlor. This can be one of the other shareholders in the business or a solicitor acting for the business.

5. As settlor, I shall have the power by deed during my life to appoint a new or additional trustee or trustees and shall also have power by deed to remove any trustee. The power of appointing a new trustee or trustees after my death in any case where there is no trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a trustee after the settlor's death) ____provided that, as settlor, I may at any time or times by notice in writing to the company vest the said power of appointing a new trustee or trustees in any person or persons in substitution for the person or persons in whom it has previously

Finally the trust will be invalid if it is not signed, dated and the signature witnessed. The trust form must be dated on or before the date of the protection application CAB and data protection form.

Date:	/ /
Signature of Settlor:	
Signature of Witness:	

3. PARTNERS TRUST FORM - HOW TO COMPLETE

For use on a plan taken out as part of a partnership insurance arrangement

Insert the name and address of the Settlor (plan owner / life assured) along with the date of the protection application CAB and data protection form and the type of plan being proposed for e.g Term Life Cover plan. This information is to ensure that the trust can be linked to the plan.

I (partners name) ____________of (address) ____________________ have submitted a proposal dated (date of proposal) _______________to Irish Life Assurance plc

Next the name and address of the firm on which the partnership insurance arrangement is being put in place. (not the individual partners)

(a) the partners for the time being of the firm known as (name of firm) __________________________
carrying on business at (address of firm)
____
and their successors in business,

The name of the individual with the power to appoint a trustee after the death of the settlor. This can be one of the other partners in the firm or a solicitor acting for the firm.

5. As settlor, I shall have the power by deed during my life to appoint a new or additional trustee or trustees and shall also have power by deed to remove any trustee. The power of appointing a new trustee or trustees after my death in any case where there is no trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a trustee after the settlor's death) ____provided that, as settlor, I may at any time or times by notice in writing to the company vest the said power of appointing a new trustee or trustees in any person or persons in substitution for the person or persons in whom it has previously

Finally the trust will be invalid if it is not signed, dated and the signature witnessed. The trust form must be dated on or before the date of the protection application CAB and data protection form.

Date:	/ /
Signature of Settlor:	
Signature of Witness:	

4. SAMPLE BOARD RESOLUTION

We reccomend the company pass a Board Resolution recording their intention to take out Keyperson Insurance. The resolution should cover the purpose for which the plan is being taken out.

Sample text

"That the company shall effect a life assurance plan on the life of Mr X in the sum of €XXX,XXX. The purpose of this insurance is to (meeting the financial loss which the company is likely to suffer) / (protect company borrowing which may be repayable) in the event of his death whilst in the service of the Company.

Mr Y is hereby authorised to complete all necessary documentation on behalf of the company and it is hereby declared that the proceeds of this insurance are intended for the protection of the Company itself and are not for the benefit of Mr X or his family."

PENSIONS
INVESTMENTS
LIFE INSURANCE

Irish Life

ILA 15846 (NPI 02-21)