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**ASIC Compliance
—is your firm up
to date?**

NCS Newsletter

Welcome to the March issue of our quarterly newsletter. This issue has details of our Training Courses for the year and some timely reminders for the last quarter of this financial year.

Our feature article is on “Business Succession—Managing Loans” written by Peter Cain from Irongroup Lawyers.

Sue is now getting very excited about her trip to China from 9 March to 27 March. She'll tell you all about her adventures when she gets back. Cheers!

NCS Training Courses for 2009

Our **Introduction to Corporate Secretarial Practice and ASIC Compliance** has proved to be most successful in the market place. This year we have planned for the current, calendar year, to offer this course in some regional centres such as Geelong, Ballarat and Frankston and also some interstate venues. Please see below for a schedule of course dates and venues for 2009:

Victoria

Thursday, 23rd April Gateway on Monash - Notting Hill

Thursday, 21st May Geelong Conference Centre - Geelong

Friday, 17th July Victoria University - Footscray

Thursday, 23rd July Coastal Conference Centre - Frankston

Thursday, 6th August Venue to be confirmed - Ballarat

Thursday, 20th August Asia Pacific Business Centre - Kew

Thursday, 10th September Punt Hill - Burwood

New South Wales

Friday, 8th May Venue to be confirmed - Sydney

Queensland

Friday, 5th June Venue to be confirmed - Brisbane

South Australia

Friday 19th June Venue to be confirmed - Adelaide

Outside Victoria

If you are interested in a training seminar at a venue closer to you or in your own offices, please contact our office to register your interest.

For more details go to www.ncs-services.com.au/asic-compliance-training.html

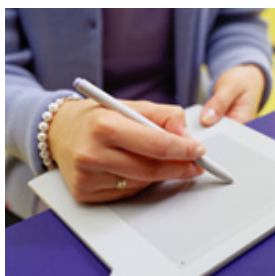
Advanced Corporate Secretarial Practice & ASIC Compliance

This training course is only run upon request. This course is suitable for staff who are responsible for Public Companies, Foreign Companies registered in Australia or Companies limited by Guarantee.

For any enquiries relating to our training courses, please contact our office on (03) 9466 9990 or visit our website at www.ncs-services.com.au

"Business Succession" by Irongroup Lawyers

For more information, please call Peter Cain at Irongroup Lawyers on (03) 8621 9000



Helping clients plan exit strategies from their business

Business Succession—Managing Loans

Helping business clients plan their exits...

In the current economic climate, we are finding more advisers moving into business succession planning to help clients in partnerships plan for their involuntary exit by putting insurance funding in place for death, TPD or trauma.

A critical part of this process lies in supporting it with a legal agreement to ensure the equity changes hands when the insurance is paid out. Here at Irongroup, we not only work with the clients to prepare the Buy Sell Agreement, we can also work with the Advisers to sort out some of the financial issues including what should happen to loan accounts. This review focuses on some of the common problems and solutions involved in managing those loans.

Loan accounts

External Debts
Unpaid distributions
\$ borrowed for working capital
\$ loaned to business owners

Most common solutions

Key person policies—owned by the business
Loan forgiveness clauses in Buy Sell Agreement
Key Person policies—owned by the business
Extra insurance cover—usually self-funded

Case Study: Mark & Steve

Mark & Steve have been in business together for almost 10 years. They have worked hard and it has grown steadily. They have agreed on a plan which is being funded by insurance and implemented with a Buy Sell Agreement. The Adviser has identified the insurance funding they need to cover the business value and an amount for CGT. The next question is - how do they want to handle their outstanding loans?

External Debt

Scenario 1: Debt owed to a bank with guarantees in place

The business has a \$500K overdraft, for which the bank required Mark & Steve to sign personal guarantees. Let's say Steve dies and his estate receives his insurance payout. The Buy Sell Agreement ensures Steve's share in the business passes over to Mark (at no cost), with Steve's estate liable for any CGT payable on the transfer of those shares. (That was also covered by insurance funding). But what happens to the debt owed to the bank?

Depending on the bank's loan agreement, the bank could call up the loan as a result of the death. However even if it doesn't, Steve's executor still has a problem because she can't wind up the estate until the guarantee is extinguished. Potential problems all round. Does the business have enough money to repay the loan? Probably not. Does Mark have enough money to repay it himself? Possibly not. So how can you help sort this out?

Most common solution: What most clients do in this scenario is have the business take out key person policies on both Mark & Steve (for say Life & TPD) for the full amount of the debt (plus extra for CGT on TPD cover). So if Steve dies, the business receives the \$500K, the loans are repaid and the guarantees are extinguished.

Internal Debts - business owes money to the owners

Scenario 2 Unpaid distributions

As a business grows it often needs working capital so whilst a distribution may have been declared, no money may have been taken. These debts can build up and are often known as beneficiary loans - here the business owes both Mark & Steve \$400K each.

Let's say Mark suffers a TPD, receives an insurance payout which triggers the Buy Sell Agreement and he exits the business. But what happens to the \$400K beneficiary loan owed to Mark? Mark still has a right to the funds and could sue the business. Can the business afford to repay it?

Most common solution: The business can take out key person insurance to cover this but clients usually choose to forgive these particular loans. We ensure this is covered with 'beneficiary loan forgiveness clauses' in our Buy Sell Agreements.

What will happen to your business if a Partner dies or is incapacitated?



Sole Directors / Shareholders should have a Will.



Business Succession—Managing Loans (cont)

Scenario 3 Money borrowed for working capital

Rather than borrow from a bank, the business borrows from Mark & Steve. Mark provided \$250K from his own funds and Steve \$350K from his funds.

Let's go back to the scenario where Steve has died and the Buy Sell Agreement has been triggered. Steve's estate receives the insurance and pays the CGT and his share in the business transfers over to Mark.

What happens to the \$350K Steve is owed? The business will either have to fund it from retained profits, borrow it or Mark could fund it from his own assets. Are the clients happy with this possibility? Usually not.

Most common solution: When money has been lent to the business from personal funding, the clients usually want to see it being repaid when they exit. So again, key person policies (usually owned by the business) could be written to cover these amounts.

Internal Debts - the owners owe money to the business

Scenario 4 Money loaned to business owner

Turning the above scenario around this time, Steve & Mark have each borrowed \$250K from the business to buy holiday homes. Again Steve dies, the insurance is paid to the estate, CGT paid and his shares transfer over to Mark. The business however is still entitled to the \$250K from Steve's estate. What now?

Most common solution: These amounts are usually added to each individual's Life & TPD policies. So if the business is worth \$1m, Steve & Mark would each have \$500K cover for the business value, \$150K for possible CGT and \$250K for these loans - total cover of \$900K.

Whilst these are some of the more common solutions to these issues, we discuss all options with clients, and of course where extra insurance is required, with their Advisers, when liaising with them to prepare their Buy Sell Agreement.

Irongroup's service options for Advisers

1. Referrals

If your clients need estate planning or business succession advice, email their name & phone number to referrals@irongroup.com & we will contact them obligation free to discuss our fixed fee services.

2. Irongroup training for Advisers

We offer lunchtime seminars or full day workshops. For more information visit www.irongroup.com

3. Irongroup Alliance Partner advice model

If you want to grow your practice by offering an in-house estate planning or business succession planning service you may like to consider licensing our system. Email us on info@irongroup.com or call 03 8621 9000 for more information.

The Importance of Sole Directors/Shareholders Having a Will!

If a sole director of a company dies without leaving a will, the death will usually leave the company without any person properly authorised to immediately manage the company. If the sole shareholder dies, the directors can usually continue to manage the company until the beneficiaries under the will have the shares transferred to them. Where the sole director is also the sole shareholder, the risk of uncertainty is much greater.

Section 201F of the Corporations ACT 2001 relates to the event of death of a single director/shareholder and provides that the executor or other personal legal representative appointed to administer the deceased's estate may appoint a new director to the company.

Spend some time doing 3 budget forecasts for the next financial year:

1. **Best case scenario.**
2. **Average case scenario**
3. **Worst case scenario.**



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The Importance of Sole Directors/Shareholders Having a Will! (cont)

Where there is no will, however, a near relative or other person would have to apply to the local Supreme Court for letters of administration to manage the estate. This could take some time — possibly weeks, if not months. Alternatively, in the absence of any immediate relatives, the Public Trustee may step in and administer the deceased estate but this process can also take months.

During that period when there is no director, the company will not be able to operate, trade, pay suppliers, debtors or staff. The company cannot be sold or wound up until all beneficiaries can be paid out. It is much more prudent to have a Will!

Tax Planning & ASIC Compliance

During this time of economic uncertainty, it will be more important than ever to plan for the end of the 2008/2009 financial year.

Many companies will be seeking appointments with their accountants to do some tax planning, revise budgets and profit projections and implement strategies to help through a difficult time.

Some hints for ASIC Compliance issues:

- Compare your corporate compliance software database with your tax database. Make sure all your client's companies are input on your corporate compliance software.
- Check for any discrepancies in addresses or company details.
- Delete "No Longer Clients" from your corporate compliance software and lodge a Form 361 to remove companies from your ASIC Agent List.
- Don't forget to prepare and lodge a Form 362 to add new companies to your ASIC Agent List.
- Check you have Auditor details for all PUBLIC companies.
- Foreign companies registered in Australia—have they lodged a Form 405 or 40 in this calendar year?
- Pty Ltd Companies wholly owned by foreign companies—check when the last financials were lodged with ASIC or apply to ASIC for an exemption.
- Large Proprietary Companies—check when the last financials were lodged.

Changes to Financial Reporting Relief for Wholly Owned Entities

Changes to Class Order (CO 98/1418) and the ASIC Form 389 to apply for an exemption to lodge financials for wholly owned subsidiary companies were implemented in 2008.

Prior to this change, a Form 389 had to be lodged for each company applying for the relief **EVERY YEAR!**

However, **now a Form 389 for each company only has to be lodged once.** When a company no longer wishes to take advantage of the relief, a "Form 399 Opt Out Notice by Wholly Owned Entity Relieved from Financial Reporting Obligations" must be lodged within 4 months after the end of the financial year.