

I Can't Work With My New Business Partner

Alice and Regina have set up a company entitled A & R Gifts Sdn Bhd to sell corporate gifts to different companies. The company's clientele consists mainly of insurance companies and banks. Since Alice had worked in a bank and Regina was from the insurance industry, they were able to use their contacts in the industry to gain business.

Initially building the business was extremely difficult but after five years, the business flourished and they estimate it to be now worth RM 10 million. Both Alice and Regina's business objectives are the same which is targeting mainly financial institutions and creation of corporate gifts rather than focusing on the public at large. Alice is single whereas Regina is married to Chia, who runs a small company manufacturing preserved fruits.

Regina was diagnosed with cancer but continued to work with Alice. Later, Regina passed away. In her will, she had given all her shares in A & R Gifts Sdn Bhd to her husband, Chia.

As months passed by, both Alice and Chia could not work together since both did not share common business objectives. Chia wanted to include the preserved fruits as part of the corporate gift in order to promote his business whereas Alice felt otherwise. Chia wanted to sell the gifts to the public at large whereas Alice still wanted to focus on the financial institutions.

They had different approaches in managing the company as well. Whereas Alice wanted all instructions to be documented, Chia preferred to use verbal instructions which often led to miscommunication between them, their employees and also their clients resulting in complaints regarding quality and timely delivery. Business began to deteriorate and Alice decided to sell her shares to Chia. However, both of them could not agree on the purchase price. Finally, both decided to liquidate the business. What used to be worth RM 10 million and growing in value was now worth very little.

Situations such as the above often happens when business partners no longer see "eye to eye". In Alice and Chia's case, both had different objectives and approaches. Both could not agree on the purchase price of Alice's shares. As you can see the business suffers and is devalued due to the disagreement.

What Alice and Regina could have done was to create a Business Value Protection Trust (BVPT) to prevent such problems from arising. The arrangements in a BVPT would require Alice and Regina to sign a buy sell agreement, execute separate trust deeds and a power of attorney.



A Monthly Article by
Rockwills Trustee Berhad

The buy sell agreement between Alice and Regina will contain the terms of the sale and purchase of the shares including the purchase price and obligations of the shareholders. The trust deed among other things will state the duties and obligations of the trustee company in handling the transfer of shares and monies for the exchange of the shares, whereas the power of attorney will authorize the trustee company to transfer the shares of the outgoing shareholder to the surviving shareholder as the purchaser.

With BVPT both Regina and Alice can ensure Regina's share will be transferred by the trustee company to Alice quickly without having the need to obtain Probate or Letters of Administration from the High Court, which normally takes about 6 months or longer. Without the trust and power of attorney in the BVPT, it will take many months before Regina's shares are distributed to her beneficiaries and for Alice to receive her shares.

In order for Alice and Regina to create a proper BVPT, there are a few issues they will have to resolve. Firstly, they have to agree on the value of their business. This can be done by way of a formal valuation conducted by preferably by an independent accountant using various valuation methods or Alice and Regina can agree on a formula, e.g. a multiple of profit, which is then used to determine the value of their shareholding. The valuation exercise can be conducted regularly at the agreed interval stated in the agreement. Commonly, the review of the value is done every 1 to 2 years.

Secondly, once the agreed value is determined, Alice and Regina would have to think of a way to fund the purchase of the shares. The easiest way is to insure both Alice and Regina based on the value of their shareholding. If the business is valued at RM10 million and they are equal partners, an insurance policy worth RM 5 million each will have to be purchased by them. This can only be done provided the partners are eligible to be insured. If not, there are still other ways to fund the purchase. Alice and Regina would be able to pay for the insurance premium using the dividend proceeds received by them as shareholder and/or from their Director's fee. However, there are legal and tax pitfalls that need to be considered in funding the insurance premium.

Thirdly, Alice and Regina need to agree the trigger event when a sale of the shares is to take place in the future based on the agreed price. Sometimes, the shareholders may want to include permanent disability or retirement as one of the triggers.

What would be the benefits for Alice and Regina to create a BVPT? These would be as follows:

- a) With BVPT, Alice and Regina as the business owners will be guaranteed the sale of their shares at a full and fair value.



A Monthly Article by
Rockwills Trustee Berhad

- b) At the same time it prevents Chia from being part of the business or selling Regina's shares to outsiders.
- c) With the inclusion of a power of attorney in the BVPT, the transfer of the outgoing shareholder's shares is made easier without the need to obtain Probate or Letters of Administration. There is no need to wait for the personal representative of Regina to act or worse still when the outgoing business owner is disabled or in coma, to wait for his recovery to sign the share transfer form.
- d) As the business or the company is a not a public listed company, it is difficult for the business to be sold to an outsider. BVPT ensures that non-liquid stock/interest is easily converted to liquid income providing a fund for Regina or her loved ones to use during their time of need.
- e) Regina can ensure that the proceeds of the sale of her shares are distributed according to her wishes and prevent it being misspent by her beneficiaries.
- f) A & R Gifts Sdn Bhd can carry on business like normal and the bankers and suppliers/creditors can be assured of the existence of the business without having to demand for immediate payment. At the same time, any key employees of the business will be willing to remain due to the smooth transfer of ownership to the remaining business owners.

If only Alice and Regina created a BVPT, Alice will not have to have the unpleasant experience of managing the business with Chia and lose so much in value.