

# “Intra-Business” Agreements (1)

1. **Shareholder** or other stakeholder – covering contribution, profit sharing, future shareholder exit & dispute resolution
2. **Service** – provision of support services by related entity
3. **Loan** – to or from business (secured/unsecured)
4. **Licence or franchise** of intellectual property, eg trade mark, registered design, patent or copyright

## ***“Intra-business” Agreements***

These 8 types of intra-business agreements are agreements that are frequently recommended whenever:

- There are more than one principal operating an owner controlled business; or
- (Because of asset protection or tax considerations), ownership of assets such as premises or equipment are separated from the trading business itself.

For example, ownership of business premises in a self managed superannuation fund will require the rental agreement for the premises to be on commercially realistic terms. Other assets that are frequently held separately from a trading entity include:

- Retained profits;
- Plant and equipment; and
- Trade marks, patents, registered designs and other intellectual property – usually subject to a licence or franchise agreement.

### ***Issues for Minority Stakeholders***

The worth of an investment in the business by minority stakeholders will be very much affected by whether certain of the key issues in a shareholder agreement have been addressed. A potential minority stakeholder would usually want to know that:

- Key principals have a commitment to the business;
- Remuneration levels for majority stakeholders and their associates will be capped;
- A dividend or distribution policy is in place;
- Contingencies such as incapacity are addressed and funded; and
- There will be a market for the investment when the time comes to realise the investment, eg a sell option and agreed formula are in place.

## “Intra-Business” Agreements (2)

5. **Lease of premises**, eg from SMSF or other related entity
6. Future **realisation** of co-owned assets, eg premises
7. Insurance funded **involuntary departure**, eg because of death or permanent incapacity
8. Funded **retirement departure**

### **Types of Intellectual Property**

The types of intellectual property that are granted legal recognition vary from country to country. Other than **trade marks** (ie distinctive signs or indicators that indicate the origin of goods and/or services, typically comprising one or more symbols, images, logos, words, shapes, colours or sounds), among the types of intellectual property that are granted formal recognition in Australia are:

- **Copyright** (eg literary, musical, and artistic works such as paintings and sculptures, sound recordings and cinematographic films – the range of literary works to which copyright applies is quite diverse, ranging from works of fiction and non-fiction to computer programs);
- **Patents** (ie rights granted in respect of an invention, granted in exchange for a disclosure of the invention in Australia - a patent is registered under the *Patents Act 1990* for a period of either 8 or 20 years, depending on the type);
- **Designs** (ie the visual appearance of a product owing to a visual feature of shape, configuration or composition of pattern and ornamentation that meets the requirements of the *Designs Act 2003*);
- **Plant breeder’s rights** (as per the *Plant Breeder’s Rights Act 1994*); and
- **Eligible layout (“EL”) or integrated circuit rights** (as per the *Circuits Layout Act 1989*).

For a summary of the registration process for trade marks, patents, designs and plant breeder’s rights, see [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au). No formal registration system exists in Australia for copyright or EL rights.

Trade marks are the only form of intellectual property that remain in existence for an indefinite period (albeit through renewal every 10 years) and thus can have relatively enduring value. Forms of intellectual property other than trade marks generally fall in value over time as their remaining lifespan steadily decreases.

## Intra Business Agreements – Further Reading

**Australian Master Estate  
Planning Guide –  
Chapter 39 in the  
Premium Edition**

**You Can't Take It  
With You –  
Chapter 18**

The latest version of this Pocket Summary is at  
[www.mooreslegal.com.au/services/estateplanning/pocketsummaries](http://www.mooreslegal.com.au/services/estateplanning/pocketsummaries)

### **Further Reading**

- *Australian Master Estate Planning Guide* – Allan Swan, to be published (in both a Standard and Premium Edition) by CCH in 2012.
- *Estate Planning Documents* – Allan Swan, Moores Legal (includes many of the Pocket Summary series).
- *You Can't Take It With You* – Andrew Simpson, Wrightbooks.
- *Tax Issues in Family Law Property Settlements* – Peter Szabo, Moores Legal.

### **Australia-wide Seminar, Workshop & other Presentations – Allan Swan**

**EPSTTAP Introductory:** • Estate Planning – The A-Z • Superannuation – The A-Z  
• Trusts – The A-Z.

**EPSTTAP Advanced:** • Estate Planning – Case Studies • Estate Planning Masterclass • Superannuation – Death Benefits & Binding Nominations • Testamentary Trusts – Drafting the 6 Major Types • Trusts & Deceased Estates – Income & Capital Distributions • AMEPG Chapter Workshops.

Allan's local Moores Legal client, community & discussion group topics are:

- Estate Planning – Protecting & Enhancing Wealth • Estate Planning – Vulnerable Family Members • Family Trusts – Income & Capital Overview • Farm Succession – Avoiding Tax Pitfalls & Anticipating Disputes • Providing an Estate Planning Service for Clients • SMSFs – Instalment Warrants, Pensions & Binding Death Benefit Nominations • Tax & Business Structures Overview (includes both pages of this Pocket Summary) • Update – Estate Planning, Superannuation, Trusts, Tax & Asset Protection.

To book Allan for any of these topics, contact Lilian Bruère on 03 9843 2153. All Pocket Summaries are copyright and are for general information purposes only and should not be relied on as (or in substitution for) legal or other professional advice.