Lynn & Brown LAWYERS

Business Insight Series – Chapter 11

Business Structures, Asset Protection & Insolvency

What is tonight about?

- Different business structures available.
- What to consider first when choosing your best structure.
- Pro’s & con’s of each model.

Business Structures

Sole trader

- Registered business name
- ABN
- GST registration

Business Structures

Trust

- Discretionary
- Unit

Business Structures

Company

- Pty Ltd
- Ltd by Shares
- Ltd by Guarantee
- NL
- Limited

Business Structures

Partnership

- Individual
- Company
- Trust
- Joint Venture

What to consider

No Perfect Structure

- Life cycle of the business
- Nature of the business
- Control
- Asset protection
- Financing (borrowing)
- Taxation
- SBT concessions
- Access to 50% CGT discount
- Ability to utilise losses (start ups)
- CGT rollover relief for restructure
- Division 7A
- Tax rates of participants & related parties
- New owners
- Retirement/succession plan.

Discretionary Trust

Pros

- ✓ Easy to set up.
- ✓ Flexibility to stream income.
- ✓ Easy to wind up or vest.
- ✓ Good access to SBT concessions
- ✓ Easy to hand over control of the business to members of the family.

Cons

- × Difficult to bring in external parties into.
- × 80 year rule.
- × Succession planning problems.

Unit Trust

Pros

- ✓ Easy to establish and allows unrelated people to run or have an interest in the business.
- ✓ A unit holder's interest in the trust's income or capital is clearly defined.
- ✓ A unit holder can sell its units or have its units redeemed by the trustee.
- ✓ Easy to bring in employees into the business.
- ✓ Not all unit holders need to have an active participation in the business.
- ✓ Tax advantages, character of income flows through the trust to the unit holders.

Cons

- × Losses are quarantined and trust loss rules.
- × Not as easy to wind up as a partnership or discretionary trust.

Partnership

Pros

- ✓ Partnerships are relatively simple and inexpensive to establish.
- ✓ Easy to dissolve.
- ✓ Relatively flexible and can be adapted.
- ✓ Each partner has a hand in the business of the partnership.
- ✓ Losses from a partnership flow to the individual partners.
- ✓ Access SBT concessions for each partner.

Cons

- × Liability – joint and several.
- × Change in partnership can create tax and funding issues.
- × Generally difficult to introduce employees or passive investors into the business.
- × Borrowing may be difficult.

Company

Pros

- ✓ Separate legal entity with limited liability.
- ✓ May be established quickly and efficiently.
- ✓ Good borrowing vehicle.
- ✓ Ability to dispose of shares rather than the investment, reducing stamp duty and other costs.
- ✓ Corporate tax rate of 30% is lower than top individual marginal rate.
- ✓ Profits can be easily accumulated without further tax.

Cons

- × Losses are trapped in the company and cannot be distributed to shareholders.
- × Gains made by the company not entitled to the 50% general capital gains tax discount.
- × Division 7A issues.

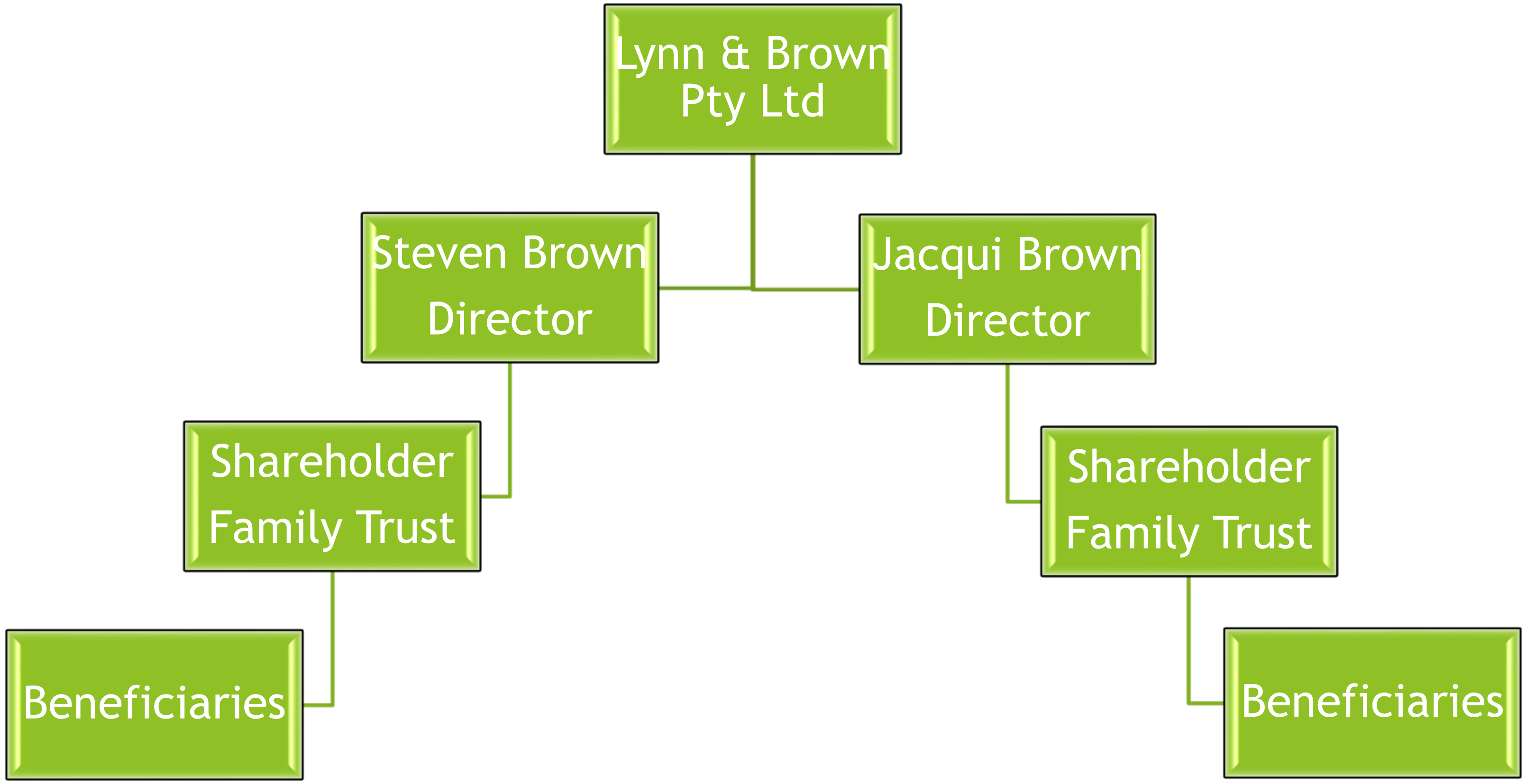
Insolvency

- An entity or individuals inability to pay their debts as and when they fall due.

1. **Company** –separate entity good protection
2. **Trust** –ensure trustee is not an individual
3. **Partnership** –ensure not between individuals
4. **Sole Trader** –all assets exposed

- Personal Guarantees.

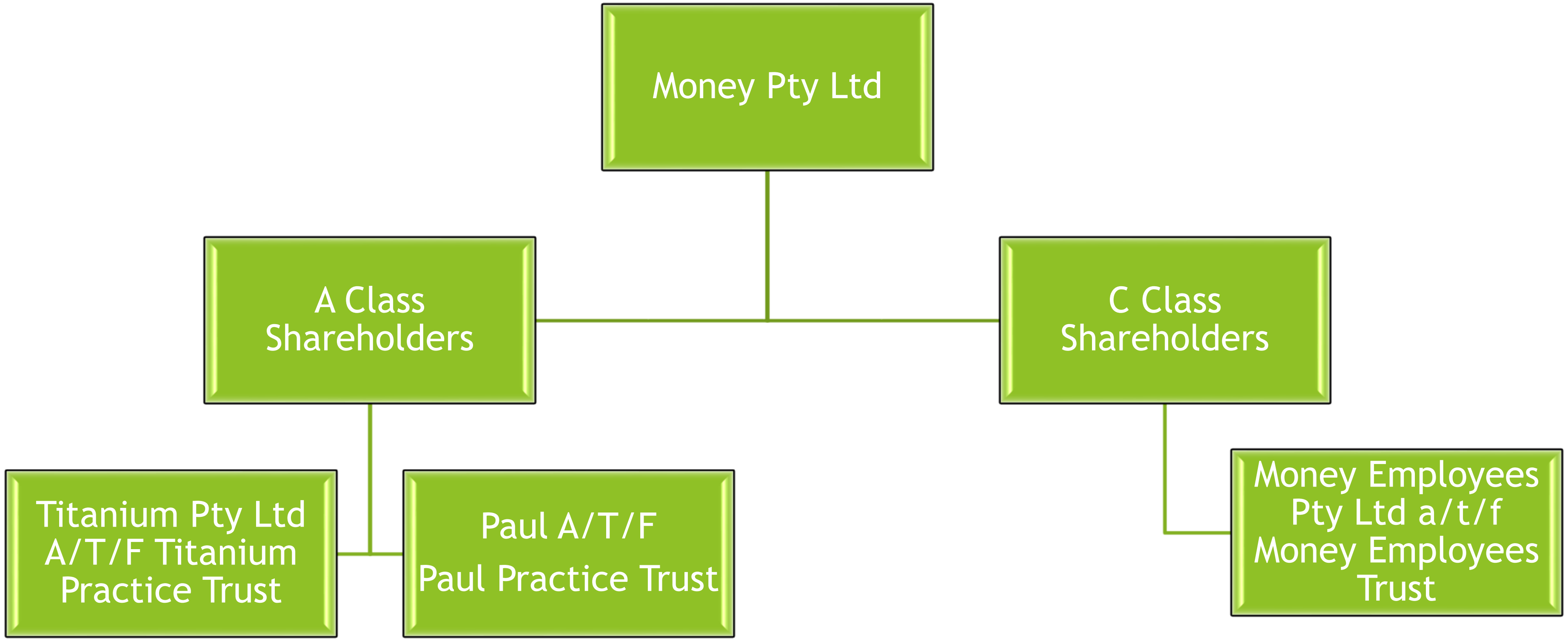
Examples – Hybrid 1



- Real estate held separately

Examples - Hybrid 2

Examples – Hybrid 3



Business Structure

- Different structures, use hybrid.
- Start early.
- Can move from one to another.
- No perfect structure.

Questions & Discussion

Business Structures, Asset Protection & Insolvency

THANK YOU

Business Insight Series – Chapter 12

Personal Succession Planning

On Tuesday 21 June 2016

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