



Put and Call Option Agreement

IMPORTANT

This is purely a sample agreement and should not be used as it stands.

There may be a possible conflict between the option agreement and any existing pre – emption rights in the company’s articles of association.

In such circumstances it may be desirable to include an additional clause in the option agreement stating that the agreement supersedes any pre – exemption rights in the articles of association.

A company should draft its own agreement in conjunction with its own legal & taxation advisers.

Section 1 – This is the definition section, defining terms that are used throughout the agreement.

Section 2 - This makes the Agreement conditional on the company effecting and maintaining a life assurance policy on the life of the shareholder for the purpose of buying back that shareholder's shares on death.

The purpose of this Section is to prevent a situation arising where the company could be compelled under the Agreement to buy back its shares from a deceased shareholder where the company had no life cover in place on that shareholder and hence had no liquid funds to complete the purchase.

Section 3 - This clause is self-explanatory and emphasises the point that the Agreement can only be performed insofar as such performance complies with the provisions of Part XI of the Companies Act 1990.

Section 4 - This Section outlines the nature and extent of the Put and Call Options and states that the options shall arise on the occurrence of the Specified Event, i.e. death. These options are always subject to the provisions of Part XI of the Companies Act, 1990. Clause 4.1.3 also states that the company can only purchase its shares under the options only to the extent which it can purchase the shares out of Profits Available for Distribution.

Section 5 - This Section outlines the procedures for the exercise of the Put and Call Options following the death of the shareholder. The company's Call option lapses after three months from the death of the shareholder. The Vendor's Put option lapses after six months from the death of the shareholder.

Section 6 - This section specifies the procedure for calculating the purchase price of the shares to be bought back on death. Clause 6.1 simply says that the purchase price shall be based on the market value of the shares on the last day before the death of the shareholder. The purchase price shall in no way be affected by the receipt by the company of the proceeds of the life policy.

Section 7 - This section contains some general clauses. Clause 7.3 provides a procedure for determining which of the two shareholders died first in circumstances where they die simultaneously, e.g. in a plane crash. This might be relevant if both shareholders were the subject of separate Put and Call Option agreements and it was uncertain which buy back should occur first.

This agreement is made the (date) [redacted]
between (Mr X of) [redacted]
(the "Vendor" which expression shall include his executors and administrators) of the one part
and (Y Limited)
[redacted]
having its registered office at
[redacted]
(the "Company" which expression shall include it's successors) of the other part.

WHEREAS:

- A. The company is a private limited company incorporated in the Republic of Ireland on the (date) [redacted] and it has an authorised share capital of [redacted] shares [redacted] of which [redacted] are issued and fully paid up in cash.
- B. The vendor is a shareholder of the company.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

SECTION 1 - DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings appearing opposite.

"the Call Option"	The option granted to the Company pursuant to Clause 4.1.1.
"the Insurance Company"	
"the Insurance Policy"	The policy of life assurance effected by the Company on the life of the Vendor or on the joint lives of the Vendor and any other shareholder of the Company, or any policy issued in substitution or in lieu of such policy, for the purpose of enabling the Company to purchase the shares from the Vendor or his personal representative or beneficiaries in accordance with this Agreement.
"other Shareholders"	Shareholders of the Company other than the Vendor.
"Part XI"	Part XI of the Companies Act,1990
"Profits Available for Distribution"	As defined by Section 45(2) of the Companies (Amendment) Act, 1983.
"the Purchase Price"	the price of the share calculated in accordance with Section 6 hereof
"the Put Option"	the Option granted to the Vendor pursuant to Clause 4.1.2
"the Shares"	Any or all of the shares held by the Vendor in the Capital of the Company at the date of the occurrence of the Specified Event.
"the Specified Event"	The death of Mr. X.

SECTION 2 – CONDITIONS

2.1 This Agreement shall be conditional upon the Company having entered or entering into the Insurance Policy within [redacted] days of the execution of this Agreement and shall be further conditional upon the continuing payment by the Company to the Insurance Company at the times specified in the Insurance Policy of all the premiums and other sums required in order to keep the insurance policy effective.

2.2 Failure to comply with Clause 2.1 shall render this Agreement null and void.

SECTION 3 – PART XI

3. It shall be a fundamental term of this Agreement that any obligations assumed by the company under this Agreement shall at all times be subject to the provisions of Part XI and shall not be construed to require the Company to do anything in breach of any of the provisions of Part XI.

Note:
Every effort has been made to ensure that the information in this publication is accurate at the time of going to press. Irish Life Assurance plc accepts no responsibility for any liability incurred or loss suffered as a consequence of relying on any matter published in or omitted from this publication.

SECTION 4 – PUT AND CALL OPTION

- 4.1 Subject to the provisions of Part XI and Section 5, on the occurrence of the Specified Event:
- 4.1.1 The company shall be entitled to purchase the Shares from the Vendor at the Purchase Price; and
- 4.1.2 The Vendor shall be entitled to require the Company to purchase the Shares from the Vendor at the Purchase Price.
- 4.1.3 The company may purchase the Shares only to the extent to which it can purchase the shares out of Profits Available for Distribution or to the extent to which it can otherwise purchase the Shares in accordance with the provisions of Part XI.

SECTION 5 – EXERCISE OF THE OPTION

- 5.1 The Call Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Company to the Vendor within three months from the occurrence of the Specified Event. The Put Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Vendor to the Company within six months of the occurrence of the Specified Event:
- 5.2 A notice in writing in accordance with the provisions of Clause 5.1 having been given by the Company or (as the case may be) by the Vendor, the Company pay to the Vendor by way of bankers draft the Purchase Price and in return for the payment therefore the Vendor shall furnish to the company the share certificates in respect of the Shares and do all other acts necessary in order to pass title in the Shares, free from all liens, charges and encumbrances to the company.

SECTION 6 – CALCULATION OF PURCHASE PRICE

- 6.1 Upon exercise of the Put Option or the Call Option the Purchase Price shall be determined by the auditors of the Company based on the market value of the Shares on the day immediately preceding the occurrence of the Specified Event, and shall not take account of any increase in the share price or asset value of the Company which might otherwise occur by virtue of receipt of the proceeds of the Insurance Policy. The determination by the auditors of the Purchase Price shall be final and binding. The auditors will act in this regard as experts and not as arbitrators and the provisions of the Arbitration Acts will not apply.

SECTION 7 – GENERAL

- 7.1 Any notice required to be given hereunder shall be in writing and shall be delivered by hand or sent by prepaid post to the party to whom such notice is to be given at its address as set out herein (or such other address as such party may have notified in writing from time to time as its address for the purposes of notices hereunder) and if delivered by hand shall be deemed to have been received upon delivery, and if sent by post, shall be deemed to have been received forty eight hours after posting.
- 7.2 The captions in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 7.3 In the event of the deaths of two shareholders in the Company occurring simultaneously the oldest shareholder will be deemed, for the purpose of this Agreement, to have died first.
- 7.4 This Agreement is personal to the Company and the Vendor and shall not be assigned by either of them.
- 7.5 This Agreement may be rescinded by the passing of a Special Resolution by the Company in accordance with Section 217 of the Companies Act.
- 7.6 This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Ireland.
- 7.7 If any term or provision of the Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision shall to that extent be deemed not to form a part of this Agreement and the enforceability of the remainder hereof shall not be affected.

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