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FitzGerald Solicitors is a full-service progressive law firm. The strengths of the firm lie in the areas of commercial law, estate planning, family law, property, employment law and litigation. The philosophy of the firm centres on delivering pragmatic and solid advice tailored to meet the specific needs of clients.

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Crowleys DFK is a progressive firm of chartered accountants with offices in Cork and Dublin. The firm is part of DFK International, a worldwide association of independent accounting firms. Key services provided to clients include tax planning and compliance, wealth management, audit, accounting, corporate governance, payroll, corporate finance and company secretarial.

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# The Case Study.



## The Business

- Smith & Co. Limited

## The Shareholders

- Mr. Smith Senior - 51% shareholding
- Mrs. Smith - 15% shareholding
- Mr. Smith Junior - 4% shareholding
- Ms. Smith - 30% shareholding

## Summary of key points

- Smith & Co. Limited is an unquoted company involved in manufacturing. Turnover €2m. Pre-tax profits of €750,000
- Four shareholders
- Mr. Smith Senior, 62 yrs, 51% shareholding, wishes to:
  - retire from the day-to-day running of the business
  - transfer his shareholding to his daughter
  - retain some shareholding in the company if possible
- Mrs. Smith, 63 yrs, 15% shareholding, wishes to:
  - retire from the company
  - dispose of her shareholding and ideally receive some proceeds from this sale
- Mr. Smith Junior, 39 yrs, 4% shareholding, wishes to:
  - dispose of his shares at market value
  - protect business from consequences of his marital difficulties
- Ms. Smith, 34 yrs, 30% shareholding, wishes to:
  - acquire sufficient shares to give her a majority shareholding
  - take over the day-to-day running of the business from father
  - protect the business in the event of a breakdown in her marriage

## Your notes

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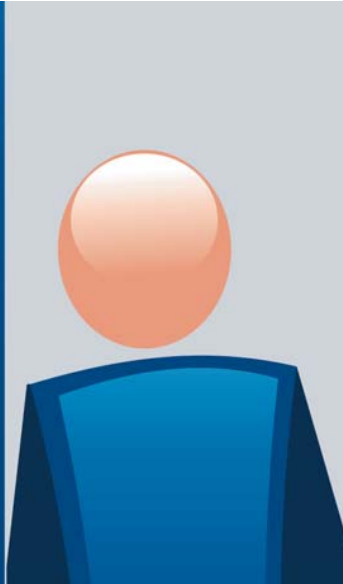
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# Mr Smith Senior.

Shareholding: 51%

- Transfer of ownership
- Tax planning
- Retirement planning
- Legal considerations
- Exit strategy



## Summary of key points

- Appoint an executor
- Approach estate planning with overall good of family in mind
- Consider son and wife in estate planning to off set possible future claims
- Establish a discretionary trust in Will to protect remaining shareholding
- Consider an Enduring Power of Attorney
- Additional contributions to pension fund – company & personally
- Tax free termination payment – increase final years' salary
- Retirement relief from capital gains
- Early retirement planning advised

## Your notes

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**Mrs Smith.**

Shareholding: 15%

- Disposal of shares
- Tax planning
- Retirement planning
- Legal considerations



**Summary of key points**

- Appoint an executor
- Approach estate planning with overall good of family in mind
- Establish a discretionary trust in Will to protect remaining shareholding
- Consider an Enduring Power of Attorney
- Review salary and pension contributions
- Tax free sale of shares to daughter
- Capital gains tax treatment on sale of shares to company
- Early retirement planning advised

**Your notes**

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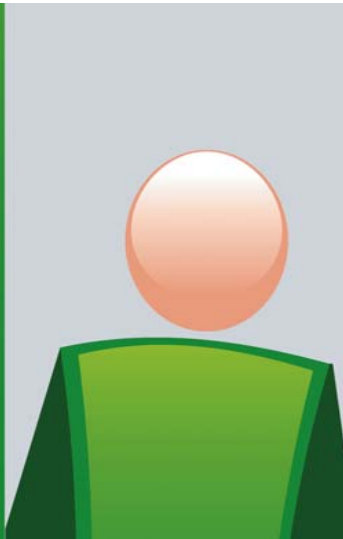
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# Mr Smith Junior.

Shareholding: 4%

- Disposal of shares
- Post-Nuptial Agreements (protect the business)
- Wills and trusts
- Personal tax planning



## Summary of key points

- Make Will bearing in mind marital circumstances
- Consider dependents in estate planning
- Set up a discretionary trust
- Consider an Enduring Power of Attorney
- Approach estate planning with overall good of family in mind
- 20% capital gains tax on profit of sale of shares to company or sister - with conditions
- Up to 41% if conditions not met
- No capital gains tax if assets are transferred to spouse by court order
- Early retirement planning advised
- Selling his 4% shareholding may have a negative impact on his separation
- Post nuptial agreements are unheard of in Ireland to date but may become part of Irish Family Law in future years

## Your notes

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# Ms Smith.

Shareholding: 30%

- Acquisition of shares
- Transfer of ownership
- Tax considerations
- Pre-Nuptial Agreements (protect the business)
- Wills and trusts
- Business and personal planning
- Future dependants



## Summary of key points

- Make a Will specifically contemplating marriage
- Make a new Will upon marriage and review annually
- Appoint an executor who is capable of temporarily managing the business
- Consider a discretionary trust in Will to protect the business
- Consider an Enduring Power of Attorney
- Allow in Will for future dependents
- Approach estate planning with overall good of family in mind
- Needs to acquire at least 20% to achieve majority shareholding
- Consider eligibility for business property relief from gift tax
- Weigh up purchase of shares v gift of shares
- Set up pension fund
- Early retirement planning advised
- Consider a pre-nuptial agreement in order to protect the business and each spouse
- Specific formalities when preparing a pre-nuptial agreement to ensure that it is recognised

## Your notes

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