



BUSINESS CONTINUITY & SUCCESSION

PLANNING
PROPOSAL

www.caliphgroup.com

Business Owner most common fears

Governance & Control

- Loss of control over the company (e.g., outsiders buying shares, hostile takeovers).
- Shareholder disputes that paralyze decision-making.
- Succession uncertainty — not knowing who will take over when they retire or pass away.

Financial & Operational Risks

- Cash flow problems — inability to meet payroll or loan obligations.
- Debt liability — especially with joint and several clauses in business loans.
- Economic downturns or market disruptions that threaten stability.
- Unexpected expenses (legal claims, compliance fines, tax issues).



Business Owner most common fears

People & Relationships

- Key employee departure — losing talent that drives the business.
- Family conflict in family-owned businesses (inheritance disputes, unequal treatment).
- Loss of trust among partners or shareholders.

Continuity & Legacy

- Business collapse after their exit — fear that the company won't survive without them.
- Unprotected legacy — heirs or successors not prepared to manage the business.
- Shares falling into the wrong hands (competitors, outsiders, or uninterested heirs).
- Charity or community impact lost if the business fails.



Business Owner most common fears

Legal & Compliance

- Regulatory non-compliance — fines, penalties, or reputational damage.
- Poorly drafted agreements — loopholes in shareholder or buy-sell agreements.
- Litigation risk — disputes with partners, employees, or customers.



Aspect	Company Constitution	Shareholders' Agreement
Nature	Public document filed with Companies Commission (SSM)	Private contract among shareholders
Scope	Broad governance rules for the company	Specific rights, obligations, and protections for shareholders
Flexibility	Standard provisions, less customizable	Highly customizable to suit business/family needs
Enforceability	Binding on company, directors, and shareholders	Binding only on parties who sign it
Transparency	Accessible to public (official record)	Confidential, not filed with SSM
Focus	General corporate structure & compliance	Practical issues: profit distribution, exits, succession, dispute resolution
Use Case	Required by law for incorporation	Optional but critical for SMEs & family businesses



Business Cycle



Setup Business

Capital raising etc



Regulate Business

Company Constitution
&
Shareholder's Agreement



Exit / Business Inheritance

Buy & Sell Agreement

Tag-Along / Drag-Along

Clause Type	Protects Minority	Protects Majority	Outcome
Tag-Along	✓ Yes	✗ No	Minority can join sale to avoid being left behind
Drag-Along	✗ No	✓ Yes	Majority can force minority to sell for clean exit



Aspect	Shareholders' Agreement	Buy-Sell Agreement
Purpose	Governs the overall relationship between shareholders and the company.	Provides a mechanism for handling ownership changes when a shareholder exits (death, disability, retirement, or sale).
Scope	Broad: covers governance, voting rights, dividend policy, dispute resolution, transfer restrictions, etc.	Narrow: focuses specifically on how shares are bought/sold among shareholders or by the company.
Key Provisions	- Board composition & decision-making, Dividend distribution, Reserved matters requiring special approval, Confidentiality & non-compete & Dispute resolution	- Triggering events (death, disability, retirement, bankruptcy), Valuation method (formula, independent appraisal), Funding mechanism (insurance, company buy-back), Rights of first refusal, tag-along/drag-along clause
Beneficiaries	Protects both majority and minority shareholders by ensuring fair governance.	Protects remaining shareholders and the company from unwanted outsiders inheriting or buying shares.
Funding	Typically no funding mechanism; focuses on governance.	Often funded via life insurance or Takaful policies to ensure liquidity for buyouts.
Timing	Applies continuously during the life of the company.	Activated only upon specific triggering events.
Legal Nature	Contractual governance document supplementing the company's constitution.	Succession/exit planning instrument ensuring smooth transfer of ownership.

How They Work Together

- Shareholders' Agreement.
“Rules of the game” for ongoing operations.
- Buy-Sell Agreement.
“Exit plan” for when a shareholder leaves or passes away.

In practice, many companies integrate the buy-sell provisions inside the shareholders' agreement or draft it as a separate standalone contract (especially when insurance funding is involved).



“Jointly and Severally” In Business Loan

- **Jointly:** All borrowers together are responsible for the loan. The lender can treat them as one group.
- **Severally:** Each borrower is individually responsible for the entire loan, not just their share.
- **Combined effect:** The lender can demand repayment from any one borrower for the full amount, even if others default.



Example

Imagine three shareholders
(A, B, and C) sign a loan agreement
for RM1,000,000



Director A



Director B

- If the loan is jointly and severally guaranteed, the bank can demand the full RM1,000,000 from A alone if B and C fail to pay.
- A then has the right to recover B and C's portions separately, but the lender doesn't have to chase all three — they can pick any one.



Director C

Triggering events

Death

Retirement

Disability

Bankruptcy



Funding Mechanism

Funding Mechanism	Cash Reserve	Company Assets	Bank Loan	Takaful Funding	Difference
Value	RM2,189,102	RM12,120,000	RM12,300,000	RM12,300,000	0
Shortfall	RM10,110,898	RM180,000	RM0	RM0	0
Costs	-RM12,300,000	Depreciation / Time frame to sell / Finding Buyer	RM15,324,000	RM3,070,500	RM12,253,500
Installments Per Month	NA	NA	RM127,700	RM25,625	RM102,075 Monthly Savings
Ratio	1 : 1		1 : 1.24	1 : 0.24	

Example Takaful Funding

Takaful Funding	Year	Savings	Acc Savings	Withdrawal	%	Per Year
5,000,000.00	Year 1	120,120	120,120	59,291.00	49%	59,291.00
5,000,000.00	Year 2	120,120	240,240	136,673.00	57%	68,336.50
5,000,000.00	Year 3	120,120	360,360	218,140.00	61%	72,713.33
5,000,000.00	Year 4	120,120	480,480	310,277.00	65%	77,569.25
5,000,000.00	Year 5	120,120	600,600	410,907.00	68%	82,181.40
5,000,000.00	Year 6	120,120	720,720	518,254.00	72%	86,375.67
5,000,000.00	Year 7	120,120	840,840	626,665.00	75%	89,523.57
5,000,000.00	Year 8	120,120	960,960	746,497.00	78%	93,312.12
5,000,000.00	Year 9	120,120	1,081,080	864,582.00	80%	96,064.67
5,000,000.00	Year 10	120,120	1,201,200	999,162.00	83%	99,916.20
5,000,000.00	Year 11			83%		
5,000,000.00	Year 12					
5,000,000.00	Year 13					
5,000,000.00	Year 14					
5,000,000.00	Year 15					
5,000,000.00	Year 16					
5,000,000.00	Year 17					
5,000,000.00	Year 18					
5,000,000.00	Year 19					
5,000,000.00	Year 20					
5,000,000.00	Year 21					
5,000,000.00	Year 22					
5,000,000.00	Year 23					
5,000,000.00	Year 24					
5,000,000.00	Year 25					

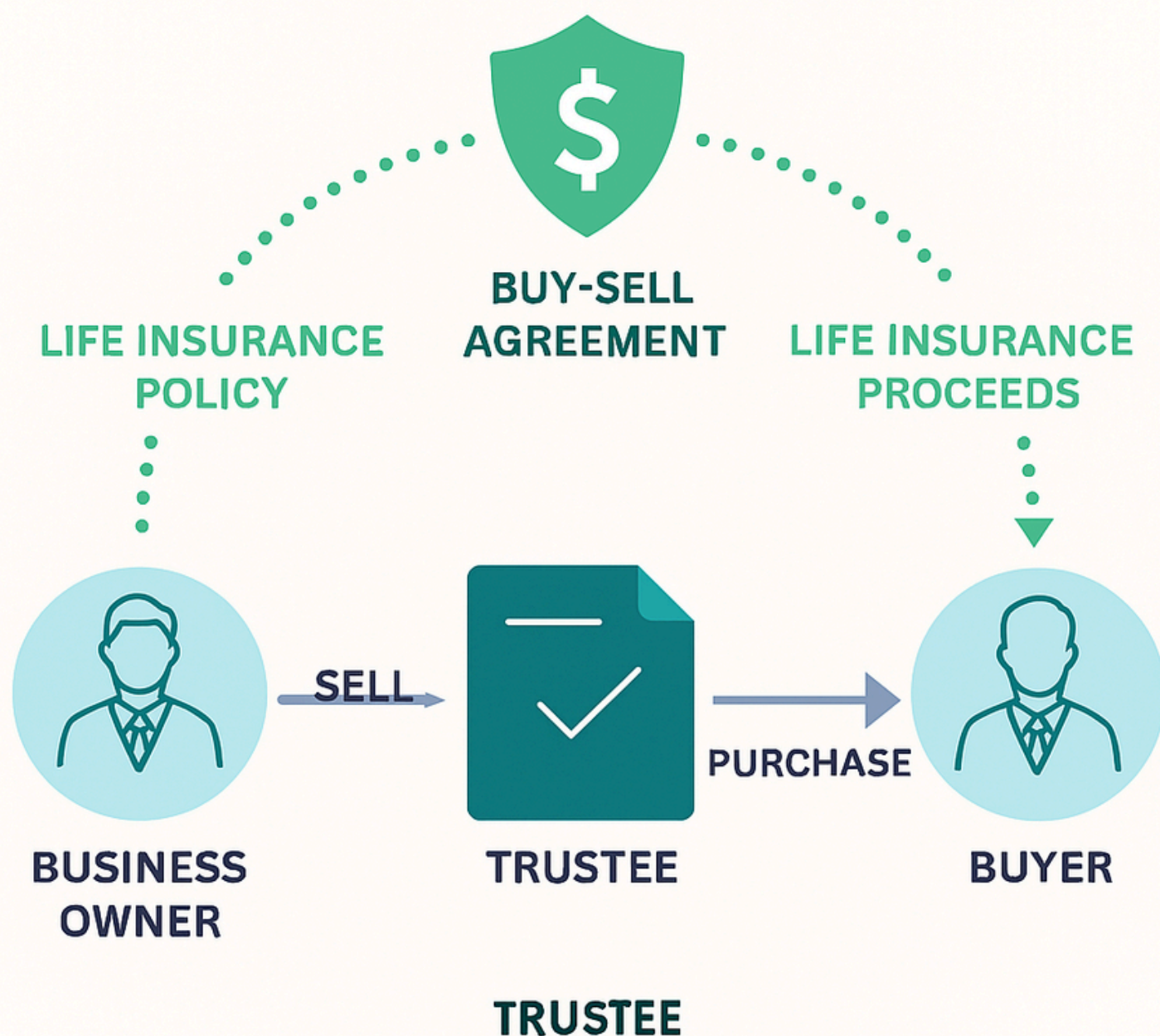
Aspect	Trustee Company (e.g., As-Salihin)	Individual Lawyer
Continuity	Perpetual succession — the company continues even if directors or staff change.	Dependent on the lawyer’s lifespan, health, and practice continuity. If the lawyer retires or passes away, arrangements may lapse.
Regulation	Licensed under Trust Companies Act 1949, subject to audits, capital requirements, and oversight.	Regulated under the Legal Profession Act 1976, but not specifically as a trust company.
Expertise	Dedicated to estate planning, trust administration, Shariah-compliant structures, and corporate governance.	Strong in legal drafting, litigation, and advisory, but may lack operational infrastructure for long-term trust management.
Capacity	Institutional — can handle thousands of estates simultaneously with systems, staff, and nationwide presence.	Limited to the lawyer’s personal practice capacity and resources.

Aspect	Trustee Company (e.g., As-Salihin)	Individual Lawyer
Risk of Bankruptcy	Possible, but trust assets are ring-fenced (separate from company assets). Beneficiaries are protected even if trustee company fails.	If lawyer faces bankruptcy or misconduct, estate assets may be at risk unless safeguarded by court or professional indemnity insurance.
Neutrality	Seen as more neutral – corporate trustee avoids family bias and personal conflicts.	Lawyer may be perceived as aligned with certain family members or clients.
Cost	Structured fees (setup + annual maintenance). Transparent but can be higher for complex estates.	May be lower upfront, but costs vary depending on lawyer’s billing (hourly, retainer, case-based).
Shariah Compliance	As-Salihin specializes in Islamic estate planning (hibah, faraid, waqf).	Lawyer may or may not have Shariah expertise – depends on background.

As-Salihin Trustee Berhad

- Background:
 - Established in 2004 by the late Tun Mohamed Salleh Abas, former Chief Justice of Malaysia.
- Specialisation:
 - Provides Shariah-compliant estate planning and administration, including wills, hibah (gifts), trusts, and harta sepencarian declarations.
- Scale:
 - Has administered estates worth over RM40 billion for more than 50,000 clients, supported by 5,000 Islamic Estate Planners nationwide.
- Continuity:
 - As-Salihin emphasises perpetual succession, meaning the company continues to exist and administer estates even if individuals within it change





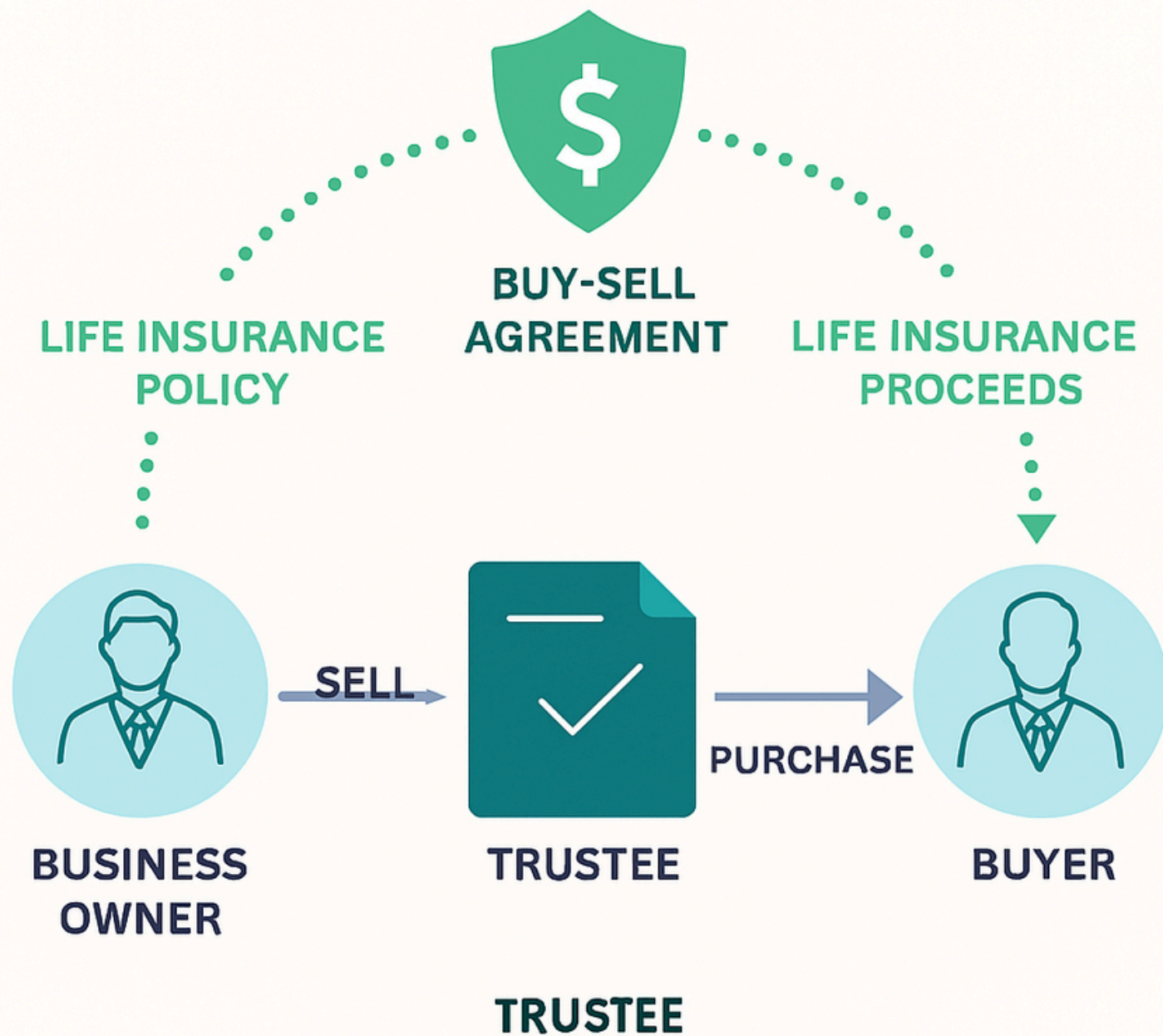
Why Use Trustees?

• Neutral & Independent Party

- Trustees act as a neutral administrator between shareholders, heirs, and the company.
- Prevents disputes when emotions run high (e.g., after death or disability of a shareholder).
- Ensures the agreement is executed fairly, without bias toward majority or minority shareholders.

• Safeguarding Takaful Proceeds

- In many buy-sell agreements, life or takaful insurance funds the buyout.
- Trustee receives the insurance payout and ensures it is used only for the agreed purpose (buying out shares).
- Protects heirs from delays or misuse of funds by surviving shareholders.



Why Use Trustees?

• Continuity & Compliance

- Trustee ensures the share transfer process follows the agreement and legal requirements.
- Provides perpetual succession — unlike an individual lawyer, a trustee company continues even if personnel change.
- Especially important in Malaysia where Shariah-compliant distribution may be required.

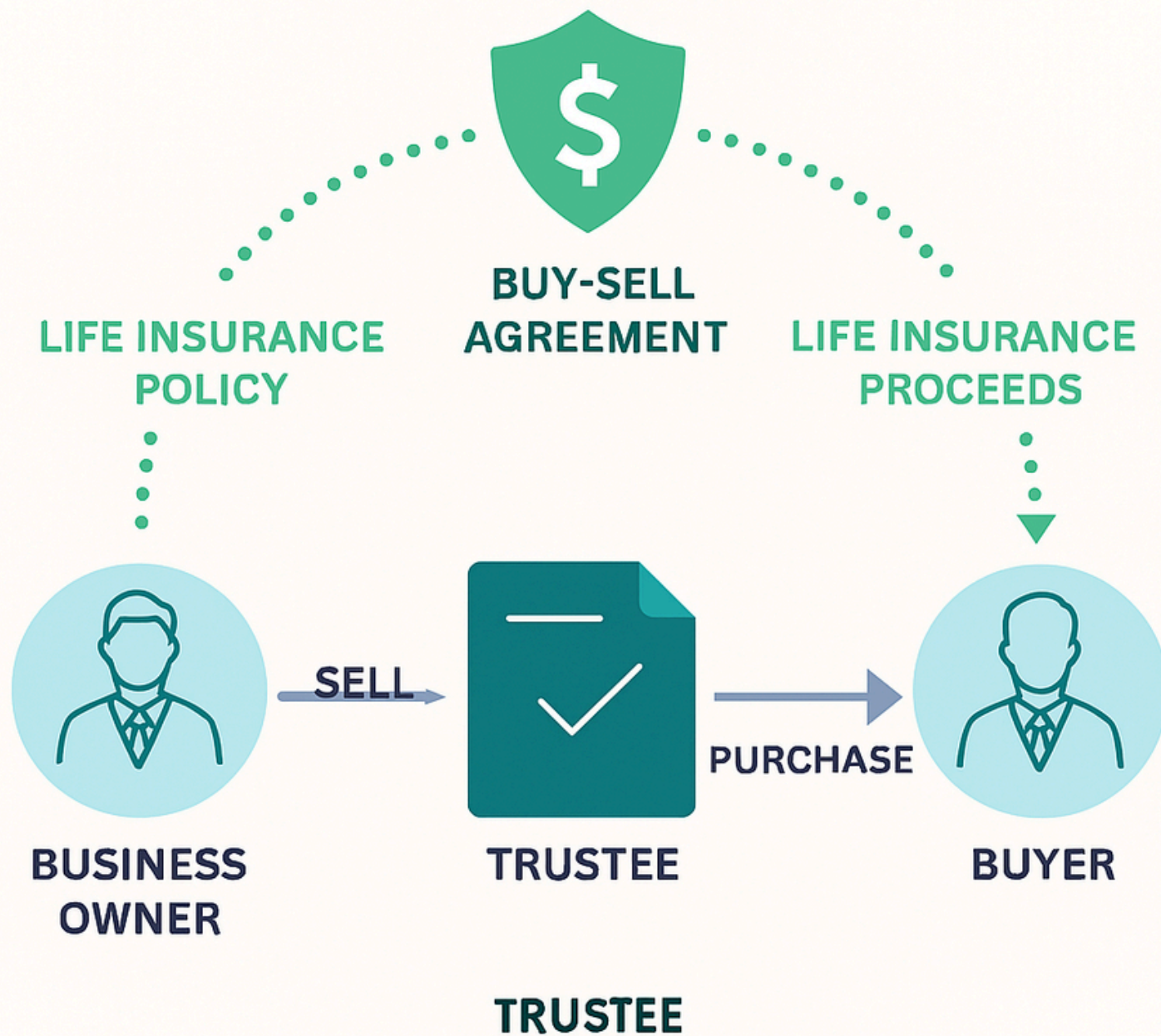
• Protection for Heirs & Beneficiaries

- Trustee guarantees heirs receive fair value in cash, not unwanted shares.
- Can manage staggered distributions (e.g., partial payouts over time, charity allocations).
- Prevents heirs from being forced into business decisions they don't want.

Why Use Trustees?

- **Risk Management**

- Trustee reduces risk of disputes, fraud, or mismanagement.
- Acts as a buffer between shareholders and family members.
- Provides professional oversight, ensuring compliance with Companies Act, Trust Companies Act, and Shariah principles (if applicable).





Sunlife Malaysia Berhad

- Joint Venture Structure:
 - Sun Life Malaysia is a partnership between Sun Life Financial Inc. (Canada) and Khazanah Nasional Berhad, Malaysia's sovereign wealth fund.
- Assets Under Management (AUM):
 - Globally, Sun Life manages over CAD 1.5 trillion in assets, giving Malaysian operations strong backing
- Credit Ratings:
 - Standard & Poor's: AA (Very Strong)
 - Moody's: Aa3 (High Quality)
 - A.M. Best: A+ (Superior)


Next Steps

- Draft shareholders' agreement
- Prepare funding mechanism
- Draft buy & sell agreement
- Review every 5 years





Thank you

 012-7215389

 hamzavi@caliphgroup.com

 www.caliphgroup.com

 Waze Caliph Group Putrajaya