



s110 MVLs

Section 110 reconstructions

A complicated corner of solvent liquidations

s110 reconstructions

- The law – what s110 says
- What s110 is used for
- A typical transaction
- The professionals – who does what
- The timetable
- Pricing the work
- Questions arising (and please also ask as we go)

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The law – what s110 says – the conditions

- Voluntary liquidation (MVL or CVL) (of **NotBustCo**).
- A transfer of a business or property (in or before the liquidation).
- The buyer (**NewCo**) is a company or LLP.
- s110 can authorise the liquidator to:
 - take shares (as consideration for the transfer) in NewCo; and
 - distribute them to NotBustCo's shareholders.
- NotBustCo must pass a special resolution to authorise it.
 - The resolution can authorise other types of interest in NewCo.
 - (Different authority is needed in a CVL.)

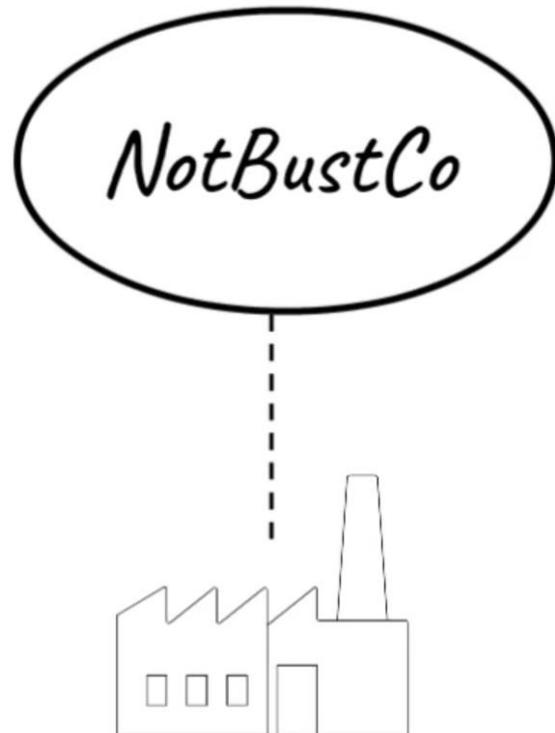
The law – what s110 says – legal risks (1)

- Insolvency risk
 - Suppose a winding up order is made within 12 months.
 - That invalidates the special resolution.
 - And, with it, your authority for the transaction.
 - **Mitigate** by:
 - Winding up a different company;
 - Waiting 12 months;
 - Checking that NotBustCo is very solvent;
 - Getting a decent indemnity.

The law – what s110 says – legal risks (2)

- Dissenting minority risk
 - Any shareholder can object to the transaction.
 - (But not if they voted for it.)
 - (And they've got only seven days to object.)
 - Purposes for the objection might be:
 - To block the transaction; or
 - To sell their shares.
 - **Mitigate** by:
 - Getting all shareholders to sign the resolution;
 - Waiting seven days;
 - Making an offer to the minority in advance;
 - Getting a decent indemnity.

s110 – the basic transaction



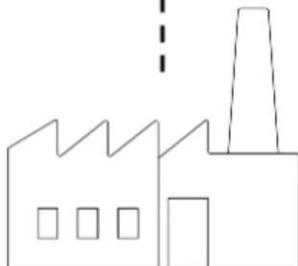
s110 – the basic transaction



Shareholders

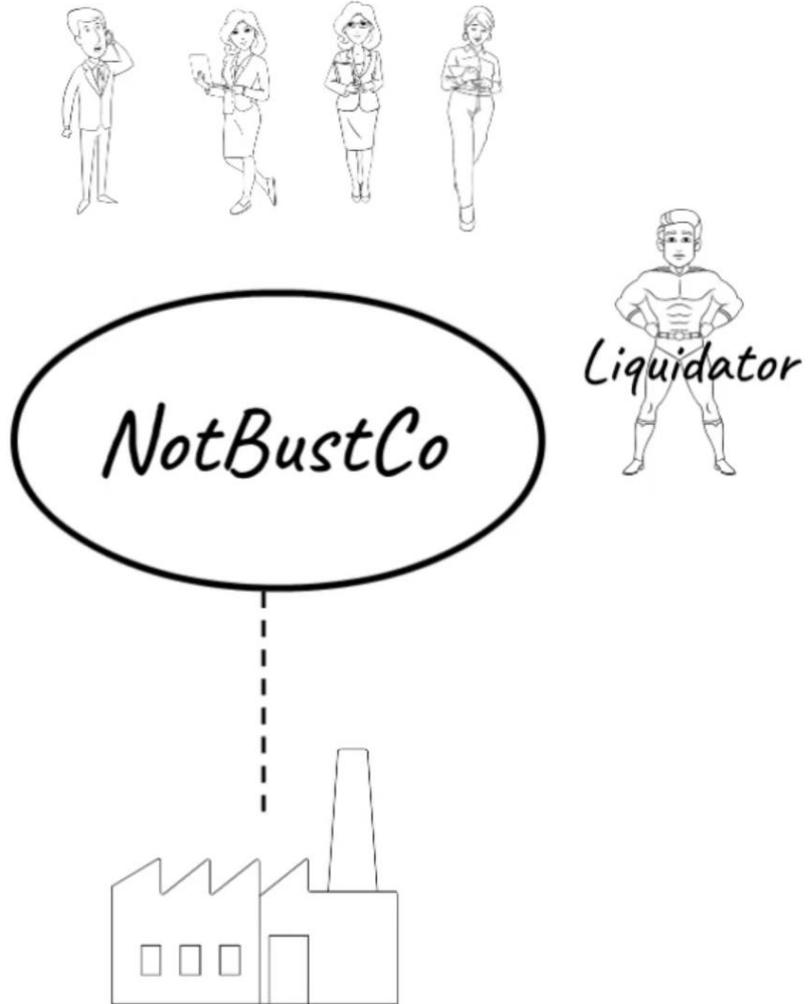


Company

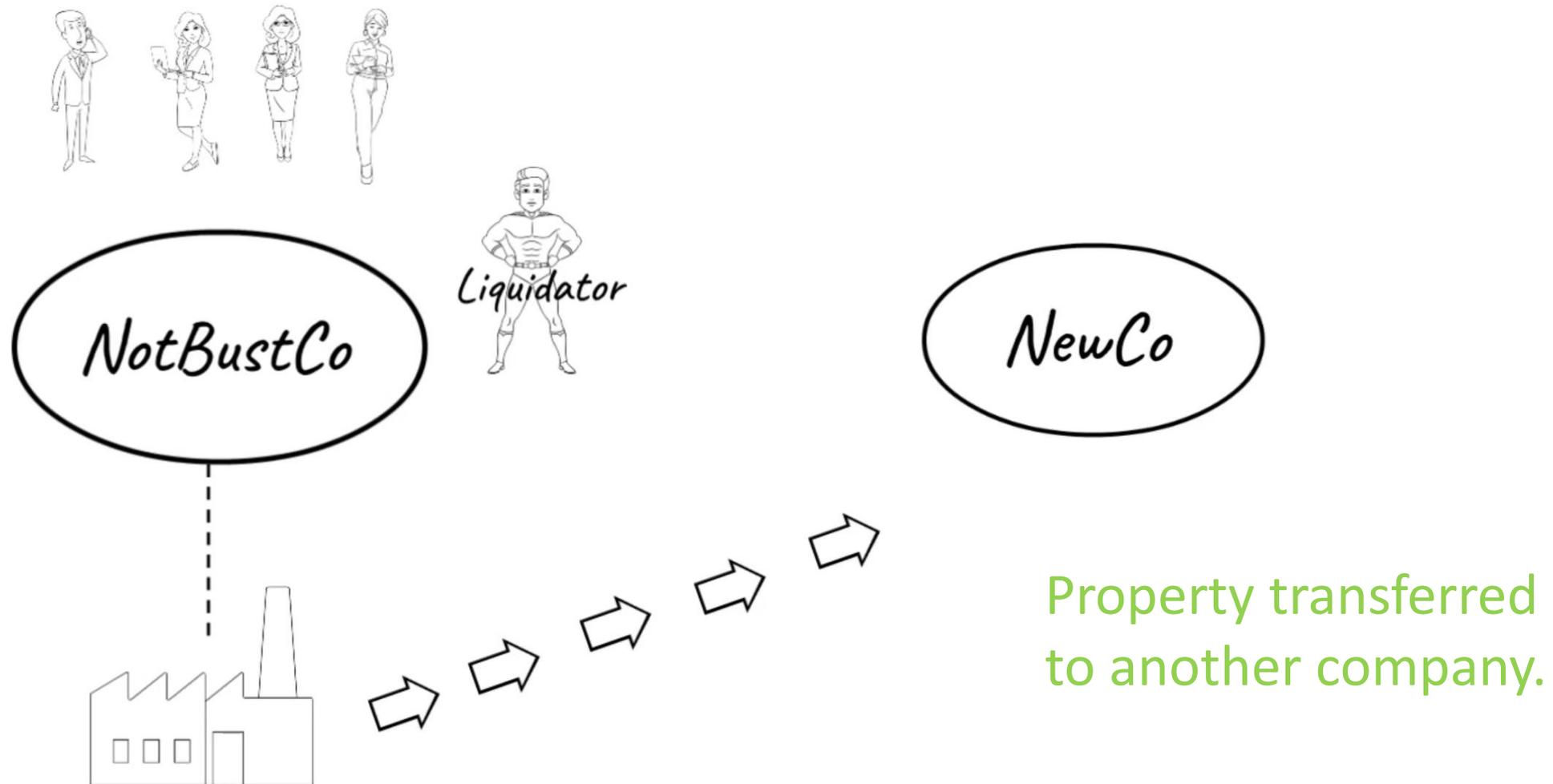


Business or property

s110 – the basic transaction

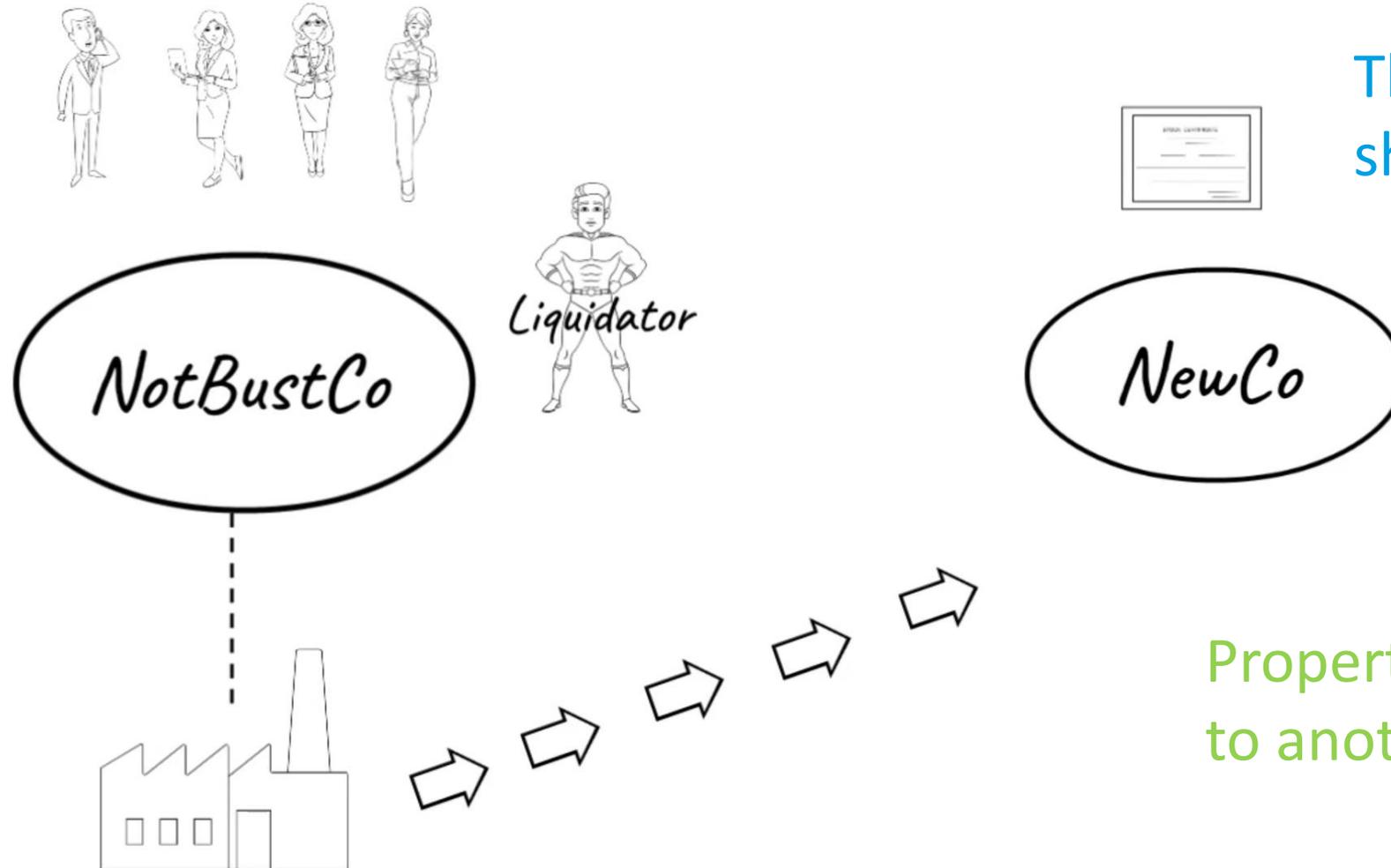


s110 – the basic transaction



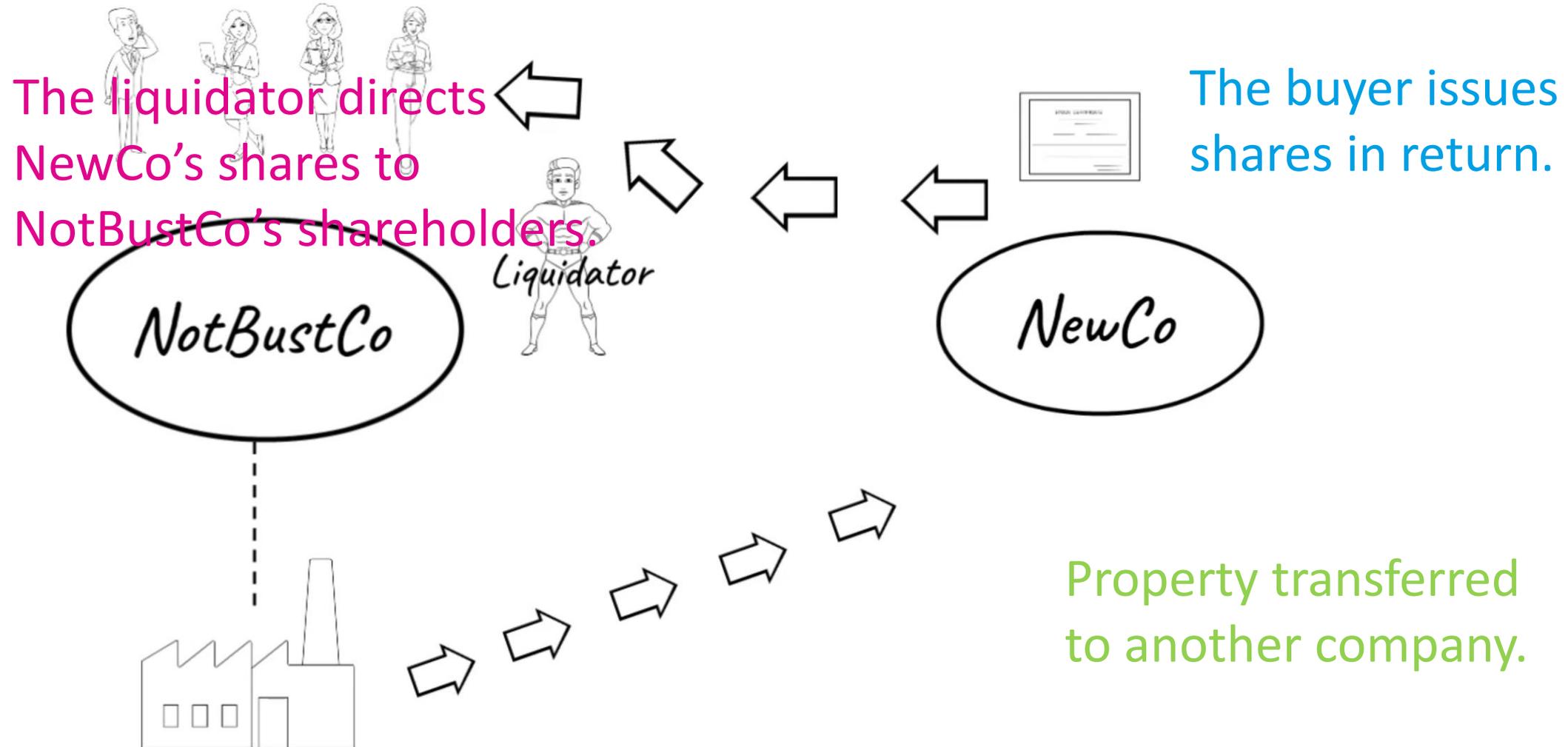
s110 – the basic transaction

The buyer issues shares in return.



Property transferred to another company.

s110 – the basic transaction



s110 – the basic transaction



The transaction ends with NewCo:

- Owned by the original shareholders;
- Owning the original property.

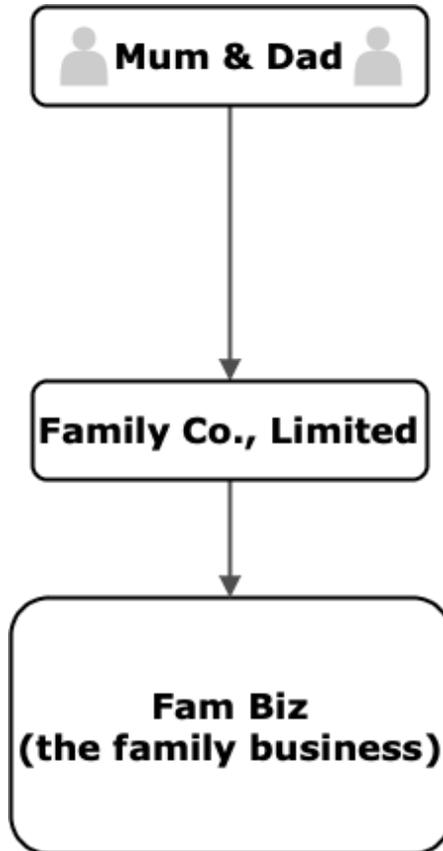
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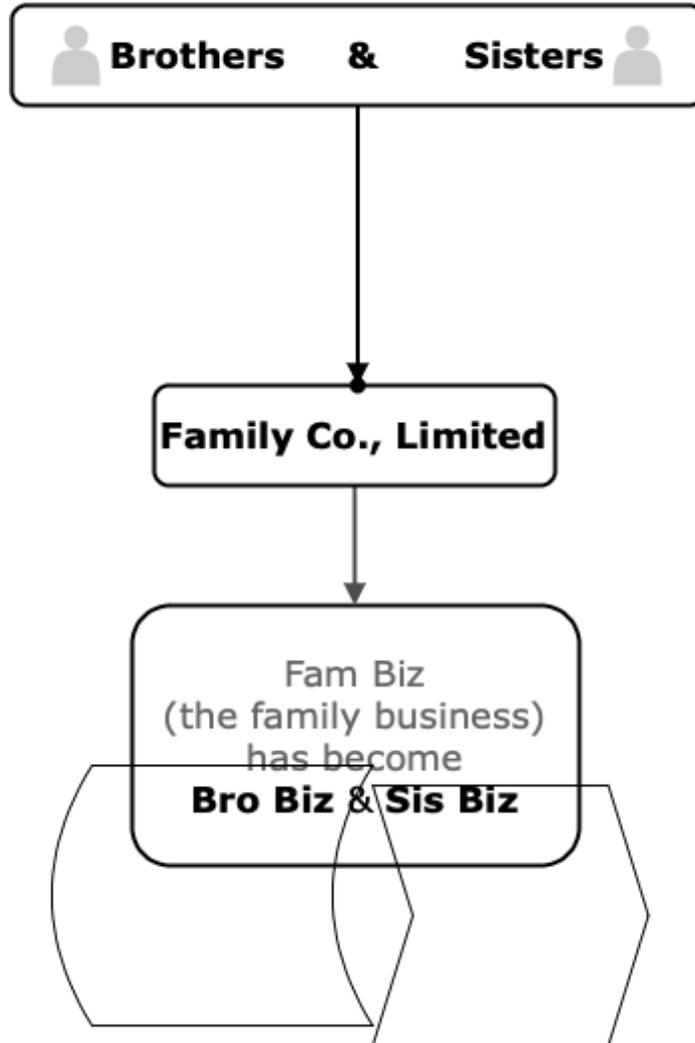
s110 reconstructions – a typical transaction



The family company.

How it always was.

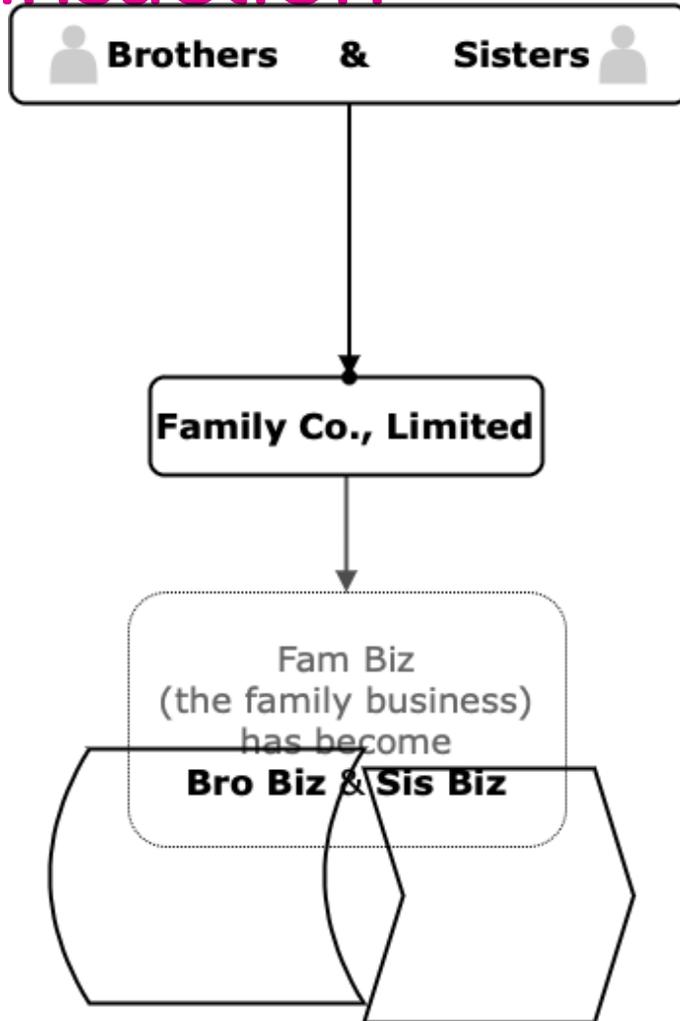
s110 reconstructions – a typical transaction



The family company.

How it developed.

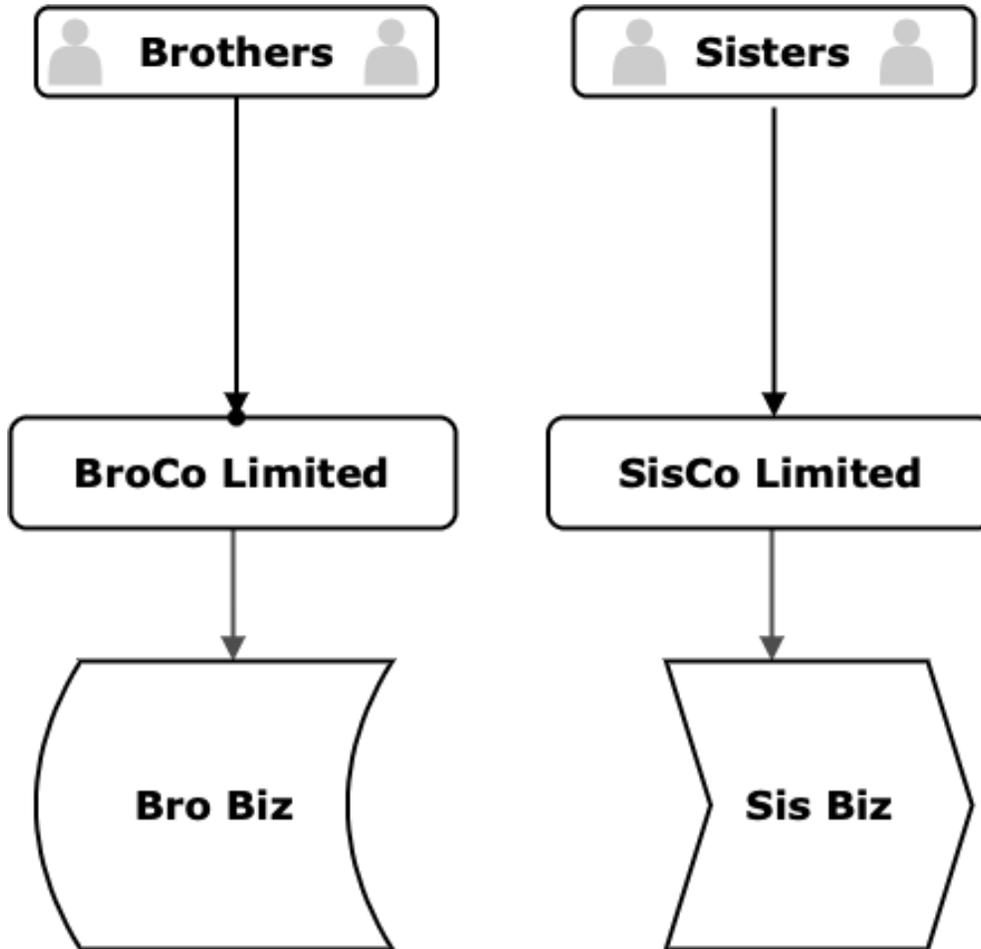
s110 reconstructions – a typical transaction



The family company.

How it is now.

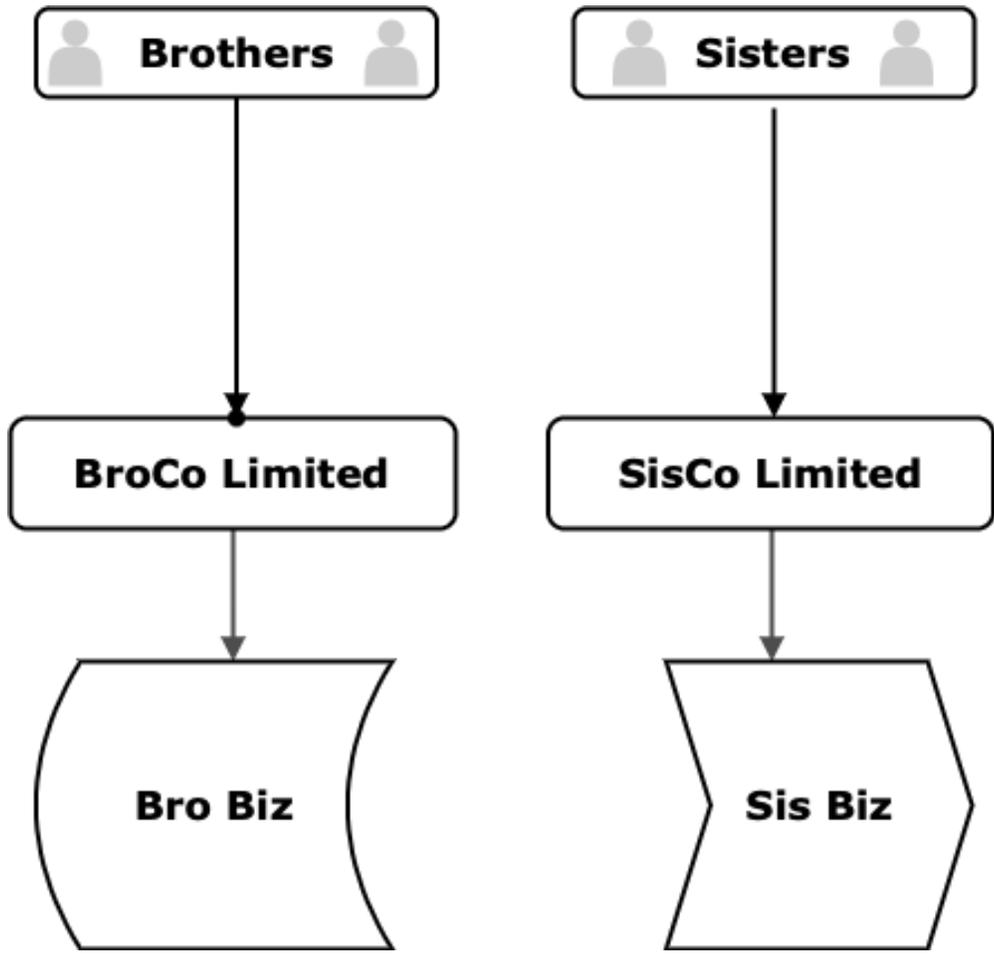
s110 reconstructions – a typical transaction



The family company.

How it is to be.

s110 reconstructions – a typical transaction



This is a typical use of s110 – to subdivide a company.

There are tax benefits – make sure a tax accountant is getting advance clearance.

Don't liquidate the original company. Keep it as owner of part of the business. (Avoid triggering defaults. And, liquidating a company that's never traded is less risky.)

s110 reconstructions – tax benefits

- Broadly speaking:
 - Benefits that shareholders receive are taxed as capital, not income.
 - NewCo is treated as acquiring assets on a 'no loss, no gain' basis.
 - Shareholders' shares in NewCo are treated as replacing their shares in NotBustCo.
 - 'Degrouping' tax charges are normally avoided.
 - Stamp duty on share transfers (normally 0.5%) is usually exempted (indemnities may put that at risk).
 - 'Acquisition relief' normally mitigates SDLT to 0.5% (in business division s110 reconstructions; others might be fully exempt).
- Make sure a tax accountant is getting advance clearance.

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s110 reconstructions – who does what

- Typically:
 - NotBustCo's directors – [almost] everybody's client.
 - NotBustCo's accountant – project manager.
 - Tax accountant – devises scheme and get clearance.
 - Liquidator – follows cleared scheme to:
 - Liquidate a transaction newco; and
 - Distribute properties and shares in specie.
 - NotBustCo's solicitor – implements property transfers (and corporate transactions).
 - Liquidator's solicitor – makes sure the liquidations, distributions, property transfers and corporate transactions follow the cleared scheme, s110, etc.

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s110 reconstructions – the timetable

- The timetable may already be tight when you're first instructed.
Consider:
 - Tax clearance.
 - If already in place – the timetable may be urgent.
 - If not, how long might it take?
 - Important tax dates – ask the accountant what they are?
 - Analysing the clearance – turning it into a complete transaction plan.
 - Preparing the documents (for the liquidation, and the transactions).
 - The liquidation timetable.
 - Including distributions.
 - Remember the legal risks:
 - Dissenting shareholders.
 - Petitions.

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s110 reconstructions – pricing the work

- Find out how much tax is being saved – if you can.
- Expect to have to give a fixed fee – particularly after you've seen the tax clearance.
- Define the scope of your work – look at the tax clearance.
- Identify the company (or companies) you're liquidating. Query it if it seems to be NotBustCo (it should be an intermediate newco).
- Ask for the timetable.
- Check who is doing the corporate transactions (forming newcos, etc).
- Check who is doing the legal transactions (property transfers, etc).

s110 reconstructions – pricing the work

- Lawyers:
 - What work will yours need to do?
 - Indemnities (avoid the stamp duty trap).
 - Reviewing others' paperwork?
 - Drafting?
- Time working with others:
 - NotBustCo's accountant.
 - NotBustCo's directors.
 - Tax accountant.
 - NotBustCo's solicitor.
 - Your own solicitor.

s110 reconstructions – pricing the work

- Pricing might reflect:
 - Value of NotBustCo's assets
 - Urgency
 - Tax saved
 - Time costs:
 - The liquidation(s)
 - The additional authorities, indemnities and distributions
 - The need to work with the other professionals
 - The costs being charged by the other professionals

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If you'd like to contact us...

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