

## Family business and succession planning



A growing awareness of the benefits that can be achieved from detailed tax and succession planning has meant that many family run businesses in Ireland have had to consider emphasising 'business' over 'family' - never an easy decision to make.

In this article Shaun O'Shea, NCFB Advisory Board member and Partner at Beauchamps law firm, considers the issue of succession planning and the importance of putting a family constitution in place.



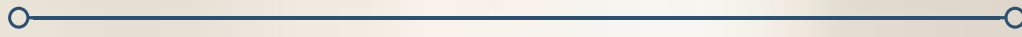
### Who should succeed?

A transition from a founder to the next generation can be relatively smooth if there is a natural successor who has been involved in the business. Some families are not so lucky, either because there is no one in the next generation who is interested in taking over, or because there is more than one family member who see themselves as the 'natural successor'.

A related issue that can arise is when no family member is interested in taking over, or, worse, when the founder is of the view that none of the interested parties has what it takes to follow in their footsteps. Evaluating the merits of a family member with a critical eye is always going to be troublesome, even if the founder is very aware of the need to put personal feelings aside for the overall good of the business.

Making a decision to favour a non-family member over a family member is also not an easy thing to do but if a founder wants to ensure their business has the best possible chance to succeed and to grow then sometimes the decision is a necessary one.

*Ideally, the successor will have served what amounts almost to an apprenticeship, have the experience and knowledge necessary to succeed, be someone who is known to the customers and suppliers of the business, and be someone who the family and other interested parties can have confidence in.*



Circumstances can sometimes mean that a successor has had their position thrust upon them unexpectedly. Having a clear plan in place can mitigate such issues and help to separate business matters from personal feelings.

## Plan early

One means to minimise succession issues, is to put in place a succession plan as early as possible. If there are internal family issues to be managed then the discussions can be started early and worked through at a time of the founder's or family's choosing. Waiting until such time as circumstances (be it death or incapacity or something else) demand action can lead to an unnecessarily stressful and rushed approach. The longer a founder has to plan a succession and hopefully the longer a founder has to work with and train their successor the smoother the transition is likely to be.

## Family constitution

Many families in business put in place a family constitution, in particular where there are two or more family members running the business. Typically, the family constitution will set out the ethos of the business and provide for:

- Mechanisms to encourage the next generation to participate in the business.
- Restrictions on the allotment or transfer of shares, often setting a minimum age at which the next generation can become shareholders.
- Whether in-laws may become involved in the business & what happens in the case of marital breakdown.

- Most importantly, mechanisms for dealing with family disputes regarding the business
- The process of agreeing the terms of a family constitution can help to identify and iron out potential difficulties and areas of conflict. The family constitution should be a “live” document, reviewed periodically to ensure it reflects the views of current members. Usually a shareholders agreement is also prepared in conjunction with the family constitution.

## Structure

Comprehensive succession planning involves more than just identifying a successor and can entail restructuring the business. In the case of a company, for example, this could entail the creation of different classes of shares with different rights attaching or the holding of shares in trust for children (adult or minor) and thereby allowing a founder to retain a measure of control.



## Start now!

To avoid conflict in the event of an untimely death or incapacity, founders should commence discussions with family members and advisors. Planning to engage the next generation in a family business cannot begin too soon and good communication is essential. The preparation of a family constitution provides a blue print for dealing with issues arising within the family concerning the business and also sets out the founder’s vision for the business.

For more information about Family Business related legal issues please contact Shaun O’Shea via [s.oshea@beauchamps.ie](mailto:s.oshea@beauchamps.ie) or 01 418 0667.

Visit: [www.beauchamps.ie](http://www.beauchamps.ie)