Transition of Family Business Ownership and Management

Transferring the family business can become a smoother process when expert advice and forward planning are involved. William Fry Tax Associate, Tina Quealy, explains more.

For family business owners, transitioning the family business leads to big questions, such as:

- Should this be done during my lifetime or on my death?
- Is there a natural successor within the family?
- Am I ready to step back and hand over the reins?
- What will happen to the business in the case of ill-health or sudden death?

Each family business is as unique as a family unit itself. However there are some considerations to guide you through these challenging questions to help make the best decision for your circumstances.

Lifetime transition within the family

When considering the lifetime transition of the family business within the family, the main aim is to bring the successor family members on board in as straight-forward a manner as possible. This can be easier said than done! Where possible, a plan should be established and expectations should be communicated by way of aiding this process.

Where the next generation are introduced as shareholders, it is important to have a robust shareholders' agreement in place. This can deal with a wide range of matters including rules on the transfer of shares, for example prohibiting the transfer of shares to non-immediate family members and to provide a process for resolving disputes between the shareholders.

A shareholders’ agreement can be supplemented with a family charter. A family charter is generally not legally binding but it can develop the rules established in the shareholders' agreement and deal with a variety of matters such as:

- how the family wishes the business to be run;
- the family’s goals and long term strategies for the business; and
- how family members should behave towards each other in the context of the business.

Both the shareholders' agreement and the family charter are key documents to guide family members on their expected roles and duties as shareholders of the business.

Will

It is vital that business owners have a valid will. Without a will, your estate may be inherited by unintended beneficiaries. For example, if a married individual dies without a will ("intestate") and is survived by a spouse and children, the estate will be divided between the spouse and children. This may not be suitable in circumstances where there are minor children or adult children who may not be capable of running the family business. By ensuring a valid will is in place, you can decide who should inherit the family business, or if you cannot decide now, your will can include trust structures which would allow this decision to be made by your trustees in the event of your death.

Enduring powers of attorney

It is also extremely important for business owners to have an enduring power of attorney. This enables the business owner to nominate an attorney or attorneys who can act on his or her behalf in the event that the business owner cannot manage his or her own affairs following an accident or illness. With planning, a business owner can appoint appropriate individuals as attorneys to act in respect of business matters ensuring the continuity of the business in difficult circumstances.

Taxation

Whether transition during lifetime or on death is preferred, the business owner should ensure that appropriate taxation advice is taken. Where a family trading business is being transferred, there are various tax reliefs which can be relevant both for the business owner and the successors. In cases where the tax reliefs are not immediately available, it may be possible to take steps so that such reliefs could be available in the future.

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