

Wedlake Bell

BUSINESS SUCCESSION

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BUSINESS SUCCESSION – INTRODUCTION

Objectives

- Why is this important?
- Why now?
- What are the issues to consider?
- What tools are available?

FAMILY BUSINESSES ARE IMPORTANT

- Two thirds of UK businesses are family owned - 4.8 million in total, of which over 18,000 are medium and large businesses. They generate over **a quarter of UK GDP**. (Institute of Family Business)
- However, less than one-third of the companies in the S&P 500 remain founder- and family-owned businesses.
 - “Family owned” means that a family owns a significant share and can influence important decisions, particularly the election of the chairman and CEO.
- The picture is quite different in emerging economies according to McKinsey analysis
 - Approximately 60 percent of their private-sector companies with revenues of \$1 billion or more were owned by founders or families in 2010
 - 4,000 of them could hit \$1 billion in sales in the years from 2010 to 2025 and represent nearly 40 percent of the world’s large enterprises in 2025, up from roughly 15 percent in 2010

FAMILY BUSINESS SUCCESSION

- Fewer than 30 percent of family- and founder-owned businesses around the world survive to the third generation as family-owned businesses.
 - (See Christian Caspar, Ana Karina Dias, and Heinz-Peter Elstrodt, “The five attributes of enduring family businesses,” *McKinsey Quarterly*, January 2010.)
- Baby boomers, the wealthiest generation in history, are aging and are now preparing to pass down a record-breaking amount of assets to their heirs.
 - (BNY Mellon)
- Succession planning can effect successful transition of ownership to next generation.
 - However, not many family businesses do it!

FAMILY BUSINESS SUCCESSION STATISTICS

43% of family firms do not have a succession plan in place, with only 12% making it to a 3rd generation



Source: Family Business Survey 2016, National Bureau of Economic Research
Family Business Alliance

Slide 5

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DEATH, DEMENTIA, DISASTER

- Inertia
 - Too difficult to deal with
 - Denial
 - Lack of specialist advice
- What is the impact of not addressing the issues in time
 - On the family and wealth
 - On the business
- Lack of control and dilution of shareholdings
- Practical impact on the day to day functioning of the business
- Adverse affect on the value of the business

SUCCESSFUL SUCCESSION PLANNING

- Keep your business as fit as possible
- Separate the ownership from the management
- Plan for effective transfer of wealth
- Incentivise key non-family members
- Put appropriate ownership structures in place – Trusts? Foundations? FICs?
- Review/draw up Shareholder Agreements
- Plan for the unexpected:
 - Lasting Powers of Attorney
 - Wills

SUCCESSFUL EXAMPLES

- Warburton Family
- Warburtons is the UK's leading independent baker and one of the UK's top five grocery brands
- Warburton family have run the business for most of its 130-year history, as the business has extended its reach across the UK. Jonathan Warburton, one of the fifth generation of the family, is current Chairman, and his cousin Brett is Director of the business
- In 2005, after a decade of strong growth when turnover went from about £50m to more than £300m, the family decided that they were ready for a chief executive from outside the family
- Anonymous example

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RB2

Looking beyond the family at Warburtons - The Economist

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KEY POINTS – PLANNING WITH FAMILY BUSINESS

- Increase in wealth – requires careful planning
- Asset protection issues – e.g. divorce (pre/post-nups?)
- Need to consider estate planning in a global context (including assets overseas and tax in those jurisdictions)
- Tax
- Jurisdictional considerations (e.g. recognition of legal structures)
- Planning for death/incapacity
- Consider overall position including existing arrangements (e.g. shareholder agreement) as well as new structures
- Start the process early and involve family members where possible/appropriate

PASSING DOWN FAMILY WEALTH– KEY QUESTIONS

- How much should one tell the next generation about the family's wealth levels
- How do you balance between family members?
- How do you inform but not over-burden?
- How do you educate rather than dictate?
- How do you instill responsibility and stewardship yet leave room for flexibility and initiative?
- How do you protect assets yet not exclude or dis-engage wider family members?
- When are the right times for these conversations?

SUCCESSION PLANNING

- Address the "heart" and psychology of the matter:
 - Consider how to raise these issues in a positive and calm way
 - Establish a family framework
- Consider the legal options available and actual mechanics: what would this look like?
 - a trust/foundation?
 - Co-investment agreements?
 - Creating share classes in a family business? A FIC?
 - Wills/Powers of Attorney?
 - What are the tax consequences?

CHOOSING THE RIGHT OWNERSHIP STRUCTURE?

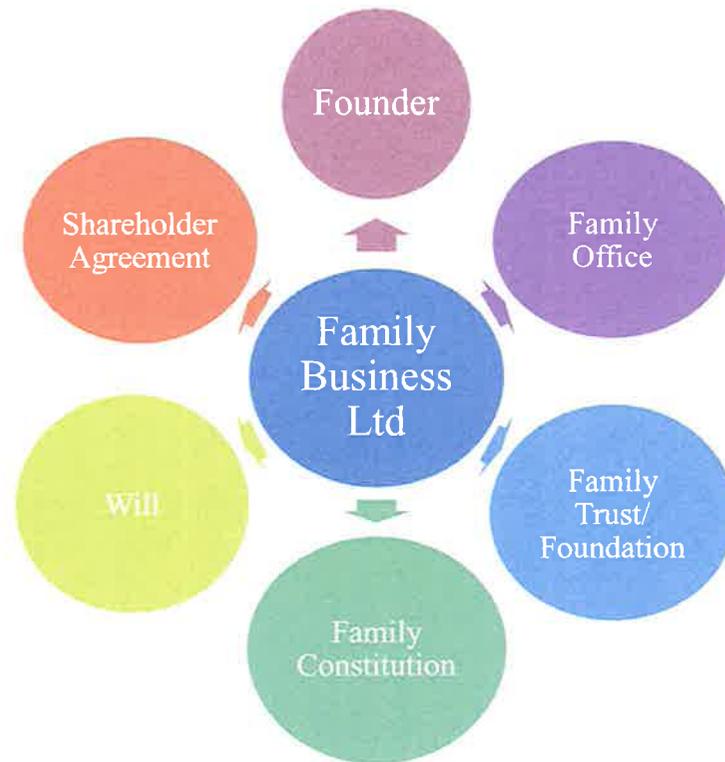
Introduction

- Objectives:
 - Separation of ownership from management
 - Consolidation of business
 - Asset protection
- Transferring shares (or part) to structures like Trusts/Foundations can ensure ownership is unaffected by death of patriarch.
- Family members involved in business - can continue to manage the business at Board level but have wealth protected and managed separately
- Family members uninvolved in business - have wealth protected and managed, but no direct involvement in business

FAMILY CONSTITUTIONS – KEY POINTS

- Can anticipate and deal with difficult issues e.g. death of key individuals or divorce
- Provides a “road map” for family and their advisors to successively manage competing interests in the “spirit” that the Founder intended
- Can provide for management of family wealth and extraction of profits from family business
- Can set out guiding principles for employment of family members within the business and how/when external professionals should be introduced
- Encourages a mutual understanding of the rights and responsibilities of all persons who have an interest in the family wealth
- Forms a framework which engages with the family members, family advisers, family businesses, family investment companies and other family structures

SUMMARY – OVERALL CONSIDERATIONS





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