

SUCCESSION PLANNING – FACE REALITY AND GET IT RIGHT

It is often said that the effort required to keep a profitable family business intact can frequently exceed that required to create the business in the first place. When the founders or custodians of a successful business approach retirement, they can often face such a bewildering array of issues that they find it difficult to know what to do for the best.

Experienced businessmen or businesswomen often have difficulty in addressing the situation. This is because there are inherent conflicts of interest.

They are investors in the family business and may be looking for the capital tied up in it to sustain their retirement if they have inadequate personal savings or pension funding in place. They are successful managers and administrators but love and affection for their family may affect their objectivity as to the management abilities of the younger generation. The end of their employment can often weaken the business because of the departure of know how and goodwill with clients.

Impartial and objective professional advice helps rationalise these conflicts to evolve an effective and sustainable strategy. This Memorandum summarises how we as a firm can help each client to achieve a well conceived and carefully planned succession.

Most clients only retire once, but we have the collective experience of advising many family companies on the problems and their resolution.

WHAT IS SUCCESSION PLANNING?

Succession planning takes so many forms it is difficult to describe succinctly. Common to all situations, however, is the desire to find a route that offers:

Financial security for the founders of the business.

Effective future management of the company.

Passing family wealth to the successor generation with minimal devaluation from Inheritance and Capital Gains Tax.

It is all too often the case that not focusing on the possible effects on family members and family politics leads to significant problems when founders let go of the reins. Our experience suggests that it is those with the willingness to face up to these difficult areas who have the greater chance of achieving most of their aspirations.

Where there are two or more founders of the business, it becomes even more important that the issues above are addressed and resolved if the business is to continue successfully as a single entity.

OUR ROLE

There is no standard approach to achieving a successful succession to a family business. However, we can help clients focus on the particular issues.

Essentially our role is that of a facilitator. We already have a detailed knowledge of what your business is all about, its weaknesses as well as its strengths. Typically, a succession plan will involve:

Identifying the issues - **We can discuss the situation and establish key issues for each of the protagonists. It is often more productive to interview interested parties separately so they can be quite specific about their individual aspirations.**

Identifying the fears - **Each interested party (and their spouses) will have anxieties over different aspects and fears of what will happen if the unexpected (or, indeed, the expected but not said) occurs. We can help clients face these issues and provide suggested solutions.**

Coming up with answers - **When the issues have been fully explored we, together with your solicitor, can advise on how we believe matters should proceed. For example, in the case of a family company, we will explore such issues as:-**

lifetime gifts of shares to adult children

gifts of shares to family trusts with a view to protecting wealth and maintaining a degree of fiduciary control

negotiating a sale, possibly on soft terms to the younger generation where the founders have insufficient capital for retirement

arranging a sale of the business where there are doubts as to the management abilities of the younger generation

reorganising the company into two or more companies to be run by different members of the family if management or family incompatibility is irreconcilable.

altering share rights to give different voting control on different issues

restructuring a company's issued share capital so that the older generation have preferred income and capital rights

utilising a self-administered pension plan for the benefit of all

tax advice on removing surplus cash and investments from the family business

creating written contracts of employment for the founder directors concerned about losing control of the company.

preparing Wills which will complement steps envisaged above and, in particular, benefit any members of the family who are not involved in the family business, i.e. maintaining the desired balance between children.

Limiting the adverse effect – marriage breakdown? - **It is unrealistic in these times not to address the implications of marriage breakdown in relation to the next generation. What happens if a son or daughter succeeds to the business and then finds that he or she is involved in divorce proceedings?**

Our planning advice can extend to the use of family settlements created with a view to minimising risk of having to sell the family business to settle divorce proceedings, or proceedings brought by unmarried partners. Working with your solicitor we can address these matters in good time.

HAVE WE FORGOTTEN TAX?

The emphasis so far in this Memorandum is on the practical realities of passing on a family business to the next generation. It is seldom possible to ignore tax implications of proposed succession planning steps, but all that we need say at this point is that we advise clients on what we consider to be the most tax-efficient route to achieving their objectives. Once clear personal financial and business objectives have been arrived at, we will then analyse, the capital gains tax, inheritance tax, income tax and corporation tax problems and come up with means of reducing the overall tax burden for the benefit of the whole family.

CONCLUSION

It is axiomatic that succession planning should not be left to the last months leading to retirement. Any client with retirement plans within the next few years wishing to keep the business within the family should begin to consider how this is to be achieved today.

We would be pleased to discuss your particular circumstances with you as a first step along this road and, if appropriate, help you to develop a succession plan. If you consider this a desirable step, please call your normal contact to get things moving.

NASH HARVEY LLP

Factsheet

FOR GENERAL INFORMATION ONLY

Please note that this Memorandum is not intended to give specific technical advice and it should not be read as doing so. It is designed only to alert clients.

Professional advice should always be sought before action is taken or refrained from.