Experts

Avoid the drama: Succession planning for your business

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Carefully considering who you put into the driver's seat and when and how this occurs, will increase the likelihood of a more profitable business and in the long run, a dependable retirement income for you and the future owners of the business. Source: Getty

"I'm too young or too busy to think about a succession plan for my business," says the voice in your head. Or you're one of those lucky people with an abundance of family members ready, willing and able to take over your business. No matter what your situation, a family business succession plan is important, and it's never too early to have one in place writes Susan Bonnici, Estate Planning solicitor.

A 2021 KPMG report revealed 54% of family businesses have no documented succession plan in place and no retirement plan for their current leader.

Not only are they putting their hard-won business at risk, but they also could be opening the door for future conflict between family members, which can be very stressful and expensive!

Getting in early and putting a proper plan in place means you can have peace of mind knowing your business can and will continue without you if you retire, have an accident or at worst, die unexpectedly. But there are other benefits as well.

You can decide who will replace you

You may have in mind a particular person who you think is a natural fit to take-over your family business, but are they actually the right person? Do they have the necessary skill set? Are you sure they want to step in and run the family company?

It's worth having the conversation now rather than just assuming you know what other people want – especially over long periods of time when things can change for them – and for you. There could be other people in (or outside) the family who may be just as enthusiastic, and maybe even better equipped skill-wise to take on all the responsibilities to ensure your business is able to keep operating.

Carefully considering who you put into the driver's seat and when and how this occurs, will increase the likelihood of a more profitable business and in the long run, a dependable retirement income for you and the future owners of the business.

Avoid rushed decisions

One reason to plan the future operation of your business early is that it avoids the need to make rushed decisions when an unexpected event happens, such as an accident or death. Early planning gives you the chance to carefully consider all of your options, and for unhurried, open conversations with the people you have in mind.

Having honest and respectful conversations with family members and others with a stake in the business is the best way to preserve goodwill

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that you hadn't considered.

Retirement on your mind? – Start transitioning early

Different people approach retirement differently. Some people like to make a hard stop – finishing work on a Friday afternoon and never giving it a second thought.

Others, particularly where there is a family business involved, prefer a gradual transition to retirement. This approach is beneficial in that it allows you to train and observe the future leaders of the business in their new roles, while you are still on hand to assist with any difficult issues that may arise. Taking this time to pass down knowledge and support the new management will help to ensure a smooth leadership transition when the time does come to hand-over the reins for good.

Things to consider

So, the benefits to early succession planning are clear, but what makes a good plan and where do you begin?

When it comes to business succession, there are two main aspects to think about. The first is who will take over the practical running of the company, in terms of making the day-to-day decisions and leading the employees. The second consideration is who will have the legal control and ownership of the business, such as the shareholders or directors.

The legal structure of your business, for example whether you are operating as a sole trader, a partnership or a proprietary limited (Pty Ltd) company, will also inform how you approach your business succession planning.

If you are a sole trader, and you personally are a vital element of the successful operation of the business, then it may make no sense for the business to continue operating without you. In which case, the plan should simply be to dissolve the business and to sell its assets if you are no longer willing or able to work. An alternative is to change the structure well in advance of retiring and reorient the business accordingly – for example, transitioning the brand so it's associated with other key people in the business.

If you're in a partnership structure, then you will need to have a discussion with your business partner or partners and agree on what you all believe is an appropriate plan if one of you wants to leave the partnership or is unable to continue due to death or injury. Usually this situation will (or should) be covered by the terms of a Partnership Agreement.

Other family businesses are operated using a family trust model, with a corporate trustee. These are typically more complex arrangements, and when the time for succession arises, you will need to carefully consider who will be appointed as the new directors of the company, and whether there needs to be a change in the shareholders as a result of someone leaving the business. The gifting of shares in a company, and the appointment of a replacement director or trustee, can also be handled as part of your estate planning in your Will.

If you want your family business to continue operating after you retire, then the overall goal has to be developing a plan that maximises the value of the business by putting the right people in the right roles and ensuring that all of the legal groundwork and logistical preparation has been taken care of.

Doing the preparation and planning can seem like hard work – but given the blood, sweat and tears that have already been invested in building a family business – it is surely worth it. Proper planning can ensure that all that work doesn't go to waste and that the business continues to thrive for future generations.

What are the steps?

Seek independent advice

Decide what kind of advice you'll need. For example, legal advice is vital when it comes to putting all the documentation together, formalising a business succession agreement, or assigning gifts of shares and appointing new directors. The transfer of property or company assets to new owners may also give rise to significant tax implications, so seeking financial or taxation advice is also a good idea.

Identify a successor and map out roles and responsibilities

Identifying the roles and responsibilities of future participants in the family business is another critical step. Don't assume that everyone understands your thought process, and the rationale behind your business succession plan, even if you feel like it has been discussed over the years. There is often a lot of emotion tied up in family businesses, and when this is combined with high value assets, it can be a recipe for disaster for the future of the business.

Start writing the plan

Yes, start writing the plan – the legal term is a 'business succession agreement'. Your estate planning lawyer is a good place to start when it comes to beginning this process. There is a clear overlap between business succession, your Will and your Enduring Powers of Attorney. Each of these documents deal with the control or the transfer of your wealth from you to someone else. A comprehensive estate plan will look at your personal situation, as well as your business and its assets, and will ensure that they are all dealt with properly in the legal sense and can be carried out in accordance with your wishes.

Review it regularly

Reviewing the family business succession plan every few years is important, especially if you've created it early in the life of the business. Situations can change. For example, the daughter you may have initially nominated to take over the business may now have a career that's taking her in a completely different direction and her commitment has changed. Diarise to review your business succession plan, and your overall estate plan, every 2-3 years or when there is a significant change to your life or situation – whichever comes first. The important thing is to check in regularly and not leave it too long.

When should the plan come into effect?

This is entirely up to you! You can design a business succession plan that it comes into effect at a certain date (for instance, the age you want to retire) or have a 'stepped' plan that is gradual series of events over a set period of time. It's important to have provisions in place to deal with unexpected events, such as a serious injury which prevents you from working, or an untimely death.

If you haven't made specific arrangements for unexpected eventualities in your business succession plan, your financial attorney, or the Executor of your estate, may be required to step in and to deal with your business assets and operations if you lose capacity or die unexpectedly. It is often when people have complex financial or personal circumstances and a reasonable amount of assets that an independent trustee is useful to engage with.

It's up to you how much help you'll need or whether you'll let things take care of themselves. But putting together a family business plan as early as possible is a worthwhile step if your plan is to give your family business the best possible chance of continuing to benefit future generations of your family.

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