

BUSINESS TOOLKIT

Business Succession Planning



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5 TOP TIPS

Business Succession Planning

By Greg Dixon, Partner, Gordons LLP

When the inevitability of change occurs, having an effective business succession plan in place will help to secure certainty and stability. Here are my five top succession planning tips for business owners.

1 Make a will / check your will is up to date and valid

If you are a shareholder, particularly a majority shareholder, in a privately-owned business, a will is an absolute must. The will can be the key document in the business succession planning process as, in most cases, it will determine where that individual's shares (and associated voting rights) will end up.

If there is no will, or if the will is invalid, the default intestacy rules will apply. These rules create the ideal opportunity for a shareholding and its voting rights to be fragmented. With multi-generational businesses, the intestacy rules provide the perfect environment for acrimony between family members already involved in the business and others who have had zero interest in the business up until that point.

Often, particularly where young children are the next generation in a business, using a trust in a will is a really useful tool. They keep a shareholding and its voting rights together in the hands of trustees who ensure the benefit deriving from those shares filters down not only to the right people but, crucially, at the right time and in the right way, taking into account their individual circumstances.

2 Consider cross option agreements

A death in any business at shareholder level can have a profound impact on operations. A clear concern of the surviving shareholders is that they may find themselves suddenly in business with individuals with whom they had no prior relationship, or even who they dislike or consider lack the relevant business acumen, drive or interest in the business.

The very real threat of this is that key business decisions are not made quickly or at all. To tackle this, shareholders can enter into an advance cross option agreement to give the surviving shareholder(s) the ability to purchase a deceased shareholder's shares. This is achieved by life cover which all shareholders take out and hold in a trust arrangement for this eventuality. This can equally apply to the critical or terminal illness of a shareholder.

3 Check the company's constitution / review any shareholders' agreement

Succession planning can come unstuck if a company's Articles of Association impose restrictions which a shareholder doesn't know about. There may be a requirement, for instance, that shares cannot be held by anyone other than a bloodline relative. This may scupper a will which gives shares to a spouse, partner or stepchild for example.

Similarly, a Shareholders' Agreement, which can be a great way of formalising the wishes of shareholders on various issues, can contain provisions such as pre-emption rights (which equally could appear in the Articles) providing for shares of a deceased shareholder to be offered to the surviving shareholders in a certain order.



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4 Consider Inheritance Tax and the availability of Business Relief

As a general rule, shares held for at least two years in trading, private limited companies attract 100 per cent relief from an inheritance tax charge on death, irrespective of value. Assets held outside of a company but used in that business may also attract some relief, though a director's loan account will not.

To reassure yourself that your death will not trigger a potentially catastrophic tax charge and to check whether your particular circumstances or business structure may be restricting this important relief in whole or in part, it is a good idea to seek specialist tax advice. If a problem is spotted, there may be a quick fix to create a more tax efficient position.

5 Get a Financial Lasting Power of Attorney (LPA)

Finally, the mental incapacity of a shareholder, be it temporary or permanent, can throw a spanner in the works for a business. A simple step to protect against this is a Financial LPA.

This can cover a person's complete financial life or specifically their business interests. In any event, the LPA will enable shareholder decisions to be made without disruption or procedural uncertainty. The LPA can also be vital should there subsequently be a need to sell the business.