SUCCESSION PLANNING FOR FAMILY-HELD BUSINESSES

If you are currently in business with a family member, you may be surprised to know that non-arm's length business relationships are some of the hardest businesses to keep alive. The failure rate for family business succession is very high. Survival past second and third generations is unfortunately rare. Research shows that family-held businesses have approximately a 30% likelihood to survive the second generation and a low 15% prospect of surviving the third generation. There is no shortage of litigation over family-held businesses. Some of the most awful litigation originates from family disputes over business succession and the division of wealth.

Research shows that the majority of business owners don't plan their exit from their business. The reason for this lack of desire to plan might be the fear of letting go of their business or other factors such as family tension. Whatever the reason, research shows that 71% of small business owners plan to exit their businesses within the next 10 years, mainly for retirement purposes, and only 7% of them have a structured succession transition plan. Business owners are more likely to either sell their business to non-family members or not plan for succession, than to sell their business to family members.

This trend might be reversed if the business relationship between family members were formalized at the outset. Although many may not like treating family members like arm's length parties, when it comes to business, it is better to take additional preventive measures. Most business owners wouldn't consider owning shares in a company without a shareholders agreement to determine their rights and obligations vis-à-vis the company and the other shareholders. A shareholders agreement can provide a certain comfort level in terms of control and certain restrictions in terms of future expectations. The probability of breakdown of the business relationship and, ultimately, litigation can be minimized when expectations are made clear at the outset of the business relationship. At the very least, a shareholders agreement is essential in a succession planning situation, especially one that involves a family member receiving shares.

A business owner may benefit from many advantages of implementing a succession plan, such as providing for the future of one's family, minimizing future taxes, maintaining harmony with family and employees, and improving the value of the business. The successor also benefits by being able to prepare himself or herself to become the business owner and from the improved value of the business. Although it might prove challenging finding a suitable leader of the business to reconcile certain family members' conflicting visions for the future of the business, the benefits of a succession plan far outweigh any disadvantage of implementing such a plan.

The implementation of a succession plan involves complex consideration of the "who, what, when, where and how". A lawyer can provide advice on the timing, the appropriateness and the manner of implementation of the succession plan to the benefit of the business owner and their family.