

Let's chat

Family business succession – November/December 2020

With:

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Information provided is general in nature; precise application depends on specific circumstances

Introductory comments

- Detailed paper
- Role of the advisor
- Project manager or specialist

Statistics

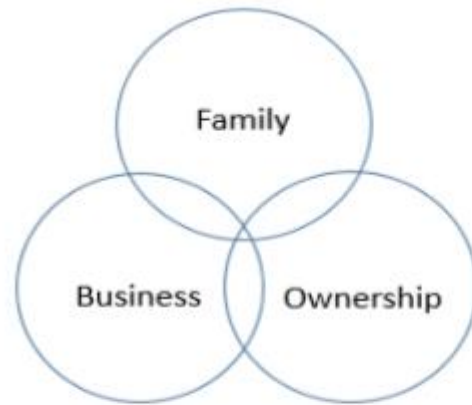
- 2018 KPMG Report in conjunction with Family Business Australia
- 37% with some form of plan v ~20% in 2012
- Still lacking appropriately documented plan

The 'family' factor

- Academic literature
- Concept of 'socioemotional wealth'
“non-financial aspects of the [business] that meet the family’s affective needs such as identity, the ability to exercise family influence, and the perpetuation of the family dynasty”
- Five factors:
 - **F**amily control and influence
 - **I**dentification of family members within the firm
 - **B**inding social ties
 - **E**motional attachment
 - **R**enewal of family bonds to the firm through dynastic succession

Family and non-family businesses

Picking family members into leadership roles in the business regardless of experience	Picking a person with the most suitable qualifications into leadership roles
Family member executive deciding to proceed with risk adverse strategies to maintain family wealth	Directors deciding to proceed with strategies maximising potential returns
Family businesses choosing to self-finance transactions to ensure control is retained in the family	Non-family businesses may seek financing via debt financing or equity participation from non-family members to ensure large-scale transactions undertaken
Family businesses sticking by underperforming family members due to fear to repercussions within family dynamics	Non-family member executives more easily criticized and dismissed if underperforming
Lack of written documents and evidence maintained due to the trusting nature of family members	Formal documents and processes implemented to provide a record of decision making



***Three Systems Model of Family Business (Source: Tagiuri and Davis
1992)***

Fact-searching

- Understanding intentions in relation to ownership, management and family
 - The family's objectives in relation to the succession of the ownership and control in the business
 - The family's values and overriding principles that should be considered for future generations
 - Whether there are any transition arrangements that can be implemented to ease key persons into the business

Application

- Hardwiring (formal legal documents)
- Flexibility (moral pieces of paper)
- Middle ground?

Ownership

- Current structure
- Trust/Company/Partnerships
- Need to restructure
- Ensuring ownership passes to intended beneficiaries
- Documentation

Discretionary trusts

- Discretionary beneficiaries
- Ownership is difficult
- Heavily relies on passing ‘management’ to the correct people
- Trustee role
- Appointor/principal role
- Certainty v forcing members together
- Recent case – Hoh v Ying Mui Pty Ltd [2019] VSCA 203
- Equity/trust law

Unit trusts

- Identifiable interests removes ownership doubt
- Rarer
- Some commercial issues persist
- QLD stamp duty issues

Companies

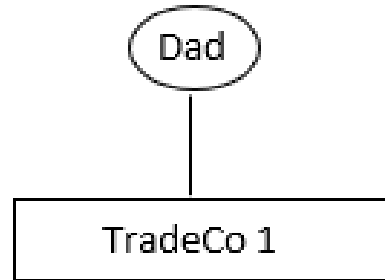
- Identifiable interest allows ownership certainty
- Retention of profits
- Abuse of minority shareholder rights (Corporations Law)

What's the best structure

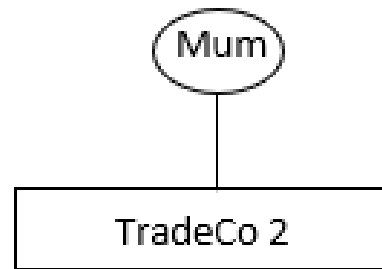
- Bringing family groups together
- Ensuring family sub-groups have an identifiable share
- Longevity:
 - Company
 - Trust
 - SA Trust

Bakery example

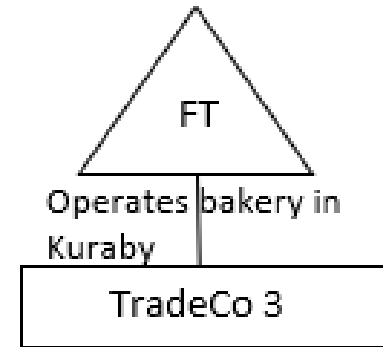
Example



Operates bakery in
Sunnybank



Operates bakery in
Aspley



Operates bakery in
Wavell Heights

Passing ownership

- Ensuring ownership passes to intended beneficiaries
- Documentation
- Context
 - Will challenges
 - Challenges under separate areas of law – equity/trusts/corporations law

Passing control (management)

- Rules v framework
 - Certainty but cannot predict everything
 - Framework to ensure things still can function
- Ensuring management passes and transitions seamlessly:
 - Integrate now or later
 - Qualifications
 - Independent advisors v family members
 - How decisions are made
 - Vetoing or casting votes

The family factor

- Managing expectations between family benefiting and family managing
- Procedures and frameworks
- Family constitutions and councils
- Frequency of meetings
- Dispute resolution mechanism

Example

- Mum and dad
- Four children
- Troublesome son-in-law
- Family dynasty
- Will challenges

Example

- Tug boats
- Two brothers
- Certainty for next generation
- Discrepancy in next generation (one brother had three children, while the other had one child)

Contact details

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