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Why do I need a Business Succession Plan?

By Gus Irdi, IRDI Legal (June 2016)

Australian business owners spend years of hard work establishing a successful business, yet many are unable to unlock the capital and wealth they have built up (and which they require for their retirement) because they have not made proper succession plans.

There are currently more than 2 million businesses operating in Australia of which up to 87% are family operated[1]. A recent report[2] showed that 72% of family businesses expected to have some transfer of ownership in the next 5 years yet only 27% of those businesses have a documented plan as to how this will occur.

While retirement can be planned, more than 50% of exits from businesses are not voluntary but a result of one of the 5 D's: Death, Disability, Divorce, Distress or Disagreement[3]. It is essential that a carefully structured business succession plan is established <u>before</u> an unexpected event occurs, so that an owner can implement their specific wishes.

Business succession is not properly dealt with in the partnership, company, joint venture or trust documents which the business may operate under. **It requires a properly prepared Business Succession Plan which will**:

- enable the smooth transition of a business from the current owner to a new owner with less chance of deadlocks, disputes and unnecessary delays impacting business performance; and
- ensure that current business owners maximise their business exit value.

The preparation of a Business Succession Plan involves:

- a discussion of issues regarding the future of the business with relevant stakeholders eg co-owners, family members, staff, financiers and suppliers;
- a financial assessment of the business and the owners future financial needs to determine appropriate succession options (eg trade sale, management buyout, family transfer);
- the formulating of a plan to make that business sale/transfer ready (eg modifying financing arrangements, reassessing business priorities); and
- the preparation of written agreements whereby the relevant parties formally agree what will happen to the business as a result of 'triggering events' such as death, retirement or bankruptcy of a co-owner and outline detailed financial and practical aspects of any transfer.

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[1] Australian Bureau of Statistics 2013 and 2014
[2] 2015 Family Business Survey by KPMG and Family Business Australia.
[3] Exit Planning Institute

Depending on the structure of the business, the written agreement (which is essentially a Will for a business) may be in the form of:

(i) A Shareholders Agreement (for a corporate business entity);

(ii) A Business Succession Agreement (also known as a Buy/Sell or Buyout Agreement); or

(iii) An Estate Plan (when shares are owned by an individual);

What to consider for your Business Succession Plan

The preparation of a Business Succession Plan will typically require consideration of the following issues **in conjunction with experienced legal and financial advisors**:

- Existing business structure (eg trust, company, partnership or self-managed superannuation fund) and terms of relevant agreements;
- Proposed successor (family member, business partner, other) or alternative exit strategy eg third party sale;
- Timeframe;
- Specific trigger events;
- Key personnel changes and skill retention strategies;
- Legal considerations eg existing Will and personal succession plan; and
- Financial considerations eg retirement income, sale price and terms, tax implications.

How can I find out more?

At IRDI Legal, our experienced and specialised Business Succession team can assist you in the preparation of your Business Succession Plan and associated agreements as well as all aspects of your personal estate planning.

We will work with you to create a solution specifically for your circumstances so that your business and personal assets are protected.

Please contact us to find out more.