

Crystallising the value your business represents

Owning a business can be one of life's most rewarding experiences but it is not without its challenges; not least of which is keeping the cash flowing, paying the wages, minimising taxation and, at times, dealing with one's fellow shareholders, directors or partners. All well and good, and all part of being in business for one's self, but what would happen if you or one of your fellows got into personal financial difficulty, got divorced, lost the capacity to speak or act for themselves, or suddenly died. Could the business continue to function, would the bank call in its guarantees and how will your families crystallise the value the business represents? And the more successful the business is, the bigger the problem gets.

Making a Will and having Lasting Powers of Attorney is only part of the story as, without a valid shareholders' or partnership agreement and the concomitant cross-option agreement, things may not run as smoothly as you hoped. For instance, can a shareholder or partner: -

- freely transfer their shares to their spouse, children, associated company, family trust etc; and, if they can, will the new owner want to be involved in the business or will you want them to be?
- sell or transfer their shares to an outsider without first offering to the other Shareholders (*Pre-Emption Rights*), and would you be happy if those shares went to a competitor?
- be obliged to sell in the event of death, bankruptcy or the loss of physical or mental capacity?
- value the shares; if so, is it by a formula established in advance, a value assessed by auditors or by auditors in default of agreement and should that calculation be treated differently depending upon the circumstances, (*e.g. on death, disability or bankruptcy*)?

Other questions to ask:-

- are there any matters requiring the unanimous approval of the Directors, Shareholders or Partners, as opposed to majority approval, or requiring the approval of a specific Director or specific class of Shareholders or Partners?
- are bank guarantees capable of being called in on death, disability or personal bankruptcy and what would that do the business and families?

Things to bear in mind: -

- Limited Companies are governed by their Memorandum and Articles of Association which don't usually cover these issues.
- Partnerships without a proper agreement are governed by the Partnership Act 1890 which stipulates that: -
 - profits are shared equally
 - all Partners are equal
 - automatic dissolution occurs on death or bankruptcy

Being in Business is one of life's most rewarding experiences, but it can expose you to more risks and higher penalties than you might have imagined. However, by finding out just what those risks are you will help to protect yourself and make your business easier to run.

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