Rhône

WHO WILL SUCCEED YOU IN YOUR BUSINESS ?

You've spent a lifetime building up a business but your children or grandchildren are not interested in taking it over. Many have come back from studies abroad and wish to pursue other interests. Before thinking about selling the business, think about establishing the right family structure.

It is a scenario that we see more and more frequently. It is estimated that in the US alone the so called 'baby boomers' will pass down $30 trillion in assets to their children and grandchildren over the next decades. But how many of those children are ready to receive them? And are there any solutions to avoid the infamous problem of "from shirtsleeves to shirtsleeves in three generations"?

TO SELL OR NOT TO SELL ?

Many business owners assume that the first question they need to address is whether their business should remain family-owned after their lifetime. This is far from the truth and the last issue to consider, not the first. If there are doubts that the next generation will be able to operate a single business, are they really going to excel at managing a heavily diversified and largely liquid investment portfolio?

Business owners are advised to first analyse family strengths instead. How should decisions be made once you are no longer available to provide a guiding hand?

ESTABLISHING A FAMILY STRUCTURE

Jointly defining a succession planning structure can bring a family together and allow each member to flourish within a particular role. Three key issues need to be addressed: Who is responsible for investment decisions? How are profits re-invested or distributed? How shall the family interact with independent professionals?

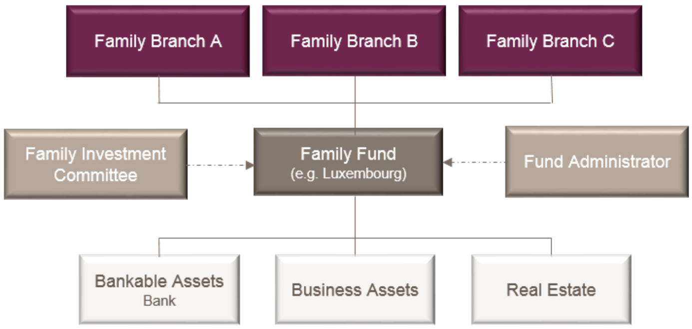
Investment control

There are obvious advantages to a family investing collectively, including better bargaining power, greater potential for asset diversification and greater interaction between family members. Nevertheless, think about who will run the business and have the last say? Collective investment can be difficult to achieve if at any time a family member can decide to go their own way. The strongest family units, on the contrary, work because every member wants to be a part and recognises the collective advantage.

Distribution policy

The easiest way to destroy a business is to drain it off investment. The second question you should ask yourself is: Who decides which profits should be re-invested and what is distributed to meet family expenditures? More specifically, should family beneficiaries be able to make demands concerning income and/or cash originating from their stake?

EXAMPLE FAMILY FUND STRUCTURE

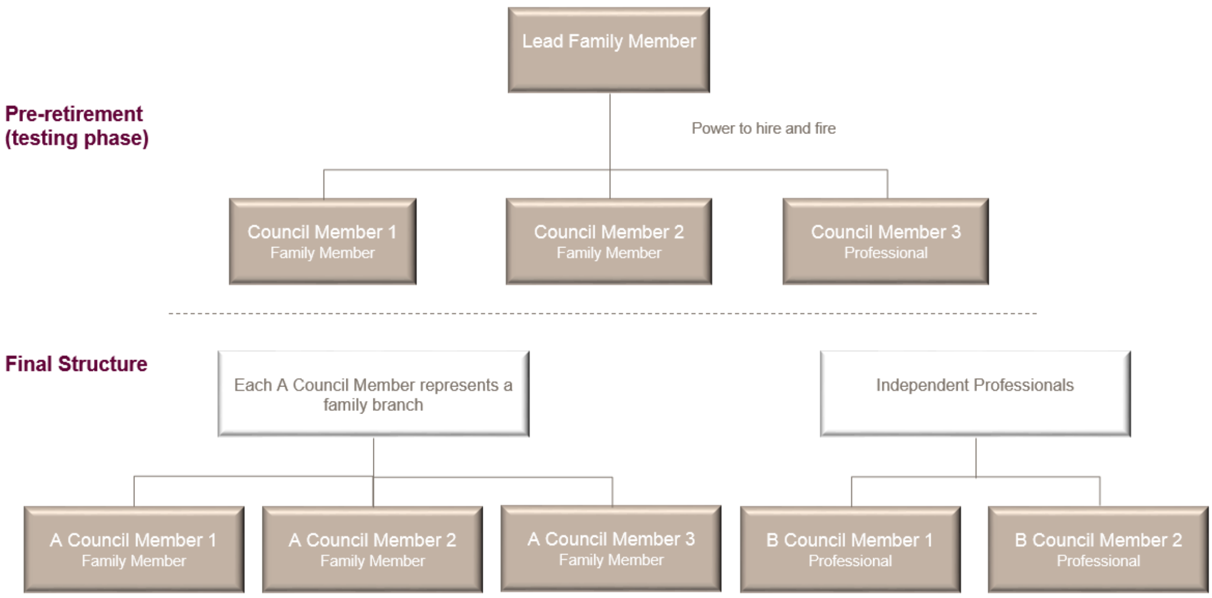


The so called 'family fund' is an increasingly common vehicle to provide family members with defined rights to participate and exit on terms that you can define. There are, however, numerous ways for family funds to be structured: the choice ranges from simple limited companies on the one hand to fully regulated funds (subject to similar rules as public collective investment schemes) on the other.

Interacting with independent professionals

There is no right or wrong answer as to how the family and independent professionals should interact in the governance of a structure. Seen in the long term, both parties must however be sure of their roles. Below you find an example of how this collaboration might be structured:

EXAMPLE FAMILY COUNCIL STRUCTURE



In this example, the lead family member establishes the Council during their lifetime. You may sit on the Council initially but eventually step down (while maybe retaining a supervisory role via an ability to remove Council Members if things are not working out as hoped).

After the lifetime of the lead family member, a balanced council reflecting all family branches and independent professionals steps in. In the example above, the independent professionals can be outvoted by the family only if they act unanimously.

NOTHING TOO TAXING…

Inevitably, any structure will also be determined by tax efficiency. As family members move jurisdictions, this can have a significant impact on the structure. Rules on taxation and on public disclosure of wealth vary dramatically between jurisdictions. One well-known European family dynasty now requires that any family member must leave the business if they move to the US (probably there are examples of US dynasties with similar rules for those moving to parts of Europe!).

However, while tax planning will certainly impact the structure used, it should not be a factor in the principal decisions. Tax rules will constantly change and families will move jurisdictions. An ownership structure must be flexible enough to adapt to that.

"PUT NOT YOUR TRUST IN MONEY, BUT PUT YOUR MONEY IN TRUST"

The role of trusts to protect wealth against third party claims, such as from creditors or in the case of divorce should also not be underestimated. A good, professional trustee can act as an experienced arbitrator, interpreting the needs of the family alongside the wishes of the founder. The ability to blame a trustee when needing to justify spending decisions, or even a requirement to enter into a pre-nup, can help to ensure that family members themselves remain on good terms.

So before you ask the question 'To sell or not to sell?', go for 'All for one and one for all?' instead.

RHONE

Rhone, a Swiss Group with international operations, provides guidance on choosing the right legal structures and jurisdictions for your needs.

We also obtain and provide a comprehensive range of legal, administrative, fiscal and accounting services for such structures. We have more than 50 experienced staff who are carefully recruited for their qualifications and discretion. They draw on decades of experience in providing services of the highest caliber to clients from all over the world – whatever their needs.

Rhone's mission is to create tailor_made and innovative solutions founded on sound expertise and a disciplined approach and delivered through a personal relationship forged with clients over the long term.

For more information, please visit rhoneservices.com

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