Why Succession Planning Must Go Beyond the Transfer of Ownership

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A business can transfer to new ownership within a short period of time, and this part is often simple. The more difficult aspect is ensuring that the right people will manage and make decisions for the business.

Planning for succession is often more complicated than anticipated. It is important to ensure that the business will continue to run, make decisions and create value.

Ownership and Management

One of the key points to remember when transitioning a family business is that ownership doesn't mean management.

There may be multiple family members who have a right to share in the wealth, but not all will have the knowledge, interest or capacity to manage the business. Whilst some family members may want to be in an executive role, others may want to stay as shareholders and enjoy the benefits but not get involved in running it.

Careful planning can be put in place to decide which family members will have voting rights, a place on the board, entitlement to dividends and management responsibilities. A shareholder agreement can also set out what happens to a family member's shares if they pass away, divorce or want to leave the business.

Governance

Often family businesses are very reliant on the founder to make decisions, build relationships and approve certain actions. If they are no longer involved, there can be confusion around who has the authority to do what, causing delays and disputes.

A good governance structure should include who will make strategic decisions, what decisions need shareholder approval, how directors will be appointed and what management authority they have. This can be set out by using shareholder agreements, company constitutional documents and family governance arrangements. In the UAE, the Family Business Law (Federal Decree-Law No. 37 of 2022) also allows families to set out these rules in a family charter.

This will give employees, lenders, suppliers and business partners more confidence that the company will continue to function.

International Structures

If the family have businesses and assets in multiple jurisdictions, then succession can become more complicated. Different countries will have different succession laws, tax implications, company rules and recognition of estate planning documents. Without a will, local inheritance rules may decide who receives the shares, which may not reflect the founder's wishes.

Using holding companies, trusts and foundations (such as those available in the DIFC and ADGM), families can structure their ownership. However, the legal, tax and governance implications should be considered from the start. Consideration should also be given to the current ownership structure of the company.

Plan Ahead

One of the most common mistakes made is thinking that succession is something that will happen once the founder retires or passes away. However, succession is a process that needs to be planned, documented and reviewed regularly.

The next generation will need time to get to know the business, develop their leadership skills and take on some responsibility. It is also important to put processes in place in case the current owner becomes incapacitated.

As the business grows, family relationships change, and assets move to different jurisdictions, your succession plan will need to be updated.

Consider who will have control of the business, who will manage it, how decisions will be made and how you will prepare the next generation.