

Back to the future: put success into your succession planning

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Family businesses are at the core of the business community in the UAE and play a significant part in the UAE's economy. Yet there continues to be a real challenge in the transition of family businesses through the generations, particularly after the second generation.

Succession planning and adopting appropriate governance are key to helping family businesses thrive and succeed through those transition periods, retain wealth within the family and avoid conflict and disruption to the business, particularly in the challenging economic climate with which we are currently faced. For a family business to survive, it is inevitable that its management and control must pass from one generation to the next, so why are so many family businesses failing to plan for the inevitable?

Historically, many family businesses have failed to do so for a number of reasons, including a desire for privacy; the ability to retain control; reluctance to involve outside parties in their business; unwillingness to incur the cost; viewing it as a sensitive topic which is difficult to discuss; and/or it may be seen as unnecessary due to a misguided belief that the principles of Sharia law will ultimately resolve matters. However, the consequences of not having a succession plan in place can be as profound as a leadership void and the discord that can often follow from this can have serious implications for the business' performance going forward, not to mention the impact on family relations.

Most of these challenges and concerns apply to all businesses, but a family business has an added dimension to navigate - the family itself. The family brings family politics which are, by nature, more personal and complex than the politics in a non-family business. Every family is unique and has its own challenges, so there is no one-size-fits-all model when it comes to advising families on their succession planning and governance. However, there are some common principles that they must all consider:

1. Time is of the essence

It is never too early to start discussing a succession plan. The earlier the process starts, the less daunting a task it will be. Although things may change along the way, a good succession plan should allow for outcomes that will work for various foreseeable scenarios that may evolve over time. The most successful transitions will happen during the founder(s)' (or the current generation owner(s)' lifetime, to provide stability during the period of change and allow the next generation to experience running the business while they are still around. Many families do not invest in succession planning until it is too late and if the founder/current owner passes away, succession will likely be determined by the law of the deceased person's habitual residence or domicile. In the UAE, the distribution of an estate may depend on the application of Sharia law. Sharia law was not designed for modern companies and will not necessarily provide an end result that is in the best interests of the business. Not to mention the fact that the business could come to a complete standstill if the founder who passes away had exclusive authority, for example, to operate bank accounts.

2. Family values

Before a succession plan can be decided on for the business, the family must be clear on its identity, culture, traditions and core values, as well as the short and long-term vision for the business. These guiding principles together with a shared family vision will provide the framework for the succession plan, as well as help to stabilise and support a smooth transition. As part of this process, it is also important to understand the aspirations of individual family members to ensure that the right succession process is selected. For instance, those family members who do not embrace the family values or support the vision, should not be considered for a leadership role either presently or in the future.

3. An objective view

The reality of what is best for the business may often differ from what a family member wants for the family or him/herself. Family emotions can influence strategic decision-making, particularly when it comes to succession. For that reason, it is also important to think about the company's future (including succession) from a business perspective, which will usually require an objective view from an external advisor. It is typical that, initially, the founder will control all aspects of the running of the business, but as a company grows it must start to distinguish the ownership from the management of the business. Bringing in outside expertise can assist with this, as outsiders add an objective perspective and give opinions or ideas that family members may not feel comfortable proposing, or may not have even considered.

It can also be useful to ask non-family member employees for their input on the business, as they will usually have a good sense of what is working and what can be improved on the ground. This will also show the employees that they are valued which, in turn, can help ensure that they remain loyal and committed to the business for the longer term.

4. Embrace the next generation

Never underestimate what the next generation can bring to the table. Often they will have been educated abroad and may also have gained experience working outside of the family business so they can bring a fresh perspective and new ideas. They should be exposed to the business, delegated tasks and involved in key conversations and decision-making processes as early as possible so that they understand the business inside-out when the time comes for them to take the reins. In particular, it is important to involve

them in the succession planning and any restructuring process, otherwise they may challenge it in the future and the foundations of the business will not be as strong as they could have been.

Today, digital disruption and innovation are (or should be) high on the agenda of all businesses because it is essential to many elements of any business, including customer engagement, e-commerce, marketing, social media and cyber-security. The next generation is growing up in a new, digital aged world, seeing the world through a digital lens and can bring that vision and those skills to the business in a way that the elder generation may not be able to.

5. The legal framework

A succession plan must be supported by a robust legal structure. There are many forms that the structure may take and there are different considerations for each family based on (amongst other things) their family values and vision, the activities and geographic location of their business and assets and whether or not the structure must be Sharia compliant. In all cases, the structure will involve putting in place legally binding agreements which may include articles of association, a family constitution, a shareholders' agreement and/or trust arrangements, all of which will give peace of mind that a framework is in place with a view to resolving any issues that may arise, and reduce the risk of conflict and uncertainty, whilst limiting the damage and disruption to family life and all the while ensuring higher chances of the business prospering well into the future. The agreements should include a corporate governance framework that clearly determines, amongst other things, the roles of each family member, stewardship, eligibility criteria for the board and ownership, how decisions are made and who is accountable/responsible for what.

Planning for the inevitable now will not only help with a smooth transition of the family business to the next generation but will also help to ensure that the business continues to be a success for many years and generations to come.

Al Tamimi & Company's [Private Client Services team](#) regularly advises on family business matters, including succession planning, together with our [Family Business Practice](#). For further information, please contact [Dipali Maldonado \(d.maldonado@tamimi.com\)](mailto:d.maldonado@tamimi.com) or [Richard Catling \(r.catling@tamimi.com\)](mailto:r.catling@tamimi.com).