Posted on: June 10, 2021

PRIVATE BUSINESS TRANSITIONS: PART 1: FAMILY

By: David W. Harvey

Recently, RBS lawyers Silvana M. Facchin and David W. Harvey were part of a panel discussion for the Continuing Legal Education Society of British Columbia on succession and transition planning for privately owned businesses. David W. Harvey has broken-down and adapted this discussion into a series of articles that will be published in the coming months.

For many business owners, there is a strong desire to keep the business that they've worked so hard for over the years within the family. A transfer of the business within the family can be a great transition option, ensuring that the business will continue to provide for the family, perhaps for generations to come. However, for this to be a viable transition option, certain requirements must be met: (i) there must be family members *available* to take over the business; (ii) the family member successors must be *capable* of taking over the business; and (iii) the successors must *want* to take over the business.

There are a number of ways to structure a transition of the business within one's family. Often it will take the form of a gradual transition, where the ownership of the business is slowly transferred to the successors over a period of years. Even if ownership transfers all at once, the family succession plan will typically have been in motion for some time, with the successors having worked in the business for several years up to the transition point, perhaps even managing and running the business before becoming de facto owners.

A family business succession plan can also take the form of a transfer on death through the owner's will, or a transfer into a family trust for the benefit of the successors (and possibly other family members). Further, it is possible to split up the rights that are being transferred – perhaps a transfer of some ownership interest, but without any voting rights.

The family succession model allows for this flexibility to plan out an appropriate transition plan to suit the needs of the owners, their successors, and the family generally.

While there are many benefits to the family succession model, it is not without its problems. Often these problems have more to do with the family dynamic than the usual business or legal issues that one would face on a business transition. Sometimes successors are not capable of taking over the business, other times the owners are not capable of letting go. In some cases family members feel left out of the succession plan, and then in other cases the successors are annoyed that other less-deserving family members are also included in the succession plan. If there are pre-existing issues within the family, those issues are only going to be made worse when you toss in ownership interests in a business.

To help safeguard the family and the business from these issues, it is advisable to have a shareholders agreement in place. While it is not a perfect fix, a shareholders agreement can help the parties to anticipate issues before they arise and provide a framework for how those issues will be resolved when they do arise.

Given the myriad of options and issues involved in a business family succession plan, it is important to engage a lawyer experienced in navigating this process to ensure an appropriate and effective transition plan is implemented.

The business lawyers at Richards Buell Sutton LLP have a great deal of experience in handling business transitions, including transitions within families. If you have a business and would like to discuss your transition options with us, please contact David W. Harvey or one of our other business lawyers you are in contact with for assistance.