How do I make sure that my business can carry on smoothly after I have passed away?

1. **Drafting of your will**

Get expert advice on the drafting of your will. Numerous persons and institutions offer their services for the drafting of wills. Many of them don't have the necessary legal expertise and experience to draft a document that will constitute a valid will and unequivocally convey the intention of the deceased. An expert will also not only draft your will, but help you with you estate planning through your will and other means.

2. **One child works for your business or is your partner in the business**

If your son, for example, runs the business together with you, you might want to consider bequeathing the business to him in your will.

You should then also carefully consider how to treat your other children fairly. You could, for example, stipulate in your will that your son must pay your other children a certain amount for the business. On the other hand, you might feel that your son has played an important role in building up the business and consequently shouldn't have to pay your other children – or at least only have to pay them based on a portion of the value of the business.

Such terms in your will could be linked to the value of the business on the date of your death to be determined by your executor with the help of a valuator.

Your son could take out life insurance on your life to ensure that he would have the necessary funds to buy out his siblings. You could also consider giving him a certain period of time to pay his siblings in instalments, for example, over three years from the date of your death.

3. **Only director of a company**

If you are the only director of a company that owns the business, you should consider appointing a second director.

The second director will be able to carry on with the day-to-day running of the company's business after your passing. If there is no other director, and if you are the company's sole shareholder, the director can only be appointed by your executor once he or she has been appointed by the master. As it can often take a lengthy period of time to get the relevant master to issue the letters of executorship, there would be no legally authorised representative for the company from the date of death until the master does appoint the executor.

4. **Guidelines for your executor**

Consider drafting guidelines for your executor on how the business should be run after you have passed away.

Such guidelines should, amongst others, indicate who the key staff members of the business are who the executor could trust to carry on with the day to day affairs of the business.

If no heir of the deceased is interested in inheriting the business, it should be sold. You could, therefore, in your guidelines, also indicate to your executors who

potential purchasers of the business might be. Indicating a value or a method of determining the value of the business in the guidelines would also be of assistance to your executor in this regard.

5. **Cash flow**

Cash flow might be an issue for the business after your passing. The bank, which granted the business an overdraft facility, might withdraw that facility after your death. Therefore, you could take out life insurance on your life to provide the necessary funds to the business.

6. **Buy and sell agreement**

If you, for example, have a partner in the business, you should consider including a so-called buy and sell agreement. Such an agreement could stipulate that the surviving partner or partners will purchase the deceased partner's interest in the business for a purchase price determined after the death of one of the partners. The purchase price could be based on the value of the business. Furthermore, the agreement could cater for life insurance to be taken out by both partners on each other's lives. The surviving partner would then use the proceeds of the life insurance to buy the deceased partner's interest in the business.

This should then be a win-win situation in that the surviving partner is happy as he does not have to partner with the deceased's family. The family of the deceased, on the other hand, will probably also be happy to rather get the money as opposed to having to get involved with a business they are not familiar with and a partner they probably don't know.

You should get proper expert tax advice on the life insurance for the buy and sell

agreement. If structured correctly, the proceeds of the life insurance policy would be exempted from estate duty. Section 3(a)(iA) of the Estate Duty Act, 1955 prescribes certain requirements that have to be met before SARS will grant such an exemption.

If a company owns the business and has more than one shareholder, a proper shareholders' agreement, which would, amongst others, contain the buy and sell terms, should be drafted by an expert.

7. **Expert executor**

Make sure that you choose an expert executor. The executor will be tasked with taking the appropriate actions after you have passed away to limit the damage that will probably affect your business – especially if you were the key person of the business. The first couple of weeks after death are crucial. An experienced executor will, with the assistance of the auditor of the business and key staff members, be able to manage the affairs of the business appropriately.

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