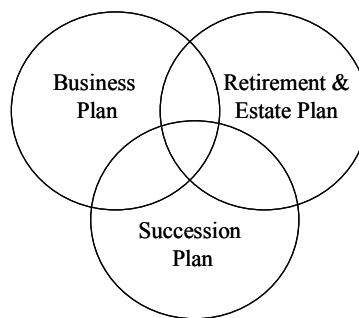


“Looking to Transition the Business to the Next Generation?” “Planning Your Exit from the Family Business?”

According to the most recent RMIT Family Business Survey, “more than 75% of family businesses have no written management or ownership succession plan” – which category does your business fall in?

As family business owners start to plan their retirement and how they will exit their business, it is critical that the business puts in place a well considered & structured ‘Transition Plan’ – sometimes referred to as a ‘Succession Plan’. A well considered ‘Transition Plan’ in addition to a strategic based ‘Business Plan’ will help improve the overall value of the business. This is critical with more than 50% of business owners relying on the business to fund their retirement (either via a sale or ongoing operation).



In constructing a ‘Transition Plan’ for your business, the key questions you will need to explore include:

- Ownership of the business going forward (Family, MBO, Trade Sale, IPO, Private Equity, Close the Business)?
- Management of the business going forward (family participation, existing staff/management, recruit external resources)?
- What will be your ongoing role in the business after retirement?
- What do your children really want to do? What are their career plans?
- What will be their role?
- Are they capable/ready to fill those key roles?
- How will their performance be measured?
- How will they be remunerated?
- How will family issues affecting the business be discussed and disputes resolved?

In those circumstances where the family will continue to hold ownership in the business and/or a new generation is entering the business, a ‘Family Business Constitution’ document provides a practical framework in which to gradually explore each of these areas and define your preferred direction.

A ‘Family Business Constitution’ documents the family’s common goals/values/philosophies and agreed ground rules on topics such as:

- The ownership of the business amongst family members (incl. definition of a family member), and what happens in the event of a shareholder dying.
- The process for employing, assessing and remunerating family members in the business.
- The ground rules for nominating, training/coaching, assessing and appointing a successor.
- The process for nominating and assessing individuals as members of the Board of Directors and/or Family Council.
- Communication channels and policies between the family and the business.
- The process for resolving conflicts within the family & business.
- Educating the next generation on the business including the roles & obligations as shareholders.
- A compulsory retirement age and process for transition. This will help facilitate the incumbent planning for his/her succession.
- The dividend policy for distributing profits to retired owners, without jeopardising business growth.
- The valuation principles & payment terms for shareholders who want to exit or sell their share.

In addition to having a ‘Family Business Constitution’ in place, establishing a ‘Family Council’ can be another effective and rewarding way to facilitate open discussions around conflicting family & business issues, and help ensure family harmony and ongoing success of the family business.

A ‘Family Council’ can be established as an alternative to shareholder meetings, and provide a forum to deal with family matters rather than confusing them with business matters. In establishing a ‘Family Council’ consideration should be given to engaging an independent 3rd party to oversee & facilitate the ‘Family Council’.

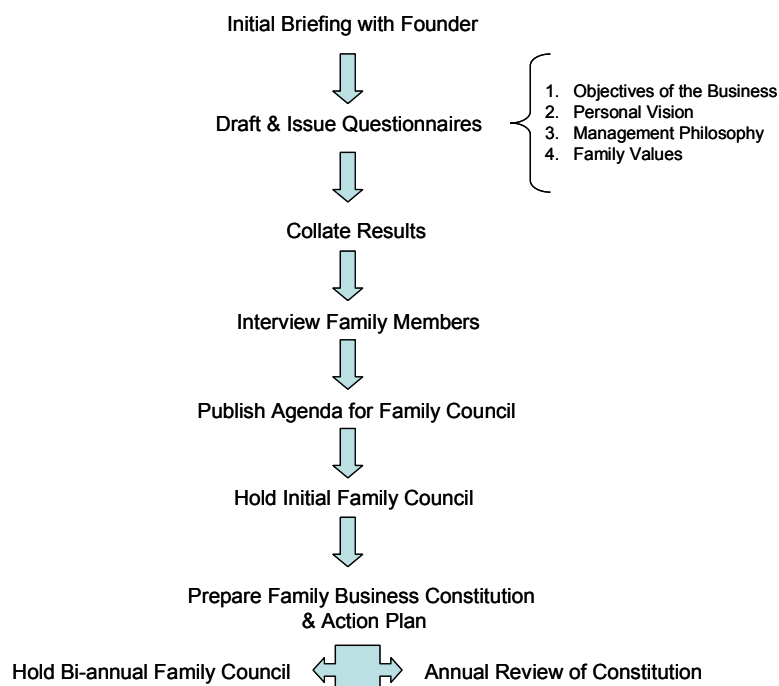
The ‘Family Business Constitution’ should be formally reviewed every two years and maybe modified or amended at any time by a majority vote of the ‘Family Council’, subject to ratification by all shareholders.

Sample Table of Contents for a ‘Family Business Constitution’ Document

1. Introduction
 2. Family Goals & Values/Philosophies
 3. Legal Structure, Business Ownership & Shareholders
 4. Organisation Chart & Positions/Roles filled by Family Members
 5. Board of Directors & Family Council
 6. Employing, Assessing and Remunerating Family Members
 7. Preparing Management Successors
 8. Dispute/Conflict Resolution Framework
 9. Termination of Family Employees
 10. Dividend Policy for Family Members
 11. Payment to Founder on Retirement
 12. Valuation Principles & Payment Terms for Transfers/Buy-outs
 13. Confirmation by Family Members
- Appendix A – Business & Personal Insurance Coverage
 Appendix B – Questionnaire Results
 Appendix C – Action Plan

A natural extension to developing a ‘Family Business Constitution’ is a review of items such as Wills/Estate Planning & Power of Attorneys, Business & Personal Insurances, Superannuation, Legal Structures & Trust Deeds, Employee Contracts, Draft Buy/Sell Agreements and other Financial Agreements (incl. pre-nuptials).

Typical Approach to Establishing a ‘Family Council’ and Developing a ‘Family Business Constitution’



To learn more about establishing a ‘Family Business Constitution’ and ‘Family Council’, call David Mernagh or Grant Field on 07 3002 4800.