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A well-planned will can save your business empire

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With more than half of Britain's small business owners not possessing a will that guarantees the future of the family firm, now is is the time to consult your lawyers for a more watertight succession plan, write Nick Sayers *and* Howard Taylor

Recent research by Legal & General has found that 51 per cent of Britain's small business owners have left no instructions in their will or made any arrangements regarding the succession of shares. A lack of planning thus is a recipe for disaster, with potential to significantly disrupt family owned firms.

The problem starts when there is a need to pass the company to the next generation which could only be possible if the bereaved owner had named the beneficiaries and apportioned shares to them in a will. Without a will, the statutory rules on intestacy will apply, which may not give the preferred outcome in terms of who succeeds to the economic ownership of the business. The persons who would inherit under the intestacy rules may end up in control of the business or may not have the necessary skills to run the business, either of which could be disastrous for the family establishment.

While shares in a company can be left under a will, a will cannot deal with issues relating to the future governance of the business and, whether or not there is a will, there is no guarantee that any beneficiaries will be able to become active in the business. These are matters for the company's Articles of Association and any Shareholders' Agreement. A will cannot provide that certain beneficiaries will be entitled to be directors or have a say in business decisions. Unless the shareholding left to a beneficiary exceeds 50 per cent, they will not be able to appoint themselves as a director. When considering succession issues, the provisions of the company's Articles of Association and any Shareholders' Agreement should be carefully reviewed and any necessary adjustments made to ensure that the beneficiaries will be able to manage the business as intended.

Where there will be a number of beneficiaries, it may be that some would like to be involved in the business more than others or are more capable than others. A succession plan should identify who are the right people to take the business forward. If there is any potential for disagreements to arise between any beneficiaries who will inherit shares, it would be wise to deal with such issues in the owner's lifetime and document any agreed arrangements.

There is a real risk of small, family-owned businesses failing if no succession plan has been put in place, particularly if the current owner is essential to the success of the company, for example if they are key to the company's relationships with its customers. An orderly handover of business operations to the appropriate members of the next generation may help to minimise any potential disruption to the business.

Inheritance Tax should also be taken into account. If a company does not qualify for Business Property Relief from Inheritance Tax (for example a property investment company), there is a risk that all or part of the company may need to be sold to meet any Inheritance Tax the beneficiaries would have to pay. Advice should be sought on whether Business Property Relief will be available and, if there is any issue, the owner should consider obtaining life insurance (which should be held on trust) to cover any Inheritance Tax that would be payable.

When thinking about the succession of a family business, it is best to plan ahead and take appropriate professional advice to help steer you through the issues involved.

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