Paul Currie LLB BCom

paul.currie@currielawyers.co.nz

113 Blenheim Road
P O Box 8261
Riccarton
Christchurch 8440

Phone: 348 8823
Fax: 348 9432
Mobile: 027 227 1887

INTRODUCTION

The information contained in this summary is intended to outline in general terms succession planning. Related to asset planning, succession planning is a subset of asset planning. What is succession or asset planning? It is arranging your assets and affairs to protect you, your assets, and your family against risks while keeping your assets and affairs in an advantageous way. Interposed into that matrix is the desire to hand over the family business to the next generation. This may not be appropriate in some circumstances, so the hard questions need to be asked and then all parties consulted in an open and frank manner.

Please note that your own circumstances may involve aspects which are not expressly mentioned in this guide. Similarly, there may be information contained in the guide, which is not relevant to your own situation. This is a general guide only.

ASSET PLANNING

What matters do you need to think about to start you on your journey?

Initially you should undertake the following analysis:

- prepare a list of your assets and liabilities – this is a good starting point. Your latest financial accounts will help, but remember they are prepared from a historical accounting basis so you will need to re-value assets at their market price;

- prepare an outline of your financing requirements – do you have the ability to borrow more, and using what collateral?

- prepare an outline of your future business activities – is your objective to increase sales organically, or buy a similar business and merge the two entities, or some non-business investment?

- prepare an outline of your family circumstances – write down each family member's ambitions, needs – then check with them to see if they reconcile;

- calculate your anticipated future income and assets – do these match your expected returns from the business?

- decide what future threats may affect your assets, and your income earning ability – e.g. incapacity, family illness

You should next consult Currie Lawyers to work through the issues that have arisen out of your asset planning exercise.

SOME REASONS FOR ASSET PLANNING:

Asset planning may involve transferring assets to an appropriate entity such as a company or a trust. These are discussed in our article on Ownership Structures. There are a number of reasons for asset planning, some of which may be applicable to you:

1. Protecting your assets from future claims

Holding certain assets in an entity that protects them from claims against you, your estate, your family members, or their estates. These claims can be made by:

- the Crown if you or your family members commit some kind of offence – these are much more comprehensive with the Health & Safety in Employment Act;
- your family under the Family Proceedings Act - this Act allows family members and step children to challenge your will, and claims under the Testamentary Promises Act;
- your spouse or your childrens' spouses under the Property (Relationships) Act - this Act now applies to both people in de facto relationships and married persons;
- third party creditors under contracts – this relates to your personal liability;
- members of the public – if it is proven you have legally wronged them – e.g. negligence

2. Flexibility

If personal, legal, or tax requirements change then you should hold assets in an entity that enables you to deal with your assets in the light of those changes.

3. Tax

Your asset plan should promote the minimisation of tax.

4. Future eligibility for asset tested benefits

You or your family members may be asset tested to determine eligibility for certain medical, rest home, and other government subsidies.

5. Transferring assets

It may be desirable to hold assets in an entity that allows you to transfer an asset efficiently to others such as your children on retirement.

6. Management

Sometimes it is desirable to hold assets in an entity that allows the asset to be managed by a one person or a small group of persons for the benefit of a number of people.

SUCCESSION PLANNING

One of the most difficult issues for business owners today is how to pass on the business upon retirement. Most business owners may want to see the continuation of their business in the next generation. The key issue is are you financially able to both pass the business on to your children, and keep sufficient money for your comfortable retirement.

Issues to consider include:

- Does the next generation have the ability or the interest to carry on the business?
- How do you choose one child as a successor over another?
- When should succession planning begin?
- Can the business support the incoming child or split to accommodate more than one child?

In most of these situations the business is sold to one or more of the children at its full market value. Some of the purchase price is paid immediately and the balance of it is paid over a period of time to the retiring parents who use this money in their retirement. These issues will create conflict. Currie Lawyers can assist with proper long-term succession planning to alleviate this difficulty.

113 Blenheim Road, P O Box 8261, Riccarton, Christchurch, New Zealand
Telephone 03 348 8823, Facsimile 03 348 9432, www.currielawyers.co.nz