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Important business strategies for company succession



The recent pandemic has been an eye opener when it comes to company continuity. What will happen if one or more of the shareholders die or become disabled, and where does their portion of the shares go?

Buy-and-sell agreements for continuity

A buy-and-sell agreement can be implemented in more than one form. The first and most popular is where shareholders enter into an agreement to purchase the shares of their fellow shareholders on death or disability, referred to as the crisscross or cross-purchase method.

The second option is where the company will purchase the shares from the deceased shareholder and cancel them, referred to as the company redemption or company purchase method. The buy-and-sell agreement stipulates the fair value of the shares or indicates a formula for calculating the share value. Trigger events can go beyond death and disability, such as divorce, *departure or disqualification of any shareholder*.

Buy-and-sell agreements aim to prevent the shares of the deceased shareholder from passing to others whom the remaining shareholders do not want as *business partners* or who are not invested in and committed to the success of the business. It also provides liquidity to the estate of the deceased shareholder.

Funding buy-and-sell agreements

To ensure that the surviving shareholders or the company have adequate funds available to purchase the shares in terms of fair value or a formula stipulated in the buy-and-sell agreement, life insurance is the most affordable and cost-effective approach. Other options include paying cash, installment payments or a loan. Each shareholder has a separate life insurance policy for each of their fellow shareholders. When any of the trigger events occur, the benefit paid by the insurance policy will be used to purchase the shares as per the buy-and-sell agreement.

In the event of a company purchase, the company will have life insurance policies for each shareholder and upon death of a shareholder, the benefit will be used to fund the buy-back of shares from the deceased shareholder's estate.

Family-owned companies

Within family-owned businesses, the deceased's last *will* and testament should indicate to whom the shares are to be transferred. In certain circumstances, the deceased estate might not have adequate liquidity and the beneficiary of the shares may have to provide liquidity before he/she can inherit the shares.

Buy-and-sell agreements are often used to keep the shares out of the deceased estate. A life insurance policy ensures liquidity for the deceased estate, with the added benefit of avoiding that the shares are held up in the deceased estate or paying unnecessary taxes.

Taxes

Taxes are always a consideration in any share transaction. Taxes depend on who pays the premiums and who will benefit on pay-out. It is therefore important that those involved in any buy-and-sell agreements familiarise themselves with estate duties and Capital Gains Tax (CGT) implications. One of the major benefits of buy-and-sell agreements are that upon death of a shareholder, the transfer of shares takes place before entering the deceased estate without being subjects to estate duty tax.

Conclusion

A properly structured *will* or buy-and-sell agreements can offer shareholders and their families peace of mind, and avoid the potential business disruption, uncertainty and conflict that may arise upon the death of a shareholder. It ensures a smooth transfer of shareholding between business partners and/or shareholders in the case of unfortunate events. It aims to prevent the shares of the deceased shareholder from passing to others whom the remaining shareholders do not want as business partners, or who do not have the necessary know-how or institutional knowledge of the business or are not invested in the success of the business. It can also provide liquidity to the estate of the deceased shareholder.

SERR Synergy has a solution that assists business in this regard, *please contact us for more information.*

About the Author: Sanet van Zyl joined SERR Synergy in June 2014. She is the Legal Corporate Advisory Manager. She specialises in business solutions and corporate governance and provides advice to businesses in respect of viable ownership structures.

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