

## *Wealth Owner Summary*

It's not uncommon for heirs to fight over how wealth should be spent. Private companies or families that agree how to manage their money effectively, now and for future generations, are more likely to keep their money. Creators and owners of wealth, and their heirs, are better served by having rules in place about how wealth should be managed, invested and distributed. Here we summarise some key features and benefits of an effective governance structure.



## AN INTRODUCTION TO GOVERNANCE STRUCTURES

The failure to plan for the transfer of family wealth to future generations is one of the main causes of the dissipation of wealth over two or three generations.

In particular, the successful continuation of a family business over a number of generations depends on planning for succession to the management and control of the business.

### WHY IS A GOVERNANCE STRUCTURE NEEDED?

As a family business devolves through generations the ownership and control of the business can be split between many individuals. This can:

- > make it difficult for key decisions to be made - for example, in relation to the potential sale or expansion of the business;
- > create tensions between family members - for example, between those family members who are actively involved in running the business and those who merely enjoy the economic benefits derived from the business; and
- > lead to instability in the running of the business.

### BENEFITS OF A GOVERNANCE STRUCTURE

A well designed governance structure will:

- > set the expectations of the owning family, particularly future generations, and get their 'buy in';
- > deal with succession to ownership of the shares (or interests) in the family business;
- > separate control of the business from ownership of the economic benefits derived from the business;

- > ensure decisions are taken at the right level - for example, day-to-day decisions can be made by the individuals who are running the business but key decisions on the strategic future of the business may require the approval of the wider family at an annual meeting;
- > provide a fair and harmonious exit from the business for family members who do not wish to be involved in the family business in the long term;
- > provide the opportunity for targeted tax structuring for different family members;
- > prepare the next generation to take over the business;
- > assist with the long term growth and stability of the business;
- > reflect the founder's/family's philosophy;
- > be flexible enough to develop and react to changes in the family and family business(es) over time; and
- > provide a means of sharing, managing and maintaining other family assets such as financial assets, properties, yachts, planes and art work.

Possible governance structures range from simple contractual arrangements, trust, foundation and corporate structures through to more complex structures involving a number of different vehicles depending on the needs of the family and the nature of the family's assets.

We design, establish and advise families on suitable governance structures to hold family businesses and other family assets.

We work closely with the founder translating the family's philosophy and vision into a workable legal structure.

## WAYS TO GOVERN WEALTH

POSSIBLE SOLUTIONS	KEY FEATURES
NON-BINDING LETTER OF INTENT	<ul style="list-style-type: none"> <li>&gt; Simplest option</li> <li>&gt; Letter of intent setting out what the family has agreed in relation to succession to the control and management of the family business</li> <li>&gt; Not legally binding</li> <li>&gt; Relies on family members (and their heirs) feeling bound to comply with its terms</li> <li>&gt; Not possible to enforce sanctions for not complying with the letter of intent</li> </ul>
CONTRACTUAL ARRANGEMENT	<ul style="list-style-type: none"> <li>&gt; Usually in the form of a shareholders' agreement or family agreement</li> <li>&gt; Legally binding document which deals with succession to ownership of the shares and control of the business</li> <li>&gt; Agreement between current shareholders but other adult family members may also sign agreement and so be bound by its terms</li> <li>&gt; Difficulties can arise in enforcing the agreement and imposing sanctions for breaches</li> <li>&gt; Not possible to bind future generations</li> </ul>
SIMPLE TRUST	<ul style="list-style-type: none"> <li>&gt; Trust holds all the shares in the family business</li> <li>&gt; Enables succession to the shares to be controlled and ensures shares are kept in the family</li> <li>&gt; Profits of the family business can be enjoyed by family members as beneficiaries of the trust</li> <li>&gt; Family members can retain control of ownership of shares and management of the business</li> <li>&gt; Ownership of the shares is not affected by the death of a family member</li> <li>&gt; No family member can transfer the shares (or rights in the shares) to a third party without the consent of the other relevant family members</li> <li>&gt; Suitable where all the relevant family members are involved in the family business</li> <li>&gt; Provides asset protection and confidentiality advantages</li> </ul>
DYNASTIC STRUCTURE	<ul style="list-style-type: none"> <li>&gt; Appropriate where nature of the family's assets and composition of family require a management structure. This will typically be for:               <ul style="list-style-type: none"> <li>- a multi-jurisdictional family and assets (which opens up the opportunity for jurisdictional diversification to improve asset protection)</li> <li>- various asset types</li> <li>- different types of family members</li> </ul> </li> <li>&gt; Likely to comprise one or more vehicles through which the family participate in and control the family's wealth, and one or more asset holding vehicles, including:               <ul style="list-style-type: none"> <li>- trusts or foundations</li> <li>- private trust companies</li> <li>- limited partnerships and limited companies</li> </ul> </li> <li>&gt; Will usually include a separate family office or administrative function</li> </ul>

This note is a general guide only and is not a substitute for proper legal and tax advice.



### CONTACT US

Please get in contact with any of our lawyers for further information

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# BUSINESS WEALTH

Building a successful business is a lifetime's investment. We will help you protect your legacy, now and for your successors.

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# *Personal* WEALTH

Substantial wealth, substantial risks. We will help you protect and pass on your personal wealth.

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# PRIVATE WEALTH INSTITUTIONS

Advising the industry that advises the wealthy; you can rely on us as your trusted legal partner.

## EXPERTISE

- > Corporate > Dispute resolution > Family businesses & family office > Fiduciaries > Philanthropy
- > Privacy & reputation protection > Private equity > Real estate > Succession planning, wills & probate
- > Tax planning, disputes & compliance > Wealth management institutions > Wealth structuring