

SUCCESSION PLANNING

Family Wealth Succession Agenda



KEY FEATURES:

- Necessity: Heredity is automatic but succession needs planning
- Ingredients of a good succession plan
- Process of development of a succession plan
- Tax and regulatory hurdles in development process and suggested solutions
- Impact analysis under regulatory and fiscal statutes
- Migration strategies
- Possible structures
- Precedents

Foreword



Wealth and businesses take years, if not generations, for families to accumulate and set up. Taking concrete steps to protect this wealth and business from changing times, evolving laws and the vagaries and conflicts of successive generations, is no longer an indulgence. It is an imperative. Succession planning is a necessity and not an option and this awareness has dawned quickly.

Many however still deny the inevitability of human mortality. Succession planning remains low down on their priorities, something that can be taken care of with a will, preferably to be made when one is nearly gone! It is never quite as simple.

As Hiten has rightly observed, succession planning is a process and not an event. It involves the promoters of business houses and also heads of family-run businesses having to think about their current family members, factions within it, generations to come, and, most importantly, the impact on business. Like any other business decision, the process of succession planning can be extremely complex and long drawn. Multiple laws and regulations need to be contended with, apart from all the other intangible issues.

While several authors have written detailed but separate commentaries on each law or regulation, I think this is one single publication focussing on and dealing with each aspect involved in succession planning and the relevant regulations impacting the same. It is this gap which the present publication has accomplished ably.

Clearly, this publication is the outcome of several years of experience, not only around the laws, but also practical challenges and the solutions adopted. Each succession plan is unique in its challenges and constraints; however, this publication provides a compilation of precedents and structures used in the past, and provides an excellent starting point for developing a new succession plan.

This PricewaterhouseCoopers publication on “Succession Planning” is a welcome complete guide for the business community and decision makers involved in the process and will provide them sufficient food for thought. Topics are captured in a succinct and lucid manner, making it not only excellent ready reference material but also logically arranged, and therefore, a pleasure to read.

Zia Mody

Preface

Dear Readers,



Benjamin Franklin famously (and allegedly) said, “The only two certainties in life are death and taxes.” Considering that the spectre of inheritance tax (or estate duty) continues to loom over us, taxes on death may soon become the third.

With family-run businesses continuing to be more the norm than exception in India and most of them progressing fast on the path to globalisation, succession planning has never been as important as it is today. Succession planning is not only a means to safeguard from a potential inheritance tax, but also a method to ensure that legacies remain alive and keep up with changing times with minimum conflict or impact on business.

Succession Planning is a process and not an event. In India, like much else, succession planning can be quite complex. Families are often large with several factions, and with multiple people involved in the business, deliberations around succession planning can be prolonged and difficult, making it imperative to involve an arbitrator or mediator. The slew of regulations around tax and other regulatory matters, in addition to the personal laws, do not help to ease matters.

Despite the above-mentioned factors, not planning for succession is not an option. Ruminating over corporate India’s history reveals the immense disruption caused by improper or absent succession planning. Familial ties have been irreparably damaged, wealth accumulated over generations has either been squandered or reached outsiders, protracted and endless litigation between family members has taken up significant time and effort, drainage of valuable resources that could have been put to better use, and most importantly, once-leading business houses have taken a huge hit — on their finances, glory and reputation.

While a will remains the most oft-used mechanism for passing down wealth through generations, it has own limitations, apart from the potential levy of inheritance tax. The chances of a will being challenged, tying up the family in litigation for years to come, are high.

Such limitations and other concerns, such as ring-fencing assets from legal issues, setting family protocols and ensuring that wealth is not fragmented, has led taxpayers to seriously consider succession planning through a private trust set up for family members’ benefit. Depending on requirements and family dynamics, multiple trusts may be formed. Usually, the trust is discretionary, with family members as trustees. Sometimes, an independent/corporate trustee is brought in.

This publication is an attempt to delve into various aspects of succession planning — from wills to trusts; Indian tax laws; and some relevant regulations, such as SEBI, FEMA and stamp duty. It’s a dynamic and very pertinent subject, and we hope you enjoy going through it as much as it’s been a pleasure for us to put together.

Hiten Kotak

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“The book reflects not only deep technical knowledge but also years of practical experience”

Adi Godrej

“A comprehensive and well-crafted compendium on the key subject of succession planning”

Harsh Goenka



“Probably one of its kind which provides insight on the regulatory landscape as well as guidance about the practical challenges and concerns of succession planning”

Manish Chokhani

“A pleasure to read what would otherwise have been a morbid subject, always nagging in the mind but never gets due attention- the compilation not only pushes one to introspect, but also provides path to action”

Ashok Goel

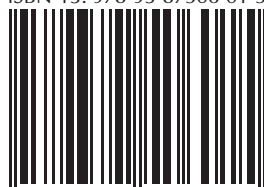


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