



PEMBERTON  GREENISH

Family Business
Confronting the Challenges

Family Businesses make a vital contribution to the UK economy and arguably constitute the most enduring business model in the world. It is therefore important that they are nurtured and sustained so that they do not become one of the many businesses that fail to survive beyond the third generation.

We have acted for family businesses for many years and can help their owners to meet the different challenges which will emerge as the family grows and the business develops.

Areas where we can, in particular, provide advice and support include the following:

SUCCESSION

This can be one of the biggest challenges for a family business, whether it is moving from the first to the second generation or, for example, the fifth to the sixth generation. Many businesses can be badly damaged or even fail completely through a lack of succession planning. We can help owners to plan for the future and ensure that there is a smooth transition of both management and ownership.

CHOOSING THE RIGHT LEGAL STRUCTURE

There are a number of alternative legal structures through which a family business can be carried on. Many family businesses are conducted through limited companies but other structures, such as a general partnership or a limited liability partnership, may sometimes be more appropriate.

We can advise on the advantages and disadvantages of each structure.

FAMILY AND CORPORATE GOVERNANCE

When a family business is first established, its governance structure will typically be relatively simple and informal. As the business develops and the family grows, it can soon become important to adopt a governance structure which not only deals with the way in which the business is directed and controlled, but also governs the involvement of the wider family in the business and its relationship with the business.

We can advise on matters such as:

- The composition of your board of directors;
- Using non-executive directors in a family business; and
- Establishing and using a family council in your governance structure.

SHAREHOLDERS' AGREEMENTS AND FAMILY CHARTERS

Shareholders' Agreements and/or Family Charters (sometimes called Family Constitutions) can be important documents for a family business. They can help to regulate how the business is going to be run and define the family's relationship with the business.

Family Charters, in particular, are growing in popularity and can be a useful way of making sure that there is a wide family consensus as to the future direction of the business. Amongst the matters which can be covered in a Family Charter are: -

- The family's long-term goals for the business;
- Rules relating to the membership and proceedings of a family council;
- The family's policy on share ownership (for example should ownership be confined to blood line descendants of the founder(s)?);
- Rules for determining which family members are employed in the business;
- Education and training for the next generation; and
- A procedure for resolving any disputes between family members.

We can advise on how to establish a Charter or how to put in place a Shareholders' Agreement.

PROTECTING AGAINST DIVORCE

If the marriage of a family member breaks down, the divorce can have a substantial impact not only on the parties to the divorce but also on the business and other family members involved in that business. In some cases the very future of the business may be threatened, particularly if the spouses concerned have few material assets outside the shares in the business.

We can advise on how to protect against the impact of divorce.

SHARE OWNERSHIP IN A FAMILY BUSINESS

As a family business moves into the second generation and beyond, ownership can soon become fractured as more and more family members become involved. It can then become important for the family to develop a clear policy on share ownership.

We can take the family through the questions which it needs to ask itself, such as:

- Who should be entitled to own shares in the business?
- Do we need to differentiate between voting and non-voting shares?
- Do I need to put any of my shares in trust?
- How do we control the transfer of shares in the business?
- How are we going to calculate the sale price of any shares which are sold?
- What happens if a family member wants to sell and no purchaser can be found?
- Is there an internal market for the shares? If not, how do we create one?
- Will the Company be able to buy back some shares if other family members are unable/unwilling to buy?

FAMILY BUSINESS REAL ESTATE

Some family businesses are run from premises which over the years have increased in value substantially. Families need to think about who should own that real estate.

Should the premises be held outside the operating company, for example by a holding company or by one or more individual family members or by a pension fund? If held outside the operating company, on what terms should the operating company occupy the premises? What would happen if the business were ever to be sold? What are the tax implications?

We can help to guide you through these and other tricky issues.

REORGANISING OR RECONSTRUCTING A FAMILY BUSINESS

Sometimes it may be necessary to reorganise a family business. Examples of possible reorganisations include:

- Splitting a family business in to two or more parts under the ownership of different family members;
- Hiving down different business divisions of a family business into separate subsidiaries;
- Extracting any commercial real estate from the family business operating company.

We can advise on how reconstructions such as this can be achieved in the most tax efficient manner.

PG FAMILY BUSINESS FORUMS

From time to time Pemberton Greenish runs forums for family business owners. These are designed to enable family members, or non-family executives working in family businesses, to meet and share experiences with other family businesses in an informal and confidential setting. If you would be interested in attending one of our forums, please contact the partner with whom you normally deal or any of the following:

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SELLING THE BUSINESS

Sometimes the only solution may be a sale of the family business. In some respects the sale of a family business is no different from that of any other business but the pivotal role which is played by the family can sometimes give rise to additional complications.

Selling can be a particularly emotional journey for some family members and complications can arise where there are a substantial number of shareholders or where a substantial number of the shares are held in trust or where some shareholders work in the business and others do not.

Again, we are used to selling family businesses and can guide you through this process.

ABOUT PEMBERTON GREENISH

In addition to assisting family businesses, Pemberton Greenish is also renowned for its property and private client work including providing legal services to companies and individuals owning and dealing in property and other related businesses. Pemberton Greenish also offers services to private clients in areas of UK and offshore investment vehicles.

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