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HOW WOULD DEATH AFFECT YOUR BUSINESS?

Rumwell Hall
Rumwell
Taunton
Somerset
TA4 1EL
01823 462500

Regional Rural
Business Centre
North Petherton
Somerset
TA6 6DF
01278 664060

9 Parkhouse Road
Minehead
Somerset
TA24 8AB
01643 701888

1A Princes Street
Yeovil
Somerset
BA20 1EN
01935 426047

www.amicuslaw.co.uk

The death of a businessperson can have serious consequences for their business. If you run a business it is vital to consider succession planning, especially in the immediate post-death period, to avoid a successful business grinding to a halt and becoming a millstone round the neck of your executors and a drain on the rest of your estate. A carefully considered and drafted Will taking into account the implications of Inheritance, Capital Gains and other taxes and potential liabilities can help ensure you keep your business running, whether to sell for the maximum return for your Estate or to pass on to future generations.

SOLE TRADERS

Sole Traders are the most vulnerable, and if your business solely comprises you and your individual expertise (as with services such as plumbers or consultants) it may be inevitable that your business dies with you. However, if there is someone who can be appointed as your Executor and can take over the running of the business in the short term pending its disposal, some value may be salvaged, especially where there is an established reputation which passes with your business name. If you have employees they may be able to assist your Executors continue to run the business in the short term whilst decisions are made how to proceed. This can be in a number of ways:

1. pass the business on to a beneficiary named in your Will
2. pass the business on to a residuary beneficiary as part of their entitlement (even if your Will did not specifically provide for this)
3. sell the business as a going concern
4. wind the business up

As successors to the business even in the short term your Executors will need to attend to practical matters such as banking, insurance, VAT and tax registrations, notification to supervisory bodies etc. As Executors have no automatic authority to run a Deceased's business, it is vital your Will gives them power to continue the business (long term if appropriate – your nominated beneficiary may be too young to inherit at the time of your death) and also personal indemnity from your Estate with regard to business liabilities they may incur.

It is also extremely important to consider employees. Employment effectively terminates on the death of a sole trader employer but if the business continues they will have the protection of the TUPE Regulations. If the business does not

continue employees will have redundancy claims which will need to be paid and which can be significant for long serving employees. Outstanding litigation and tribunal claims also continue beyond death, so it is important to take these potential liabilities into account in planning your business.

If you are about to take a new lease, how long will it be for? If this is well past your retirement age will it be an asset to help dispose of the business, or in the unfortunate event of your death will it be an expensive liability? Ensure you have rights under the Landlord and Tenant Act and you can keep renewing the lease as required, without saddling the business with an unnecessary burden.

PARTNERSHIPS

Unless a partnership deed provides otherwise, on death of a partner the partnership is dissolved and wound up with the net assets (or liabilities) shared between the partners and the deceased partner's estate in accordance with the Partnership Act. A partnership deed is vital to ensure continuance of the business for the remaining partners and provide the framework for valuing the deceased's share and how to make payment out of that amount or whether the share can be sold to another partner, sold outside the partnership, or transferred to a nominated beneficiary. Unexpected dissolution can have tax consequences that cannot be planned for. It is important that your Will is prepared taking any partnership deed provisions into account. Death of more than one partner at the same time should also be considered - a fatal accident involving both partners of a two partner business travelling together can have the same effect on a business as for a Sole Trader as referred to above.

PRIVATE LIMITED COMPANIES

On death of a shareholder their shares belong to their estate but what can be done with them depends on the Articles of the company or any shareholder agreement. These may determine how the shares can be disposed of and set out any preferential purchase rights for remaining shareholders and what voting rights the shares have. If you have a majority shareholding your Executors could be left controlling the company. Your Will needs to operate in conjunction with the Articles or shareholder agreement. If you do not have a shareholder agreement (which can also deal with many other issues between shareholders) we can help put one together for you.

INHERITANCE TAX

This is a complex issue and whilst many business assets qualify for exemption from Inheritance Tax others do not, or only qualify for a restricted amount of relief. There are also different rules for different types of businesses. We can advise you fully when preparing your Will for you and also advise the best way to take advantage of these reliefs for both lifetime and death planning, in conjunction with your accountant and other business advisors.

OTHER ISSUES

In making a Will the choice of your Executors is vital as they must be people capable of running a business, although you can appoint separate Executors to deal with your business assets. We would normally recommend professional executors who, although will charge for their services, also have accountability for their actions. Executors have authority to act from the moment of death. If you die intestate, no-one is appointed until a Grant of Representation is issued which can take 3 – 6 months. This could have a profound effect on your business.

It is also important to consider how your business interest will be bought out or liabilities discharged. We can put you in contact with advisors who can arrange Key Man Insurance, Life Assurance and Death in Service Insurance.

As well as death, you should also consider what would happen in the event of a catastrophic injury – who would run your business then? A Lasting Power of Attorney allows you to appoint someone to deal with your business in the event that you become incapacitated. Please see our separate leaflet.

Making a Will is vital to protect the future of your business. For more advice contact David Satchell (david.satchell@amicuslaw.co.uk) for our Taunton, Yeovil and North Petherton Offices on 01278 664060 or Andrew Bensley (andrew.bensley@amicuslaw.co.uk) at our Minehead Office on 01643 701888.

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