

Family Business Succession Planning in Asia – Retaining Control



No matter what the surrounding contextual circumstances may be, a global pandemic, for instance, one consideration that remains pertinent to all those who find themselves at the helm of a family business is the matter of succession planning. And as the Coronavirus has only gone on to demonstrate, it does not hurt to be prepared for unforeseen scenarios or black swan events. In regard to this salient consideration, global offshore law firm Harneys' Henno Boshoff elucidates on the numerous solutions available to the heads of Asia's family businesses, breaking down their merits, and ultimately how each of these options facilitate the undisputedly important task of succession planning.

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Family businesses in Singapore, Hong Kong, and Asia in general, have always been a key factor in generating wealth, with many of these businesses listing on a main stock exchange. It's fundamental that planning for these structures takes into consideration the dynamics connecting the family and the business, preserving the legacy whilst keeping in line with regulatory requirements.

An important factor of succession planning for family businesses is the need or requirement for key family members to be involved in the decision making process. This, along with the traditional view that ensure that the structure will continue for many generations to come, has created a unique demand for structuring outside of the typical discretionary reserved powers trust structures.

SUCCESSION PLANNING SOLUTIONS THAT ALLOWS FOR THE INVOLVEMENT OF KEY FAMILY MEMBERS

Both the British Virgin Islands (**BVI**) and the Cayman Islands (**Cayman**) have various succession planning options a family may consider should they wish to play a deciding and controlling role in the future succession planning.

1. BVI VISTA Trust

The BVI specialist legislation in this area is the Virgin Islands Special Trusts Act (**VISTA**), which disengages certain traditional trustee duties. While a BVI company's shares are held in trust, the directors of that company are free to administer the company as they see fit, without intervention from the trustee (except in extreme circumstances). The key family members may be involved by controlling the BVI company as director (subject to tax advice) thereby retaining control of the underlying assets within the limitation of the structure. In addition, the key family members may also take up the office of Protector, as well as the office of Appointor, which will enable the family to appoint future directors of the BVI company.

This solution is key for families looking to have succession planning in place and still retain some level of control. VISTA also gives the option for the disapplication of VISTA at a certain event during the



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lifetime of the trust. This allows a VISTA trust to convert to a pure discretionary or reserved powers trust, perhaps on the death of the settlor, should the settlor be concerned that the family will not be able to manage certain affairs appropriately.

2. Cayman STAR Trust

Cayman also has specialist legislation under the Special Trusts (Alternative Regime) (**STAR**). A STAR trust may be established in perpetuity, and this is a key consideration for families. In essence, a family can establish a dynastic structure where future generations may enjoy the benefits of one trust. A STAR trust is also ideal for holding family company shares, permitting the family to manage and control the family assets through its board of directors. Another benefit is a STAR trust can limit the rights of the beneficiaries which can be very appealing to traditional Asian families.

3. BVI and Cayman Private Trust Company Structures

BVI and Cayman have built a reputation as leading jurisdictions for incorporating private trust companies (PTC). Setting up a PTC allows Settlers or their trusted advisors or family members to exercise a degree of control in the decisions made by the PTC. By sitting on the board of directors of the PTC, the family can make decisions as and when required. These decisions can be made expeditiously without having to wait on an independent Trustee to deliberate on a decision.

Within a PTC structure, a family can set up different trusts enabling assets to be ring-fenced or permitting individual trusts for different family members.

PTC structures have become a popular option in Asia for families looking for pre-IPO structuring as well as integration with family office solutions, complementing both onshore and offshore structures.

4. Cayman Foundation Companies

The Cayman Foundation Companies legislation allows a foundation company to be established for those clients who are seeking an alternative to trusts. Particularly in civil law jurisdictions, a foundation company can be used to hold family wealth and businesses and is easily recognised by clients, having grown in popularity in China, Indonesia and Thailand.

As well as providing for its management by directors or their delegates, a foundation company's constitution (its memorandum and articles of association) may give rights, powers and duties of any type to members, directors, officers, supervisors, founders or others concerning the foundation company. This lets family members to be more involved in the day to day running of the foundation company.

CONCLUSION

With families looking to be more involved in succession planning and the transfer of wealth, it's safe to say that BVI and Cayman laws offer multiple options for efficacious succession planning specific to individual needs and circumstances. They ensure sustainable structures that will continue for generations to come, whilst still being practical regarding any necessary changes to keep in line with regulatory requirements. ■

