

Leading Private Wealth Lawyer Zac Lucas Offers Guidance on the Use and Implementation of a Business Succession Trust

The Hubbis Wealth Solutions Forum in Dubai on September 20 provided delegates with lots of information and interesting concepts to help them deliver smart estate and succession planning ideas to their private clients. One of the experts on display was Zac Lucas, Partner – International Private Wealth at law firm Spencer West. He offered delegates some valuable perspectives on the use of business succession trusts as a key element of robust business family governance and succession planning. He talked them through the relevant trust structure, and the decision-making around jurisdictions. He articulated why governance is so important and how it can be first documented properly, and then communicated to the family members. He alerted the audience to common pitfalls and mistakes that advisors and private clients often fail to appreciate and sidestep. Above all, he offered some colour on what sort of conversations advisors might have with business families to help guide them towards structured solutions that safeguard their businesses and family integrity and cohesiveness.

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ZAC LUCAS
Spencer West

Zac explained that he would first briefly cover the region's landscape for business succession, and then move on to the trust itself, its structure and then the

He said this is actually not dramatically different in Europe or the US, but what is very different is that 42% of the family businesses are still first generation, 36% second generation, and 14% third generation, whereas in the Western economies, ownership might often be in or far beyond the second and third generations, and often multi-generational.

In short, he said numerous families in the region are facing these succession issues, and what they might not know is that from first to second generation, there is a 65% failure rate, while the second to third handover sees a dramatic 85% failure rate.

approaches might include shareholder agreements, family charters, and few if any concrete actions, whereas the structured approach would typically include consideration of a business succession trust, or perhaps a foundation, which usually achieves a similar outcome.

Demystifying the business succession trust

Zac then set about uncovering and demystifying the business succession trust. As to the key objectives, he explained that these relate to the family business and its longevity within the family. Those needs become more urgent and complex the larger the family

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typical governance mechanisms that should be put in place. He would then discuss common drafting errors, to make sure that the families do not end up with an older or outmoded solution.

The business succession landscape in the Middle East

Zac then offered some insights into the business succession landscape in the region. He observed that at least 60% of the region's GDP comes from family businesses and that some 90% of the private sector is dominated by business families, with 80% of the workforce employed by them.

Seeking longevity

Zac commented: “Most family businesses go out of business by the third generation in the GCC, and only a very small number of them make it past that, based on data from the Family Firm Institute, which has tracked these matters since the 1980s. Little wonder then that the old adage ‘shirtsleeves to shirtsleeves in three generations’ applies here.”

He said that all families want to avoid business and estate succession failure and try to avert future crises by taking both a structured and non-structured approach. He said the unstructured

is in terms of wealth and family members and their spread around the globe, and the more complex or sizable the family business.

The vital needs

He explained that the family's key objectives should include: a Dedicated Family Forum, Representative (inclusive) Decision-making, Clear Co-Governance Rules, Competent Executive Management, a Clear Liquidity Plan, Transparent Administration and Transitional Governance.

“You need a family forum and representative decision-making, and not just what I could call more

of a founder sort of dictatorship,” he explained. “Clear co-governance rules allow the family to decide and then you have the competent team that implements that and is separate from the family politics. The families need a clear liquidity plan, so everyone knows where they stand when it comes to extracting money. They require open and transparent administration, so everyone knows what is going on. And they need transitional governance, so if there is a trust structure for a founder, everyone must acknowledge it will be organic and come to an end at some time and will need to transition to the next gens, with a proper set of mechanisms in place to achieve that.”

Having laid out that set of needs, Zac then delved into very considerable detail on the key structures around how to achieve those objectives with a business succession trust, which can be better understood by viewing the on demand version of this recording.



Failure should not be an option

Zac later closed his talk by reminding the delegates that business succession planning will be a key demand item for families in the region. “If it fails, they fail and we fail,” he concluded. “As I see things here, at the moment, there is a lot of marketing of

structures for business families, but they are effectively repurposing succession plans, and not providing the bespoke solutions that are so vitally needed. We all need to work hard on educating the market, and these families and sharing our insights and advice. In that way, the outcomes will be better and easier to achieve.” ■

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