Business Succession Planning

Business succession planning is an investment in the future of every business. Manning Fulton's team of experienced attorneys can help establish a plan to ensure the continuation of your business following the retirement of existing management and to increase the possibility of a return-on-investment. While many businesses fail to survive long after a change in leadership, the existence of a solid succession plan demonstrates a commitment by the founders to the long-term growth, continuity and stability of a business.

For family businesses, succession planning often requires cutting-edge legal and tax planning techniques, consideration of ongoing adequacy of business capital, and a particular appreciation of the dynamics involved in intra-family matters of each business.

Succession planning is a multi-step process that begins with listening to owners and management to determine their objectives for the continuation of the business. This may lead to plans for the sale of the business, but if that's not desired or viable, then a business succession plan should be developed. Our attorneys make an assessment of our clients' business arrangements relative to ownership of the business, corporate structures, valuation of the applicable business interests in conjunction with valuation consultants, and financing for the purchase of business interests upon the succession event.

Tax considerations also play a significant role in the development of a business succession plan and must be evaluated for the business entity and the sellers and purchasers of the applicable business ownership interests. These tax considerations vary significantly depending on the tax status of the corporation, limited liability company, or partnership as a C corporation, S corporation, or a partnership for income tax purposes.

Additionally, a review of existing insurance policies and collaboration with insurance advisors may be made relative to financing the purchase of ownership interests in the business, as well as a review of owners' wills and trusts. Depending on the situation, buy-sell agreements, compensation procedures and employee incentive plans may be modified or implemented for the business. For corporations, buy-sell agreements among the corporation and its shareholders are stand-alone alone agreements. However, buy-sell agreements are usually incorporated into a limited liability company's operating agreement or a partnership's partnership agreement, which contain all of the governance and operating agreements for such companies. These buy-sell agreements are important to restrict the transfer of business ownership only to intended owners of company ownership interests.

Related Services

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These agreements also create options and/or obligations for the company or business owners to purchase the stock of a selling owner upon events such as termination of an owner's employment, retirement, disability, or death.

In the case of business succession plans for family-owned businesses, Manning Fulton attorneys often work with business owners to craft estate plans with will and trust provisions that assure that business ownership and/or control pass to certain family members who have demonstrated acumen in managing the business. Consulting with owners about asset allocations in owners' estate plans can be critical to assure that family members receive compensating allocations of other assets when family members who are active in the business receive the business assets. We have successively assisted numerous family business owners with the full spectrum of business succession plans, including:

- Formation of family trusts, limited liability companies and family limited partnerships designed to restrict the transfer of ownership interests only to intended owners, direct controlling interests in the company to those who are most capable to continue the successful operation of the business, consolidate asset ownership, manage real estate investments and other assets, and minimize estate and gift taxation
- Negotiate and prepare purchase agreements for the transfer of ownership interests to certain shareholders, company managers, or other third parties upon death or retirement of other shareholders
- Configure transfer of high net worth family business to next generation using gifts and sale to intentionally defective grantor trust
- Structure intra-family loans, seller-provided financing, self-canceling installment notes and sales to intentionally defective grantor trusts as financing mechanisms for the purchase of interests in companies, with planning to minimize income tax and estate and gift tax implications of such purchases
- Coordination of transfer of life insurance policies to irrevocable trusts to minimize estate taxation of proceeds, directing the use of proceeds to finance business ownership purchases upon a succession event, and drafting appropriate trust agreements to coordinate with the applicable buy-sell agreement

Once a plan has been established, our experienced team of attorneys can assume the critical role of reviewing and updating the plan as circumstances change. We are proud to have advised clients in all areas of the law that impact business succession planning, such as income taxation, contract law, estate planning, transfer taxation, corporate and other entity governance, debtor and creditor law, asset protection, employment law and dispute resolution.

For more information about this service, please contact…

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