



Protecting your Family Business in Uncertain Times

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Please note the contents of this presentation are given for information only and must not be relied upon. Legal advice should always be sought in relation to specific circumstances.

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Corporate Governance

Michael Budd



Company

- Ownership/control
- Unlimited/limited – publicity
- Articles, model, shareholders, director, PSC
- Filing accounts
- Liability
- Conversion – once

Articles of association

- Control
- Restrictions on ownership



Control

- Who will have?
- Directors – appoint/dismiss
- Decision-making
- Conflicts



Share Classes

- Ordinary
- Preference
- Redeemable
- Different dividends



Transfers

- Family members
- Trusts
- Divorce



Shareholders' Agreement

- Private
- Board or shareholder control
- Reserved matters





Family Charters

Richard Horwood

Family Charter – Objectives



- How to run the business
- The family's long term goals
- Strategy of the family
- Relationship between the business and family
- Expected behaviour



Family Charter – A route map

Can address issues such as:

- Employment in the business
- Make up of the Board
- Share ownership
- Communication to the family
- Dispute resolution

Family Charter – not a Shareholder Agreement



Differences:

- May not be legally binding
- A party may not be a shareholder
- Some shareholders may not be included
- Deal with values and behaviours

Will be some overlap e.g. dividend policy



Family Charter – Size and Content

Just family in the business?

Examples of content:

- Vision and strategy
- Ethical issues
- Corporate Social Responsibility
- Governance
- Dispute resolution



Family Charter – how to prepare one

- External advisors
- Questions for the family to ask themselves
- Commitment to talk and listen



Family Business Disputes

John Wiblin

Family Business Disputes

- “If you cannot achieve equality of performance among people born to the same parents and raised under the same roof, how realistic is it to expect to achieve it across broader and deeper social divisions?” (Thomas Sowell, *The Quest for Cosmic Justice*, 1996)
- “It now seems clear that...earlier-born children enjoy higher wages and education as adults...Comparing two siblings, the greater the difference in their birth order, the greater the relative benefit to the older child.” (Scientific American, 3 November 2016)

Family Business Disputes – Case Study 1: The Disgruntled Brother

A member of a company may apply to the court by petition for an order under this Part on the ground— (a)that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself). (s. 994 Companies Act 2006)

- Managing Director's salary
- Salary paid to Managing Director's wife
- Managing Director's expenses
- Stipend paid to father as company founder
- Failure to declare dividend

Family Business Disputes – Case Study 2: The Unexpected Tragedy



- On the death of a business co-owner
 - in a traditional partnership, the partnership is liquidated
 - in a company, the shares may pass to the deceased's spouse.

Family Business Disputes – Case Study 3: The Broken Promise

Where:

- a representation or assurance has been made to the claimant; and
- the claimant has relied on it; and
- the claimant has suffered a detriment as a result of the reliance,

The court will ask if fairness demands a remedy. And if so, what should that remedy be?



Thank you, any questions?

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