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Family business conflict

Conflict typically arises due to a clash between commercial and emotional concerns. Unresolved conflicts are harmful and can put the business at risk. The best way of avoiding conflict is to prevent misunderstandings from happening in the first place. Drawing up a family constitution can help to achieve this.

A family business constitution is a statement of principles designed to guide a company through times of crisis and change. These principles are not legally binding, but many families find that by outlining how they will treat such issues as ownership, performance, accountability and compensation, the incidence of conflict is greatly reduced.

Such a constitution should be a practical guide that can be used to deal with family business issues that have the potential to cause disputes. Ideally the document should specify the decision-making process, succession rules, salary and equity guidelines, dispute resolution, and other vital points. It should also strive to reflect the family's shared ethics and business culture. But it should also be flexible enough so that it can be used to record the overall governance of a complex family enterprise, or it can just be limited to a

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Insolvency and Directors

A company is insolvent when it cannot pay its debts as they fall due. The company can take action itself and appoint a Liquidator, or if the situation becomes hostile, a Creditor may appoint a Liquidator or a Receiver. Directors of companies in financial difficulty must ensure that their actions are at all times in the best interests of the company. During difficult trading times directors are sometimes reluctant to make tough decisions out of fear of coming under the scrutiny of a Liquidator or the Court at a future date.

In the event that the company is eventually placed into formal insolvency proceedings the directors can be held civilly (reckless trading) or criminally (fraudulent trading) liable under the Companies Acts for their actions and in certain circumstances can be held personally liable for debts incurred by the company during this period.

However, Directors have a duty to try to resolve a company's financial crisis and this means making tough decisions. The Courts have found that it is acceptable for companies to attempt to trade out of

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particular part - for example succession planning and promotion within the family company.

The process of drafting a constitution is almost as important as the document itself. The drawing up a family constitution should be a collaborative event, involving everybody with a stake in the business. This is typically done by holding both joint and private meetings with all family members and other professionals whom they trust to act as mediator.

The process itself can take some time as issues are debated and a balance is arrived at - that all parties are happy to sign up to. The aim is to develop a formal, structured, evaluation process that everyone understands and accepts.

But a constitution on its own will not prevent conflict arising. An understanding of the issues that give rise to conflict is critical if a family business is to survive each such event unscathed. A Family Council is a useful forum to allow family members to bring forward their issues and to have them discussed openly. This Family Council typically operates entirely separate from the Board of Directors or the Shareholders and involves all member of the family. This allows issues of succession, remuneration, leadership or conflict resolution to be discussed in a separate forum without affecting the ongoing running of the family business.

The holding of regular Family Council meetings to discuss business issues and settle disagreements is recommended. All family members who own shares or who play a substantial role in the business and other members who may have decision-making influence should be involved, including spouses and children. Remember, that most people have very clear ideas about what they think is fair, and an organisation's procedures and policies must reflect this. For the Family Council participants, there is a need for recognition that a balanced approach may be the solution and this should be accepted by all. There should also be a desire to first seek to understand any issue and then commit to a logical problem solving process or perhaps to a conflict resolution process.

Businesses that have developed effective ways of managing conflict are those most likely to survive and thrive and many have used the experience as a positive driver for change.

Those who have found ways to regulate and appreciate differences of opinion are better able to work together, trust each other, and react faster to the changing economic environment.



their financial difficulties. Directors should be fully aware of the possible consequences of trading whilst insolvent as in these circumstances their primary responsibility is to protect the company's assets and the interests of the creditors. The commercial rationale for continuing to trade during this time should be documented.

If having exhausted all possible options as soon as directors decide that the insolvency of the company is inevitable they should immediately take steps to commence formal insolvency proceedings. Ultimately a Liquidator must comment, in his report to the High Court, on the behaviour of the directors in their roles, and give an opinion as to whether or not the directors acted honestly and responsibly in relation to their conduct of the affairs of the company.



PRTB and NPPR

The Private Residential Tenancies board (PRTB) was established as part of the Residential Tenancies Act 2004 to resolve disputes between landlords and tenants and to operate a system of tenancy registration. All tenancies must be registered with the Private Residential Tenancies Board within one month of the commencement of the tenancy. Each tenancy costs €70 (due to increase to €90) to register. A double fee applies for late registrations. Failure to register, means that a landlord cannot claim mortgage interest as an allowable expense for income tax purposes. The registration fee is an allowable expense against tax.

Landlords must be registered in order to avail of the PRTB dispute resolution service. Tenants will have access to the service irrespective of whether or not the tenancy is registered.

Termination of a tenancy requires the service of a valid Notice of Termination giving the appropriate amount of notice. Termination of a tenancy for serious anti-social behaviour also requires the serving of a valid Notice of Termination but the required notice period is significantly less.

The PRTB is not to be confused with the Non Principal Private Residence (NPPR) tax. The NPPR charge is an annual charge of €200 introduced by the Local Government (Charges) Act 2009 in respect of all residential property not used as the owner's sole or main residence.

The charge is set at an annual rate of €200 per non principal private residence but late payment can incur a significant fee. Liability to pay the charge is determined on the basis of ownership of the property in question on a single day each year. A person who does not pay a charge on time leaves themselves open to prosecution by the Local Authority to whom the payment is due. Both the charge and any accumulated late payment fee are charged against the property concerned.

In brief...

Prices on average, as measured by the CPI, were 0.6% higher in November 2010 compared with November 2009. The annual rate of inflation for Services was 2.0% in the year to November, while Goods decreased by 1.1%.

On a seasonally adjusted basis there was a monthly decrease of 4,200 in the Live Register in November 2010. The number of persons on the Live Register now stands at 425,002. The Live Register is not designed to measure unemployment. It includes part-time workers (those who work up to three days a week), seasonal and casual workers entitled to Jobseekers Benefit or allowance. Unemployment is measured by the Quarterly National Household Survey and the latest seasonally adjusted figure, for April to June 2010, is 284,500 persons unemployed, equivalent to a rate of 13.25%.

The ESRI have confirmed that Irish economic conditions have stabilized significantly for 2010 with an output decline in real, inflation adjusted, GDP terms expected to average 0.25 per cent for this year and return to growth of 2.25 per cent in 2011. The more significant measure for Irish incomes is real GNP, which is anticipated to decline by 1.5 per cent in 2010 and to grow by 2.0 per cent next year.

The value of house prices nationally reduced by 7.6% in the first nine months of 2010 according to the latest edition of the Permanent TSB / ESRI House Price Index. House prices have now decreased 36% since their peak in late 2006 bringing average national prices to late 2002 levels

Over the six months ending Q3 2010, there was an underlying decline of 5.1 per cent in total SME lending. This indicates that repayments on SME loans have been greater than draw-downs over the period. SME loans outstanding amounted to approximately €55.6 billion at end-Q3, €23 billion of which was with respect to SMEs engaged in the property related sectors of construction and real estate.

The average payment period in Ireland for small and medium sized enterprises (SMEs) has increased to 76 days, according to the Autumn ISME Credit Watch Survey.

Key Performance Indicators (KPI)

Key Performance Indicators (KPIs) are financial and non-financial metrics used to quantify objectives to reflect the strategic performance of an organisation. KPIs are frequently used to value difficult to measure activities such as the benefits of leadership development, engagement, service, and satisfaction.

Developing a good KPI is important for a business. And in order to do so, it is imperative that business owners find what they need to concentrate on for the success of the business as a whole. Building a KPI map begins from the most fundamental objectives of the organization: its mission and vision. Starting from these goals, each department and component of the company should then formulate their own goals.

Sometimes, however, it is actually too much information that threatens to overwhelm human judgment and management. KPIs need to be SMART:

- S - Specific
- M - Measurable
- A - Achievable
- R - Realistic
- T - Timely

KPI's should focus people on a few high value tasks and not scatter attention on too many things. The KPI's should be easy to understand and not based on complex formula that users cannot influence. Once in place the act of monitoring a KPI should trigger action and positive change. Targets and thresholds should be linked to performance so that users can gauge performance over time.

After establishing what KPIs are important for the success of the organization, they can then be broken down into the smaller pieces that the company as a whole can use. However, it is necessary to have some sort of framework on which to base judgments and around which to build a larger, more robust system.

KPI mapping allows business owners to determine the efficiency and effectiveness of its employees, business processes as well as the whole structure. The objective is to create a KPI map where each of the indicators will be depicted along with its corresponding consequence. It is important to make the connections between the goals within a level and between different levels as clear as possible. Such mapping lets decision makers align the right decisions with each other and with corporate goals

There are typically two methods of implementing KPI's :-

- Scorecards: measures performance against specific targets or industry benchmarks, usually over the longer term and can contain both tactical and strategic KPI's. The key element is focusing not only on financial outcomes but also on the human issues that drive those outcomes, so that organizations focus on the future and act in their long-term best interest.
- Dashboards: measures process/machine or individual performance, normally in real time. A performance dashboard needs to provide you with the information you need to monitor, analyze, and manage the key activities and processes that lead to achieving your objectives

The end goal here is not the product or the strategy map itself, but rather the deeper understanding that comes after undergoing the process. If you avoid the pitfalls in application and use the right performance indicators you can expect your organisation to have a competitive advantage.

Which Child gets the family business?

One of the most troubling succession planning decisions is how to divide your assets when you and your spouse are gone. It is one of the biggest reasons why family business owners don't complete succession planning.

Three factors make this division difficult for family business owners. First, between 60 and 80 percent of their total net worth is typically tied up in the business or business-related property. Available cash (profit) is ploughed back into the business. Family business owners often awaken to the reality that they have built themselves traps by having such a large percentage of their total net worth tied up in their illiquid businesses.

The second factor is determining the value of the business. Business valuation experts go into great detail explaining the three most commonly utilized formulas for determining the value of a business, and there are situations where it is worth the expense to have a formal valuation done. But most owners have a rough idea what their businesses are worth, and their seat-of-the pants estimates are usually very accurate.

The third factor arises when one (or more) of your children decides to work in the business and one (or more) doesn't.

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Should you then leave the business to your children equally? If none works in the business, the issue may be when and to whom will you sell it?

The biggest hurdle family business owners must jump is the mindset of treating children equally. In dividing family business assets there is rarely fairness in the equal division of assets. Instead, owners must consider being fair and equitable. These goals can be mutually achievable. The process is to realistically determine the value of assets and arrive at a formula whereby, children who do not receive the family business, or shares in the company, will receive a percentage of that value in other assets. The methodology will vary from family to family depending on the nature of the business, the composition of assets, and the number of children involved.

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Employing a Child Under 18

Ever since the factories legislation in 1802, the employment of children and young persons has been regulated and today is the subject of comprehensive international standards. The employment of persons under 18 years of age is regulated by the Protection of Young Persons (Employment) Act, 1996. Breach of many of this Act's requirements is a criminal offence. Under this Act:-

- A child over 14 years may be employed out of school term, or on work experience, in light work, subject to certain conditions.
- A child over 15 years of age may be employed in school term in light work for a maximum of 8 hours a day (not exceeding 40 hours per week) and also on work experience.

- A child under 16 years of age may not be employed between 8 p.m. and 8 a.m. on the following day. The Act also lays down maximum durations of employment and rest periods.
- A young person aged between 16 and 18 years of age may not be employed between 10 p.m. and 6 a.m. on the following day.
- Employers of persons under 18 years of age are required to get satisfactory evidence of the individual's age and also to maintain satisfactory records.

Bearing the details of the 1996 Act in mind, the age at which payment of wages to family members may be implemented varies between Tax Districts. The relevant factors are:-

- That the amount paid to the child represents the commercial contribution of

the work done. The national minimum wage is presently €7.65 per hour

- Proof should be available that the child took receipt of the money and had free will as regards its disposal

Employees under the age of 16 years of age pay no PRSI. The PRSI status of a family member aged 16 years or older generally falls to be treated under class K, though a ruling should be sought from the Department of Social Welfare. Class K provides for nil PRSI on wages up to €500 per week (2010).

All employees earning more than €7.62 a week must be registered under the PAYE system. Each individual has an annual tax credit of €1,650, which means (s)he does not pay any income tax on the first €8,250 of earnings in a tax year. Consideration should also be given to Health and Safety issues before employing a child under the age of 18.