

SUCCESSION PLANNING IN THE MIDDLE EAST

by Advocate David Dorgan

INTRODUCTION

Many Middle Eastern families face the pressure of transiting their businesses to the next generation, but all too often family leaders defer the transition, for a multiple of reasons, for as long as possible. Consequently, succession planning in the region is a highly sensitive and very emotional issue to tackle.

WHAT ARE THE REASONS FOR FAMILY BUSINESSES NOT BEING TRANSITIONED?

Many Middle Eastern businesses are still in the first generation so there is a lack of a track-record of best practice succession planning. This lack of track-record is not helped by some family feuds, over billions of dollars, being played out in the regional courts. Consequently, other families witnessing such feuds become sensitive about avoiding their own family hostilities and delay succession planning.

Furthermore, we cannot overlook the obvious; that many families are traditional and either will seek to pass the family business to the eldest son or permit Sharia law principles to take effect. However, these obvious approaches are not always successful for the business which can result in its ultimate failure by the next generation: the eldest son might not be well suited to the business or the ownership structure, divided in accordance with Sharia principals, causes disarray to the business.

As Western advisers, we should be acutely aware that few Middle Eastern families will bring in competent outsiders to lead or manage a family business or indeed resolve issues around succession. We need to appreciate, understand and respect the regional culture, in particular that the family bloodline is of primary

importance, and take the time to truly understand the family's objectives.

SHARIA COMPLIANT?

For those Middle Eastern families who are willing to look at their succession planning, how can we assist them, particularly in light of Sharia principals? Typically, there are three options available:

1. strict adherence to Sharia principals, together with Scholar approval, where the trust or foundation documents reflect the investment policies, dissemination of assets and charitable giving of the settlor's or founder's school. However, such strict adherence is often the exception to the rule because families are looking for more flexibility in their succession planning.

Therefore, it is more usual to see a discretionary trust or foundation, together with wishes from the settlor or founder which either:

2. allows the trustee or council to follow Sharia principals when making investments or distributions, but permits adaptability away from Sharia principals depending on the families' changing circumstances. Typically, this is the middle ground; or
3. a complete departure from Sharia principals to allow absolute flexibility and where certain property is effectively ring-fenced entirely outside of the Islamic world. This is usually undertaken for specific reasons: for example, the education of both sons and daughters at Western Universities or to ensure an equal distribution of wealth across the next generation.

ANTI-FORCED HEIRSHIP MEASURES: SO CALLED "FIREWALL PROVISIONS"

Article 9 of the Trusts (Jersey) Law 1984 and section 14 of the Trusts (Guernsey) Law, 2007 both provide protective provisions against attacks by foreign law (including Sharia) over assets held in Jersey or Guernsey structures. For instance, any question over the validity or disposition of property into trust will be determined solely by Jersey or Guernsey law regardless of any interests conferred by a foreign law or heirship rights. These legislative "firewall" provisions have been stress-tested in both the Jersey and Guernsey courts¹ and found robust.

Equally robust firewall provisions are contained in article 32 of the Foundations (Jersey) Law 2009 and section 37 of the Foundations (Guernsey) Law, 2012. These provisions are likely to be equally as effective as their trust law counterparts.

CONCLUSION

Unique challenges, issues of culture, personality and hierarchical structures can make succession planning for Middle Eastern families complicated. There is no one size fits all approach and every family is different. However, it is important to understand the sheikh's attitude to cultural and Sharia compliance, and the family dynamic, in order to properly guide the succession planning.

If done successfully, succession planning can develop a long-term multi-generational vision for the family business, ensuring its continuity and the family's name and reputation, but also promote family harmony and avoid conflict between family members.

¹ See *Tait-v-Apex Trustees Limited* [2012]JRC 148 and *Seggins v Apex Trust Company Limited* [2013] JRC077 in Jersey and *Rothschild Trust Guernsey Limited and Adamantios (Diamantis) Pateras & Katigko-Kalliopi* (2011) in Guernsey.

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