



THINKING CORPORATE SUCCESSION

Corporate Directors have a duty and obligation to ensure that the management of their company is carried out in the best interests of their Shareholders. Those obligations include proper succession planning. Difficulties can arise when an individual dies without leaving a Will. Their estate may not be able to be administered quickly and dependants such as children can be left waiting lengthy periods while applications to administer the estate are processed through the Supreme Court. When a sole director of a company dies without leaving a valid Will the complications and distress can have an even greater impact and may leave the company without any person properly authorized to immediately manage the business.

Ordinarily, if a director of a company dies, the surviving directors can continue to manage the company and may even make a temporary appointment, pending the appointment of a new director by the members (shareholders) of the company. Equally, if the sole shareholder of a company dies, the directors can continue to manage it until the beneficiaries under the Will have the shares transferred to them. Where the sole director is also the sole shareholder however, the risk of uncertainty is much greater.

Section 201F of the Corporations Act 2001 does provide that, in the event of the death of a single member/director of a proprietary company, the executor/executrix or other personal representative appointed to administer the deceased's estate may appoint a new director to the company. The director has all the powers, rights and duties of the deceased director and can keep the company running until shares are transferred to beneficiaries who may then appoint new directors if they wish.

Generally, the executor/executrix is usually and most efficiently appointed by means of a valid Will. Where there is no Will, however, a near relative or other person may have to apply to the Supreme Court for letters of administration of the estate to manage the estate. Alternatively, in the absence of any immediate relatives or other obvious people to deal with the estate, the NSW Public Trustee may step in and administer the de-

ceased estate but this process can take months. During that period when there is no director, the company may be completely unable to operate.

With no-one properly authorized to make management decisions or act for the company, it may be unable to trade. Banks and other financial institutions in particular may be unwilling to accept instructions in relation to a company's trading account if they are not satisfied there is someone properly authorized to act for it.

Equally, staff and suppliers may not be able to be paid, which can quickly have a deleterious effect on the reputation and value of the company to the beneficiaries of the estate. If, on the other hand, a person is willing to purchase the company, they may not be able to do so quickly because there will be no recognized owner of the shares who can authorize their transfer until the testator has been appointed and settled the estate.

Even if the final decision is taken to wind up the company so all beneficiaries can be paid out, the delay of possibly several months may mean the value of the company will be much less than it might otherwise have been if it had been able to continue operating in the interim period.

Proper succession planning for your company or business is an important management issue not only for beneficiaries of a corporate shareholder but also for the employees, clients and business associates of an entity. Obtaining proper professional financial, accounting and legal advice for succession planning is a critical factor in ensuring good governance and peace of mind. Thinking together with the assistance of professional advice will ensure that your business can continue to be appropriately structured, planned and managed without the cost and imposition of delays and uncertainty for those that have relied upon your leadership, guidance and strategic planning in the past. If you are a corporate director or operate your own business you should ensure that matters concerning long term corporate governance and succession are addressed in your Will.

Talk to us. You'll be inspired!
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Thinking business



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