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Succession Planning For Family-Owned and Closely Held Businesses: Keeping Your Family Protected

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For some clients, estate planning can be relatively straightforward. This is often the case when an individual or a couple own primarily liquid assets, such as investment accounts, retirement assets, or life insurance. But when a family-owned or closely held business is involved, preparing for the transfer of such assets, both during lifetime or at death, is generally much more complex.

Structuring your estate plan to accommodate your family's and your business' unique needs and circumstances begins with several questions. Who should run the business after your death? Should your spouse receive all or a portion of the business? Will your spouse need all or a portion of the profits of the business to sustain their current lifestyle? Who should have voting control of the company? Will the person with voting power be the same individual entitled to receive profits of the business or the value of the company if it is sold? Should your children ultimately be treated equally or unequally with respect to business control, the value of the business, and/or the income generated?

Some of the most difficult and complicated succession planning questions for a family-owned business arise when multiple children of the business owner work at the business and are involved in the operation of the business. In most cases, the business owner must decide which child should be selected to run the business, and this usually means that such child will also be given voting control. The business owner must then consider whether or not it is important for all of their children to be treated equally from an economic standpoint. This may require strategic planning if the assets that exist outside of the business are insufficient to accomplish this goal, as is often the case.

Once you've determined what makes the most sense for your family, your Vorys attorney must review your company's governing documents and any agreements in place that might restrict your ability to transfer

your business interest or otherwise impact the interest to be transferred to your spouse, to your child(ren), or to a trust for their benefit. If any unwanted restrictions exist, you (or your corporate counsel) may need to update the business documents and/or engage in negotiations with any other business owners to obtain their approval of any proposed changes. Once any necessary revisions to the company documents have been made, your estate plan can be customized to accommodate your specific wishes.

Our Vorys estate planning attorneys work closely with our Vorys corporate attorneys to ensure that your estate plan is compatible with your business succession planning. If your company doesn't currently have corporate counsel, in many cases, our attorneys can also review your existing corporate structure and assist you and/or your company with making any recommended changes for tax, compliance and/or personal purposes.

Although planning for the succession of your family-owned or closely held business may seem cumbersome, that is not a reason to postpone completing a comprehensive estate and business succession plan. Failure to plan only delays the inevitable and could result in unfavorable consequences for your family and your business. Your Vorys attorneys are here to do the hard work for you. Our goal is always to provide you with the best options to create and implement a plan that will achieve your goals, produce a workable practical arrangement for you and any business partners, and result in the least burden possible to you and your family members.

Start making plans to protect your business and your family as soon as possible, and, as a reminder, always contact your Vorys estate planning attorney before adopting any agreements that might limit your ability to transfer your business interest or affect the rights of the transferees.