

Business succession options for global business families: business trust, shareholder agreement...

- > Unstructured succession, Semi-Structured succession or Fully-Structured succession
- > Lifetime gift of company shares, Shareholders Agreement, Family Charter
- > First Generation Business Trust, Second Generation Business Trust, Enforcer Trust



Zac Lucas,
Partner,
Spencer West LLP, Singapore

An estimated 70% global business families do not have a formal business succession plan and an estimated 42% are due to transition to the next generation: effective business succession planning has never been more important. This presentation will provide invaluable guidance and advice on how to systematically advise wealthy global business families. Critical background considerations will be explored including interaction of multiple succession laws, whether adopting a shareholder agreement or family charter is sufficient, ending with an in-depth discussion of business trust solutions matched to the family profile, whether 1st generation, 2nd generation or 3rd generation.

Setting the Scene

In opening the presentation time will be spent discussing the scale of the business succession challenge, with supporting regional statistics and historic business succession failure rates.

Succession Options

Two broad succession options will be evaluated: unstructured succession involve use of default estate and succession laws and structured succession involving shareholder agreements, family charters and business trusts.

Unstructured Succession

- [Applicable Succession Law](#)
- [Global Businesses](#)
- [Global Families](#)
- [Worked Example](#)

Interaction of international succession laws will be explained, in the context of a global family with a geographically diversified business. The principal legal systems will be described including common law, civil and sharia law succession models. Testamentary succession will then be explained, including the use of domestic and international wills, and the circumstances where a will made by an international client may be invalid. This part of the session will then conclude with a worked example of a global business family based in a civil law jurisdiction holding operating businesses through a BVI company, and the succession law implications in the event of the founder's death.

Structured Succession

Two solutions will be evaluated and explained: semi-structured solutions involving use of a family shareholders agreement and family charters; a fully-structured solution involving use of a business trust.

Semi-Structured: Shareholders Agreement, Family Charter

- [Lifetime Gift | Clawback | Community Property](#)
- [Key Contractual Terms: Control, Participation, Benefit, Abuse | Disputes](#)
- [Family Charter](#)

> **Lifetime gift of business company shares** will be assessed in light of applicable succession laws, including common law, civil law and sharia law. Risk of "clawback" of gifted shares will be considered and assessed. The practical implications of gifting business company shares will also be assessed taking into account the age and maturity of the next generation.

> **Family shareholder agreement** will be explained, including key governance provisions that will need to be included. Collective family decision making mechanism will be explored, with examples of typical co-governance rules involving both family and management team participation, the basis on which family members may join as executive directors will also be explored as well as criteria to extract funds and benefits from the business. Methods to avoid and manage family disputes will also be explained, including use of arbitration provisions included in the company M&As.

> **Use of family charters** will then be discussed, and in particular potential legal dangers and implications where a family charter contains detailed governance rules that may be taken into account in family litigation. Best practice use of family charters and their terms will be discussed in order to limit unintended litigation risk.

THE PROGRAMME CONTINUES ON THE NEXT PAGE.



David Brownbill KC,
Barrister,
XXIV Old Buildings, London

Fully-Structured: Business Trust

- Immediate or Deferred | Will Trust | Evaluation
- Immediate Non-Deferred
- Generational Attributes:
 - 1G | RPT Solution | Evaluation
 - 2G | PTC Solution | Evaluation (Single Fund / Multi-Fund / Multi-Trust / Hybrid)
 - 3G | RPT Hybrid Solution | Evaluation
- Enforcer Trust | Entrenched

Assessment will be made of the suitable trust options available for business families at different stages of development, with an assessment of the most suitable option where a business family is first, second or third generation.

> **First Generation Business Trust:** will include assessment of a reserved investment powers trust, the use of power holders and next generation succession to power holding positions. Appropriate governance rules will be explained, including key areas of co-governance and executive team management. The challenge of a young family where next generation members may lack age or experience to take over practical running of the family business will be explained, and key governance safeguards illustrated.

> **Second Generation Business Trust:** this will involve consideration of a number of possible business configurations, including use of a private trust company structure with one business trust (single fund), a business trust with multiple sub-trusts (sub-funds) and multiple business trusts centrally administered by a single private trust company or multiple private trust companies (multi-trusts). A hybrid scenario, involving use of a business trust and shares personally held by family members will also be considered, including evaluation not only of the necessary trust related governance requirements but also necessary shareholders agreement between the business trust(s) and family members.

> Finally the session will end with consideration of a simplified approach to business family governance involving use of an **“Enforcer Trust”** to enforce good corporate governance across the family companies, involving use of a special purpose trust holding shares with special class rights. An overall assessment of the options will then be made including other key advantages and disadvantages of each option and suggested next actions.



Zac Lucas is a Partner with Spencer West LLP a UK International Law Firm. Zac is also Head of International Private Wealth with Spencer West’s alliance firm Gateway Law Corporation in Singapore. Zac is resident in Singapore. Zac has over 20 years post qualification private client experience in all areas of international private client law including cross border trust and estates, tax, family, divorce and succession laws.



David Brownbill KC is a barrister at XXIV Old Buildings, London. He specialises in international trust and commercial disputes, and advice. His practice covers commercial trusts; international estate planning; family governance and control, political risks and international sanctions, and trust arbitration. David has acted in numerous trust and commercial disputes in England and offshore and assisted various jurisdictions in drafting legislation, including trust arbitration and firewall provisions.

ZURICH, WEDNESDAY 27 MARCH 2024, 9.00 -12.30, ZURICH SHERATON HOTEL / ONLINE

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An invoice will be sent to you by email following registration. Payment is made by bank transfer or credit card

I register to the seminar “Business succession options for global families” on 27 March 2024.

I will attend in the conference room I will attend online on Zoom.

Full name

Position Company.....

Address

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