Matheson

MATHESON
FAMILY BUSINESS

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Introduction

Every family business is different.

Less than one fifth of family businesses are said to make it to the third generation. At Matheson we take a collaborative approach in advising family businesses, having regard to the individual family dynamics and the legal and tax infrastructure in which the business operates. From advice on start-ups and internal governance through to succession planning and sale, as a full service legal and tax firm, we can draw on our complete range of expertise to assist your family business every step of the way.

We understand that owning and managing a family business are complex tasks, due to changing family dynamics and the importance of preserving unity amongst family members.

This is particularly so, if there are a number of generations involved, with competing and conflicting views and ideas as to how the business should evolve.

Ownership of a family business requires constant attention. In our experience, if the ownership structure is not considered until a potential transfer of ownership, (either to the next generation or by way of sale) is tabled, it can be too late to implement an efficient and seamless transition.

We believe that a tailored and adaptable corporate governance framework and early planning for a tax efficient and cohesive succession plan are fundamental to the smooth running of the business.

Further, as the family business is often linked with a family's wealth, it is also important that a robust wealth management strategy is considered.

Using our wealth of experience and our range of legal and tax expertise, we can assist you in dealing with the challenges that face your family business. Our guide to family business looks at these issues in further detail.

Governance

The term ‘governance’ describes the framework for effective decision making, which is open and transparent. A well-articulated governance policy should enable the family to optimise the synergies between the business and the family members.

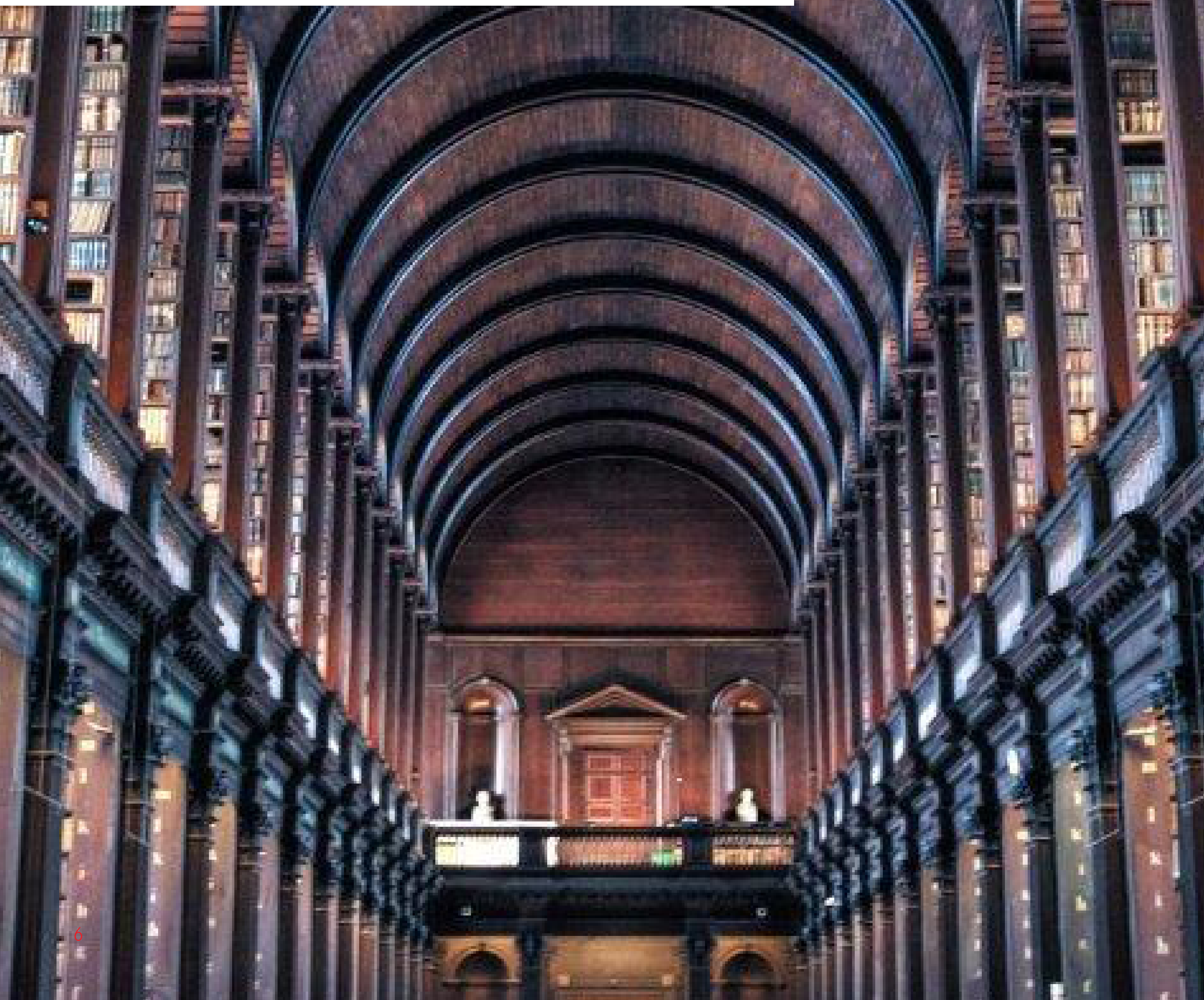
In our experience, the successful growth of a family business is centred around two key components; stability and strategy. An effective internal governance framework will provide stability to the family business which is essential to its successful continuation and growth.

Often, we find that the personal relationships at the heart of a family can have a significant bearing on the strategy of a family business. When an effective governance structure is in place, the risk of conflict is reduced.

It is important to highlight that there are three key limbs to a cohesive governance framework for a family business: the governance at family level, the governance at the level of the board of directors of the business, and the governance of the shareholders of the business. In the absence of a solid framework, these different classes of individuals can become embroiled in emotive issues, such as succession of management and ownership, and the business may ultimately be negatively affected by indecision due to conflicting opinions and personalities.

How Matheson can help

We have experience in advising family businesses on implementing effective family and corporate governance frameworks to assist in the smooth running of their business and improve performance of family members and key personnel.



The key family governance mechanisms that we recommend to clients to promote co-ordination and mutual understanding are as follows:

- **The company constitution:** This document can be updated and tailored to address the specific needs of the family business, and rules in relation to the composition of the board of directors of the business.

- **A shareholders' agreement:** This form of agreement should be put in place to regulate the relationship between the shareholders. The agreement can address management and succession objectives, and it can outline the requirements which next generation family members have to meet in order to become equity stakeholders in the family business.

- **Family charter:** This is a useful tool to outline family values and an aligned vision for the business amongst family members. It is essentially a comprehensive set of rules and guidelines, which can be used to anchor the family business, maintain family harmony, assist the family in making decisions and resolve future conflict. It can describe what is expected of family members and can address a myriad of issues, such as admission to the business at an executive level. Further, a family council could be established to hold minuted monthly or quarterly family meetings, which would enable family members to communicate matters effectively in a formal environment, and would facilitate the implementation of fair decision making processes.

Growth

Growth is a key component of the success of a family business, and it is important that an effective growth strategy is put in place.

In our experience an effective growth strategy may involve making use of available tax reliefs, acquiring new business or competitor businesses, restructuring the shareholding of the business to ensure that the next generation can benefit, tax efficiently, from an increase in capital value, and incentivising key employees and executives.

How Matheson can help

- **Tax reliefs:** Efficient tax management is an important factor in any sustainable growth plan. We can advise you on maximising the benefit of the 12.5% corporation tax rate, the availability of the research and development tax credits, the knowledge development box, transfer pricing, the eligibility of companies in availing of the substantial shareholder exemption from capital gains tax and the structuring of mergers and acquisitions (cross-border or within the State).

- **Mergers & Acquisitions / Taking your business public:** It is often the case that a family business will need to acquire or merge with new businesses and / or competitors in order to avoid stagnation in the market place, or indeed, go public. Whether the merger or acquisition is specific to Ireland or spanning multiple jurisdictions, we can provide you with seamless and integrated relationship-led advice so as to ensure that your business gets the most value out of the transaction.

- **Review of shareholdings:** We advise family companies in organising their shareholding in a manner that balances the importance of preserving maximum value for the next generation without adversely affecting the day to day control and management of the business. It is important to ensure that the shareholding of such family companies is arranged in a manner that does not unnecessarily trigger penal capital tax charges.

- **Incentivising key employees and executives:** Consideration should be given to implementing employee benefit share schemes and pensions funding.

- **Governance and risk controls:** It is important that appropriate governance and risk controls are in place so as to ensure that the growth strategy is executed in a controlled and risk free environment.

Transition

We will provide you and your family with tailored legal and tax advice in relation to the devolution of your family business interests. The smooth transition of these interests is fundamental to the growth of a family business and its continued success.

It is crucial that careful planning is undertaken to choose the persons who are best placed to take the business forward, but the fluidity of the succession process (which is not an overnight event) is key to sustaining your business for generations and integrating younger family members.

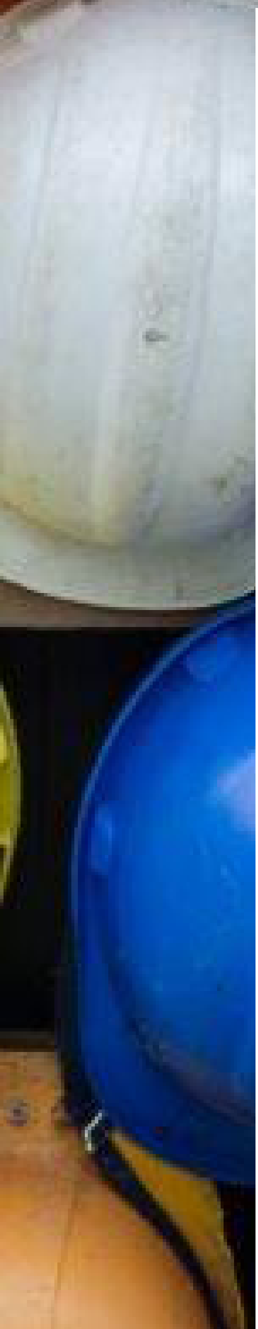
In our experience, early consideration of the transition of the business is crucial to an effective succession planning strategy, and should be discussed proactively with family members, rather than as a result of the demise of the patriarch of the business.

It is a process, not an event and in our experience most Irish family businesses do not have a formal succession plan in place, even though a significant number of such businesses have next-generation family members working at the helm.

Organising the transition is a long-term process, and appropriate planning should be put in place to ensure it occurs smoothly. Indeed, a cohesive and comprehensive governance structure would include guidelines in relation to the admission and integration of new family members to the business, for example, guidelines outlining what is expected of them, and the core skills that they must develop prior to admission.

How Matheson can help

We can assist by facilitating discussions on the various options available to you and your business and ultimately, we will help navigate your business through the key complexities and risks from a legal and tax perspective to ensure a smooth transition of the business to the intended recipients.

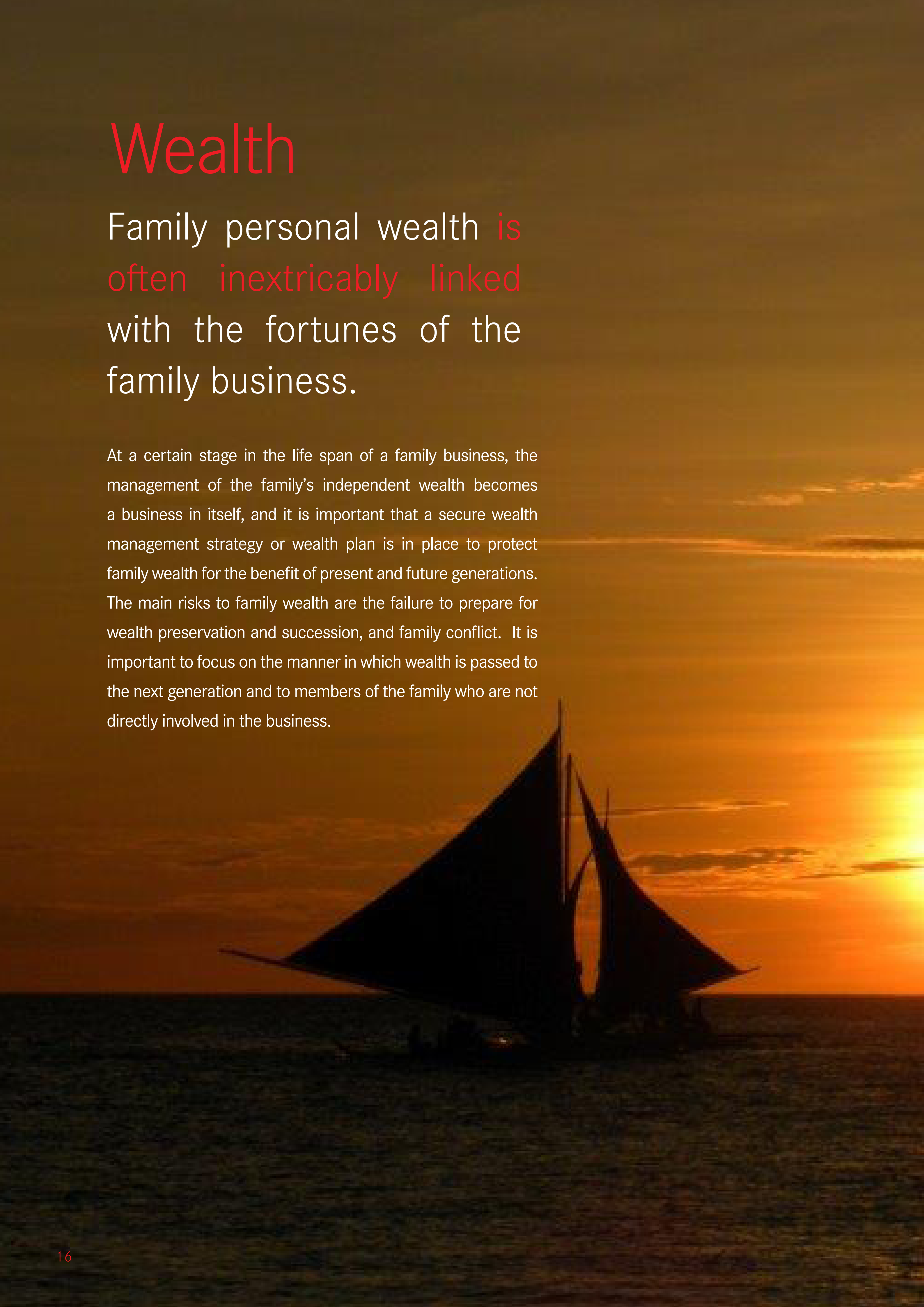


- **Review of shareholding in the business:** We have considerable experience in advising families on reviewing their existing shareholdings with a view to achieving a balance between preserving the maximum value for the next generation and not adversely affecting the day to day management and control of the business. This can be done in a way which ensures that the shareholders are not unnecessarily subjected to penal capital tax charges.

- **Selling the business:** While exit is not always the goal for some entrepreneurs, it is important to consider the potential for a sale. A sale might be unavoidable for reasons that are not always within a family's control, such as external market conditions, the financial exigencies of the family, or an unwillingness or inability of the next generation to take over the business.

  We have experience in assisting families through this complex and often emotional process and can provide advice on matters such as pre-sale restructuring to make the business as commercial as possible, capital tax efficiencies, and post completion estate planning measures to deal with the transition of newly acquired liquid value.

- **Capital tax advice:** Capital tax advice is key to ensure the transition of the business is done at the appropriate time and in a manner that takes advantage of all available reliefs, such as retirement relief from capital gains tax and business property relief from capital acquisitions tax. We have seen many family business owners postpone decision-making in relation to the transition of their business until retirement age, at which stage it is often too late to avail of capital reliefs and implement a tax efficient transition. Therefore, the issue of the transition of the family business should be addressed at an early stage in order to preserve and enhance business value.



Wealth

Family personal wealth is often inextricably linked with the fortunes of the family business.

At a certain stage in the life span of a family business, the management of the family's independent wealth becomes a business in itself, and it is important that a secure wealth management strategy or wealth plan is in place to protect family wealth for the benefit of present and future generations. The main risks to family wealth are the failure to prepare for wealth preservation and succession, and family conflict. It is important to focus on the manner in which wealth is passed to the next generation and to members of the family who are not directly involved in the business.

How Matheson can help

- **Estate planning:** Even where the next generation are minors, and the devolution of the family business is not perceived to be on the agenda, Wills must be tailored and Enduring Powers of Attorney must be implemented to provide for minimum disruption to the business in the event of an unforeseen change in circumstances.
- **Tax planning:** When implementing any type of wealth planning, careful and continuous consideration should be given to the impact of personal taxes, such as income tax, capital gains tax and capital acquisitions tax, on the strategies proposed. It is often the case, that the tax cost associated with a transaction can render it unattractive, as the resulting burden on your family's personal tax position can be too severe.
- **Management of risk:** We have experience in advising families on safeguarding their business in the face of internal threats that are unique to a family business environment, including divorce and financially reckless or financially exposed family members.
- **Use of limited (family) partnerships:** Limited partnerships are suitable for use as an investment vehicle to benefit multiple family members by providing them with a valuable economic interest from the outset, while confining control of the investment to certain individuals.

- **Trust planning:** We can advise you on the use of trusts to preserve value for future generations, to consolidate control of the family business across generations, and as an asset protection structure, to safeguard family wealth and business assets from third-parties.

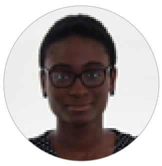
- **Philanthropy and charitable giving:** We have advised family members on how their holdings can be structured for long-term philanthropic purposes. Charitable foundations can be an efficient tool for furthering the social impact of your family business, and this may be an important consideration, particularly where younger family members are involved in the business who may seek to have their business interests and personal values aligned. A charitable foundation can preserve the family business while allowing a portion of the profit to be dedicated to charitable causes.

Contacts

John Gill
Partner
E: john.gill@matheson.com
T: 01 232 2159

Maeve Lochrie
Senior Associate
E: maeve.lochrie@matheson.com
T: 01 232 2051

Rebecca Dorrington
Associate
E: rebecca.dorrington@matheson.com
T: 01 232 2046



Ihunanya Enyi-Amadi
Solicitor
E: ihunanya.enyi-amadi@matheson.com
T: 01 232 2282

Maria Crawford
Legal Executive
E: maria.crawford@matheson.com
T: 01 232 2080

Tina Ennis
Legal Executive
E: tina.ennis@matheson.com
T: 01 232 2034