

FAMILY FARM SUCCESSION: A DELICATE BALANCE

Introduction

Planning for the transition of any business from one generation to the next usually requires a **delicate balance** of all stakeholders' interests. Achieving this balance is all the more challenging in farm businesses, where there are very often competing and conflicting **retirement** and **inheritance** needs.

In limited cases it may be appropriate for farm assets to pass to the next generation under a person's testamentary arrangements. However, in the majority of cases, a **well-planned** and **well-executed** transition of the agribusiness well *before* death is the key to achieving this delicate balance.

The Role of Your Succession Plan

Preparing for succession is daunting for many farmers. The assets are typically illiquid, indivisible and high value. They may be highly leveraged. There may not be a viable opportunity for all younger family members to take over the farm business. There may be non-farm family members and non-farm assets to consider. Farmers may have retirement plans that cannot be easily funded by the farm business. Outside problems and influences, such as will disputes, divorces and insolvency/ financial distress can derail the process.

It is important to be proactive and develop a succession plan that identifies and addresses these concerns. An important function of the succession plan is to identify changes that need to be made to ensure the **smooth transition** of the farm business to the right people and the balancing of other expectations and needs. The succession plan establishes a **roadmap** for we lawyers to prepare the transfer (and related) documentation.

Having a succession plan will provide **certainty** and reduce the many risks that confront the business. These risks include financial hardship, unnecessary tax burdens, business disruption, disputes/ litigation and large legal fees.

Just as importantly, a succession plan will provide the **foundation** for the business to **prosper** in the future.

The Role of Your Lawyer

When it comes to farm business succession, your lawyer needs more than dry technical legal ability. He needs **empathy** and **understanding** for the sensitivities unique to this area. He needs to be an excellent listener and communicator. He needs to be attuned to family dynamics but have exceptional commercial acumen. He must be comfortable dealing with your accountant, agribusiness consultants etc. He needs to simplify the complex and, above all, **speak your language**.

Beyond this, your lawyer needs to have the **skills** and **experience** for the task at hand. No two situations are the same. What is appropriate for one situation may not be for another. Implementation of most farm business succession plans is a complicated and multifaceted commercial transaction. It usually requires a lawyer to be experienced in the following:

- Asset protection
- Banking and finance
- Commercial contracts
- Complex estate planning
- Partnership, trust and company law
- Probate and estates (including contentious estates)
- Property law, leasing and conveyancing
- Superannuation, social security and retirement

Importantly, your lawyer needs to be a **tax expert**. He needs to understand the **farm business tax landscape** in order to ensure that any **tax leakage** (including stamp duty) is minimised so far as is possible.

There are very few lawyers that even know the right questions to ask - never mind that have the background or skills - to do this properly.

About Baggiolegal

We at **Baggiolegal** are experienced in, and adept at, all of these things. We regularly prepare and implement succession and transition plans for farm and other businesses. We are experts in complex personal and business succession, tax and commercial transactions. Our documentation is written in modern English and our advice is presented in a form that can be understood by non-lawyers. This blend of **expertise** and **skill** is almost **unique** in South Australia.

Baggiolegal is a boutique law firm, specialising in commercial, taxation and private client law. **We understand** our client's objectives and provide clear and independent advice. Service is paramount to us. **We deliver** technically sound, timely and commercially oriented solutions. **We know** and understand the South Australian landscape, but our international perspective is unique in Adelaide. Our people have excelled in the legal profession in private practice and industry all over the world. **We apply** international best practice to our local client's needs. **We work** with our clients. **We listen** to our clients. We are approachable, accessible and personable.