

LEGACY PLANNING

THE ART OF WEALTH PROTECTION & PRESERVATION

Using Trusts

WHAT IS LEGACY PLANNING

- Legacy Planning is the art and science of wealth Protection & Preservation
- Encompasses the the wishes, aspirations of current and future generations; continues the philanthropic legacies of the family
- Provides ample opportunities to all (both family extensions but also outsiders) to contribute to the growth of family wealth
- Prepares the family and its members to become - “fit and proper” for multilevel growth. Includes the current portfolio of assets
- Includes a

LEGACY PLANNING — contd.

- Enlists Professionals in management of diversified portfolio of assets
- Consists of strategy, schemes, and processes to ensure total control, governance and ensures trustworthy behavior
- Possibly through strategic and external investors and new generation finances

CONVENTIONAL WISDOM

- Tax Saving Mechanism:
 - **Not true**. Tax leveraging have been taken away by Tax Authorities. Either the vehicle pays the tax and passes the tax credit to beneficiaries or beneficiaries suffer the tax themselves
- Used by Wealthy families and personnel, not very useful for business purposes:
 - **Partially True**. No doubt, wealthy families across the globe have popularized the use of Trusts but they have embedded family businesses in wealth. Hence Trusts have been very much in use for businesses – segregation, incubation, research and development, philanthropy and many others. Such usages has not been prevalent in India, though
- Trusts are complex – to set up, transfer assets and manage them
 - **Partially true**. An integrated approach to wealth preservation and protection requires multiple tools and hence Trust have a medium level of complexity

EMERGING USES IN BUSINESS- INDIA

- Used to assist debenture trusts on behalf of lenders and creditors
- Used as a transaction proxy, facilitating two/multiple party dealings, – Custodians in M&A, escrow agreements, data rooms(dd exercises), privacy documents such as Technology transfer documents
- All mutual funds, AIFs, are to be structured as Trusts – as per SEBI
- Settling family wealth for future generations – esp business units, new ventures etc
- Used in Stressed Business Resolutions – through NCLT, IBB,
- Family Back offices using Trusts to mask the real family from public eyes- M&A, Acquisitions, Sell Offs etc.

OPPORTUNITIES - FINPRO MEMBERS

CONTEXT – FUTURE OF FINPRO

1. FinPro members help families gain access to finances for their businesses- growth, working capital, management of leverage etc.
2. These remain at Transactional level and rarely get into relationship level with families/ business combinations etc
3. FINPRO, in my view, is missing out a great opportunity to deepen their relationship with families through engagement, solving problems
4. Deepening will happen if deep problems bugging families/ bus combinations are addressed and resolved – through access to network, core domain expertise etc

AREAS FOR FUTURE -ENGAGEMENT

WILLING TO TRANSFORM INTO BUSINESS CONSULTING?

1. Discuss about protection and preservation of business, family and individual assets. Difficult times with banks, nclt, creditors hardlines coupled with family issues. Offer various products/options
2. Address the sibling issues, if any; elder care issues and other legacies
3. Help customers to segregate business and family assets with clear ` boundary mechanisms
4. Help to review their businesses, carry out swot analysis and help plug them
5. Provide plans to shield/ island the family and private assets from harm's way- Creditors, Claw back clauses in loan documents

AREAS FOR FUTURE –ENGAGEMENT -2

6. Use Trusts in isolating stressed business/ divisions so that they can be worked on Professionals and make them fit for an alternate exchange debut
7. Acquire new businesses through Trusts so that they can be isolated/ islanded from current business structure, its creditors esp banks
8. Use Trusts to help stranded elders (who are rich in assets but very poor in cash) through Reverse Mortgage proudcts, tailored to suit elders
9. Post Covid days, opportunity arises to serve these ageds, elders and those incapacitated to take care of themselves- use the key features of Trusts- transparency, accountability and most importantly Fiduciary

AREAS FOR FUTURE –ENGAGEMENT -3

10. Offer services as Trustees – again using Fiduciary Responsibilities of a Trustee as a force
11. Use Trusts while carrying out Due Diligence checks on behalf of your clients-it is a protection against theft of data, privacy busting techniques

PRINCIPLES IN ESTABLISHING FAMILY TRUSTS

Principles behind establishing family TRUST & GOVERNANCE

- Fairness
 - Inclusiveness
 - flexibility
 - Transparency
 - Education
 - Accountability
 - Collective buy-in
 - Clarity of procedures
- It is important to have a “driver” in the governance process – somebody trusted from within the family who leads the process and motivates and involves family members in support of the plan.