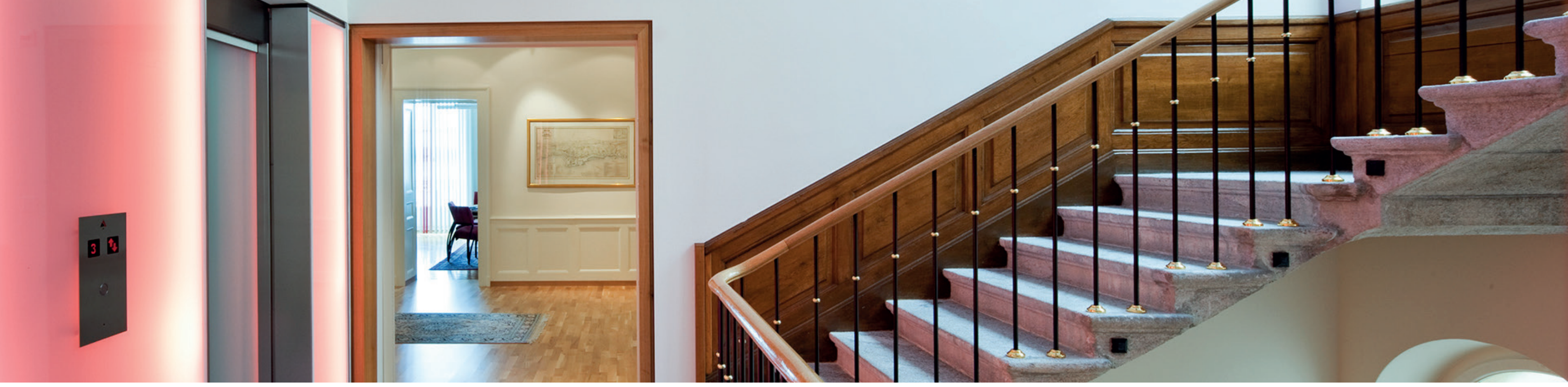

TRANSFERRING CORPORATE OWNERSHIP, A CHALLENGE FOR SMES

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Who is concerned by this issue?

Whether a shareholder-employee or a sole proprietor, an entrepreneur will one day be in the position of handing over title to his or her company. While most corporate successions are still a family affair, the trend is increasingly towards transferring ownership to someone outside this circle (e.g. to a company employee or an investor).

When is the right time to think of transferring ownership?

Entrepreneurs who play an active role in the everyday management of their firm often find themselves "suddenly" facing this decision when it is time for them to retire. In fact they should realise the importance of preparing for that day beforehand. The succession should be discussed with their children and other family members to determine whether any of them intend to get involved in the business in the future.

It is also important to know that transferring title can require restructuring a company several years before the transaction takes place, to avoid negative tax consequences. For instance, when a sole proprietorship is converted into a joint stock company, ownership is blocked for a period of five years during which the entrepreneur would be taxed on any sale of the company's shares. Planning ahead is therefore the key to success in these operations.

What aspects must be considered in the case of family inheritance?

While handing down a company within the family has its advantages, including confidence in the successor or the continuation of a tradition, it also raises the question of dealing fairly with all the heirs. How does one compensate the children who do not wish to take part in running the family business? Moreover, how does one avoid conflicts between them if some want to sell their share while the others do not?

In this situation, discussing and planning the details of the inheritance is vital to take account of domicile, marital status, nationality, etc. An in-depth legal analysis is therefore necessary.

Tax efficiency in the transfer of corporate ownership

Whether within a family context or not, the transmission of most firms occurs via a sale. In principle an entrepreneur who sells his company's shares is exempt from tax on his private capital gain. One must nevertheless be careful how the sales is structured (i.e. whether the buyer is another legal entity or an individual), and how the agreements are worded, to ensure that the capital gain is not treated as income and taxed as such (whether immediately or later).

When a firm is sold within the entrepreneur's family, it is generally a good idea for the heirs to set up a holding company. This structure enables the new owners to avoid having to borrow personally to buy their stakes. Moreover, by establishing a company that will be indebted to the departing entrepreneur, it is possible to prevent a good part of the wealth tax burden being passed on to the heirs.

How Bonhôte Services SA can help entrepreneurs

As advisers and specialists in legal and tax matters, we analyse each entrepreneur's personal situation and develop tailored recommendations and conclusions. We then help them implement the chosen option step by step (tax ruling, agreements, etc.). All these aspects are integrated in order to provide full service to entrepreneurs and ensure that the transfer of corporate ownership is a complete success.