

## **PROTECTING YOUR ESTATE WHILE INVESTING IN YOUR CHILD'S BUSINESS**

Many well-meaning parents contribute capital to fund their children's ambitious albeit start-up business. Happily, there are a number of success stories where this investment paid off as the business becomes a hit.

Unfortunately, there are also many instances where parents have had to repeatedly save a sinking ship, to the detriment of their other children, causing strife and discord within the family. Not all businesses become successful, so how do parents with the best intentions, place safeguards to ensure that apart from their investment, the interest of their other children is protected as well?

Prior to giving funds to their children, parents have to ask themselves what their intention is. Will this be a straight donation, with the parents not expecting any return on their investments? Or, will this be a loan, where the child is expected to pay the amount due on a certain future date, with interest on the amount loaned, regardless of whether or not the business makes money or fails? Or perhaps, will the parent come in as an investor, sharing the opportunities and risks, the profits and losses of the company?

I believe in the principle that "Strong fences make better neighbors." By this, I mean that proper documents should be executed between the investing parent and the businessman-child to clarify the agreement made between them and thereby help preserve relationships within the family.

For instance, if a parent would like to donate, a contract of donation should be executed between the donor parent and the recipient child because, under the law, a donation is considered an advance of inheritance. This means that in the event of the parent's death, such donation would already form part of the donee-child's share in the inheritance. This is a form of protection for the other heirs who are entitled to their fair and full share in their parent's estate, unreduced by the donation given to their sibling.

If the parent intends to lend money to his child, then either a contract of loan, or a promissory note, or any other similar undertaking must be executed. The contract should provide for the terms and conditions agreed upon by both parties, especially the manner by which the loan is to be repaid, and a set date for payment. This date may or may not be a specific date on the calendar. It may be dependent on a condition such as "When the retained earnings of the company exceeds the cost of investment placed by the creditor-parent," or "When the annual sales of the company for any given year is equal to or greater than One Million Pesos." Also, the parents may require that the child place either his own personal assets, or the assets owned by the company, as a guaranty in the form of mortgage, pledge, etc., to secure the loan. Hence, in the event of the parent's death, the receivable can be made part of the estate and may then represent the share of the borrower-child in the inheritance. Again, by doing this, the rights of the other children are protected.

Finally, should the parent wish to step in as an investor of the company, then the child may either make the said parent as an incorporator of the company, or issue shares of stock equivalent to the amount being invested by the parent. Should the parent have an existing company, another option would be for the mother company to own shares of stock of the child's company, effectively

making the subordinate company into the mother company's subsidiary.

In either case, the appropriate documents should, again, be executed reflecting this agreement. This may be through the inclusion of the parent's name in the Articles of Incorporation. The appropriate stock certificate and/or subscription agreement should be issued by the company under the name of the parent, with entry of the said investment registered on the company's stock and transfer book.

This option allows the parent to step in and take over as manager of the company, when needed, in the event that the child proves himself incapable. More importantly, these shares of stock form part of the estate of the investor parent and are therefore transmissible to his heirs upon his demise.

In sum, the appropriate contracts and documents should be executed to reflect the real agreement made between the investor-parent and the investee-child in order to protect the interest of other children and maintain harmony within the family.

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