

Case Study 1: Seeds of Discontent Split Successful Software Business

Ray and Harry started their software business 14 years ago. It grew into a significant business worth \$5M, employing 51 staff, and operating from Adelaide and Brisbane. The four owners (two founders & two spouses) personally own equal shares in their operating company.

The business developed a specialist market niche. It employed a core of programmers who were critical to the future delivery of the company's contracts. Recognising this, one original director wished to bring key staff into the company, suggesting that each couple decrease their combined holding to free up 10% equity for selected staff.

However, the other inaugural owner refused and suggested this was a plot to outvote them on the board. Further, all assets including intellectual property and their office building belonged to the sole company. No separation of core asset and trading operation was possible. Relations then deteriorated quickly until a buy-out was suggested.

Initially this was resisted, deemed as further evidence of conspiracy. Management was being affected and key staff were getting restless. This then led to four years of suspicion, and escalating legal fees for advice on a range of suggested board decisions. Eventually a purchase offer from one couple, including participation by a number of key staff, was accepted.

Bad blood between the parties was such that the acceptance was conditional on the entire company being sold to a new owner; including the 50% of the remaining owners. This was a final parting "gift", in that the CGT implications in selling shares, then repurchasing them, costing the remaining owners some \$240,000 so easily avoided.

BizSuccession was called in to set up the ownership structure and succession strategy for this new bid so that if successful, the paralysis of the original structure would never be repeated.

We established clear separation between the ownership of the intellectual property, the core asset and the trading entity. Clear and certain strategies allowing the orderly exit of any new owner were written up and so were the rules for future succession. The new board was given options as to whether future owners would own part of the core assets and intellectual property,

or just the trading company.

Had we been able to set up these structures, and exit strategies, for the original business, some four years of considerable stress, CGT impost and unnecessary legal costs would have been avoided.