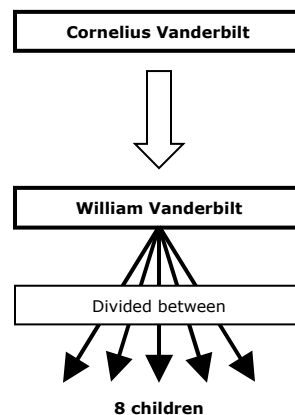


Business Succession: Can you prevent your business from fragmenting?

"A RM105 Million Mess: Tycoon's children fight over cash and shares" was the attention grabbing title of an article published in *The Malay Mail* in 2002. The story concerned a Malaysian tycoon whose death in 1995, sparked a bitter quarrel among his many children over the ownership of his cash and shares worth RM105 million. As the late businessman died without a Will, his children were entitled to an equal share in his assets. Three of his sons were extremely upset as they saw themselves as the ones who helped built the family business. The article appropriately ended with *"Father built his millions brick by brick, but they have been torn apart."*

Many successful businesses do not last beyond 2 or 3 generations, because it is divided among the children of the business owners, irrespective of their competence and business acumen. When rags-to-riches US tycoon, Cornelius Vanderbilt died, he left almost his entire estate under his will, to his son William. Cornelius left nothing to his other sons because he believed only William to be capable of maintaining the Vanderbilt business empire. Cornelius Vanderbilt was right. By the time William died less than nine years later, he had doubled the value of the business empire. However, William's own estate was divided among his eight children.



Having a will by itself obviously doesn't prevent the fragmentation of a business. If the will of a business owner says *"I give my business to my children in equal shares"* or *"I give everything to my children in equal shares"* then upon the demise of the business owner, his children may all have equal shares in his business. Even if it may be acceptable to all the siblings, these siblings will have families of their own. Eventually, the next generation will part ways. In addition, at least some shares in the business will almost certainly be passed on to outsiders as the descendants of the business founder die and their estates are inherited by their widows.

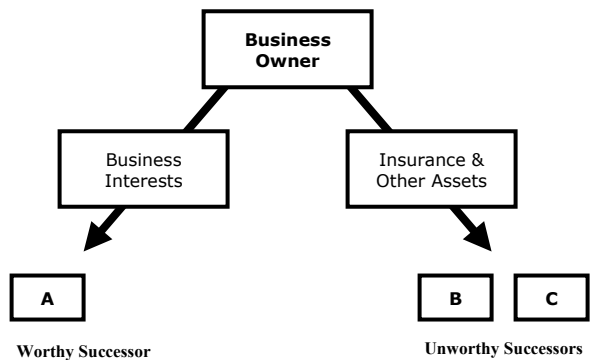
Why would a business owner choose one or more of his children as his business successors to the exclusion of the others? The reasons include:

- i) **Further Business Expansion** - You can't live forever but hopefully an equally capable offspring can expand your business further and achieve the dreams you have for your company after your lifetime. The listing of your company or establishing a business presence in a number of countries, for example;

- ii) **Fairness** - By trying to be fair to all your children you may be unfair to those among them who have been actively managing or otherwise contributing to your business;
- iii) **Appointing Competent Successors** - Not all of your children are competent or have the aptitude to be involved in the business and an incompetent successor may do more harm than good;
- iv) **Preventing Spendthrifts from Inheriting** - One or more of your children may be a spendthrift and sell whatever inheritance for the sake of the pursuit of pleasure;

As a business owner and parent it may indeed be difficult to be fair to all your children yet choose the best possible way for the continuation of your business. So, what are your options?

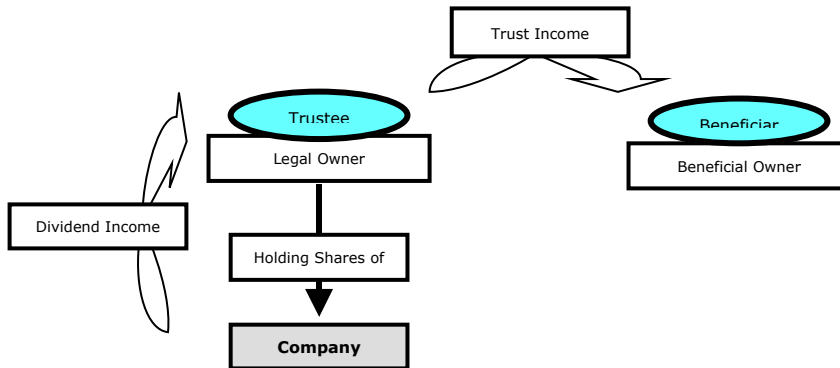
Option 1 Using Wills – Select your business successor under your Will by bequeathing him your business interests (i.e. shares in the company). Be specific by stating “*I give my shares in ABC Sdn. Bhd. (Company No. xxxxxx) to*” Children who you don’t wish to name as your successors can be compensated by other assets or proceeds from your life insurance policies. However, realistically it may not always be possible to bequeath each of them an inheritance of equal monetary value. By making this choice you may be doing a big favour to your more deserving children who otherwise may be embroiled in a battle over control of the business.



If you don’t have successors who are worthy or show the slightest interest to take over the helm, then it is important to expressly instruct the executor of your Will to sell your business interests. At least the sales proceeds can then be distributed to your beneficiaries rather than let the business die a natural death.

Option 2 Using Trusts – There is a difference between ownership and control. You can give to say, all your children ownership in the business - beneficial ownership that is – and yet not give them control over the business. Where you have children who are not worthy successors to your business, the key may be not giving them the legal ownership. The trustee holds the legal title to the shares of a company but it is the beneficiaries who will ultimately receive and enjoy the dividend income. As the

shares of the company are held on trust, they cannot be sold by the heirs during the trust period.



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