

SUCCESSION: FAMILIES TALK ABOUT THE NEXT GENERATION

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When Dame Anita Roddick, founder of the Body Shop, said she wanted to give away her £51m (\$104m) fortune, there was a receptive echo among other high-net worth individuals.

A recent Barclays Bank global survey of nearly 800 super-rich revealed that a third of them were having second thoughts about the wisdom of leaving large inheritances to their children. Many are putting provisos into their wills and stipulations that their heirs must fulfil before they can inherit the fruits of their parents' labours.

Lawyers say the worst option is to leave nothing to children who have grown up in luxury. Ceris Gardner, private client partner at international law firm Allen & Overy, says: "It's important to find the middle way, where children acquire a work ethic and responsibility for the less fortunate."

Increasingly, she says, clients are favouring the establishment of foundations that their children can run. These foundations give the children a way to learn the value of money, gain responsibility for managing funds and projects, while having a philanthropic impact.

Ms Gardner has four families putting such arrangements in place. In one case, three children in their 20s have responsibility for a charitable foundation. The parents have left them to manage it on their own with advice from external advisers and the trustees.

Ms Gardner says: "It is helping them grow in confidence and helping their parents trust them to manage their affairs."

Succession planning is becoming more fraught, aside from protecting heirs from the pernicious influence of too much money. More cross-border marriages have given rise to a multiplicity of problems.

Paul Stibbard, private client partner at law firm Baker & McKenzie, calls succession planning across borders the "perfect nightmare".

The considerations for a wealthy international family are myriad. For starters, there is the conflict of laws across borders – some countries devolve property according to domicile, other countries have split systems. Assets in different jurisdictions are affected by different tax reliefs and estate tax treaties.

Then there are forced heirship rules – for example the French and Muslims have to leave their estate in certain fractions. Another issue is community property: people may think they own property, but as they have married into community property, they discover their spouses have the requisite share.

Mr Stibbard points to a new issue that has only recently come on to his radar screen. "Say I'm living in the

Bahamas and pass away leaving £5m to my child. I think I have left it tax-free, as there is no tax in the Bahamas. But I may fail to realise that my child is living in France and is subject to French taxation.”

Families scattered across the globe, or constantly moving from one jurisdiction to another, often fail to realise that this can change the laws of inheritance on their estate or that they are subject to a totally different regime.

Mr Stibbard uses the example of wealthy individuals who become domiciled in the UK and whose families have been stung by their live-in lovers who then have claims on their estate under British law.

Using lawyers to navigate this minefield is best done as early as possible. People tend to leave it too late before they start to plan their legacies.

Lawyers advise that they can be most effective when clients approach them at milestone events such as buying property, marriage, having children or divorce – and then every five years.

The super-rich are not the only contenders for early planning. Individuals with £1m of assets should consider instructing a specialist solicitor.

Jeremy Irwin-Singer, private client partner at Blake Laphorn Tarlo Lyons, a UK law firm, says that high net worth individuals planning their succession often take too much tax advice from their financial advisers.

These advisers are essentially trying to sell financial products and are not always best placed to advise them about leaving wealth behind. “They give advice about getting money to grow and that should not be confused with planning the future in a way that will be fair to the heirs,” says Mr Irwin-Singer.

Most lawyers say that clients often believe succession planning is about saving tax at all costs. This, says Mr Irwin-Singer, is like putting the cart before the horse.

Simon Palmer, a partner at UK firm Brachers, agrees. “As solicitors, we have to manage our client’s expectations. Our role is to protect our clients and that’s not always about saving tax.”

Lawyers have in the past recommended trusts as a sound option for parents wanting to leave safe, sustainable legacies. However, says Mr Stibbard: “The UK government has increasingly set its heart against trusts, so there are increasingly more associated tax problems.”

Complicate the situation with a family business and the related issues of passing it on fairly and efficiently, and succession planning becomes an obstacle course.

Lawyers say the best way to help clients is to keep the overall plan as simple and as separate as possible.

They advise the use of different structures for different beneficiaries, so there is less possibility to intermingle and therefore confuse the affairs of different heirs.