On Mortality: tools for business and founders to help them continue after...

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Article summary

In this heavy and perhaps sad article we consider how the denial of our own mortality and death can create challenges for business. We provide a number of ideas and concepts for business leaders/founders to consider in respect of mortality.

Fear of death is a core part of the human condition. It's been associated with everything from the enduring appeal of religion and spiritual beliefs to the desire to reproduce and raise children.

Some businesses however appear to have "beaten death."

There is a hotel in Japan — Hoshi Ryokan — that has been run by the same family for approximately 1,300 years. Forty six generations have managed to maintain control of the business. Until 2010, the *Guinness book of records* considered it the oldest hotel in the world. In 2011 the title passed to another hotel in Japan, that had been founded in 705 AD compared to Hoshi's 718 AD.

How do businesses handle mortality of their founders? We explore some ideas for both the founders as individuals and the companies as corporate entities.

PART 1: At a personal level

1. **Take out a life insurance policy.**

   Life insurance is a contract between an insured (insurance policy holder) and an insurer or assurer, where the insurer promises to pay a designated beneficiary a sum of money (the "benefits") in exchange for a premium upon the death of the insured person.

   Depending on the contract, other events such as terminal illness or critical illness may also trigger payment. The policy holder typically pays a premium, either regularly or as a lump sum. Other expenses (such as funeral expenses) are also sometimes included in the benefits.

   A life insurance policy provides for your family and hence can reduce on the pressure for your business to provide for them – assuming your family was not working in the business.

2. Create a trust (as part of a will)

A trust is a legal arrangement where one or more 'trustees' are made legally responsible for holding assets. The assets - such as land, money, buildings, shares or even antiques - are placed in trust for the benefit of one or more 'beneficiaries'

The trustees are responsible for managing the trust and carrying out the wishes of the person who has put the assets into trust (the 'settlor'). The settlor's wishes for the trust are usually written in their will or set out in a legal document called 'the trust deed.' (*source: HMRC*).

Putting assets in a trusts provides business continuity because the settlor of the trust will usually provide guidance to the trustees to specify how the trust should be run and how the proceeds from the trust should be used.

A common example is for a trust to be set up as part of a will and the income from the trust assets be used to provide for education and maintenance of children left behind on death. An example of such wording is below:

TRUSTS FOR MY CHILDREN AT 21

My Trustees must hold the Trust Fund on trust for my children who are living at my death and who reach 21, in equal shares.

While a child is under 21, my Trustees:

(a) *may pay the income from the child's share of the Trust Fund to the child or use it for his or her education and maintenance; and*

(b) *subject to any exercise of my Trustees' power, must add to the child's share of the Trust Fund any income from that share.*

While a child is under 21, my Trustees may pay some or all of the capital of the child's share of the Trust Fund to the child or use it for his or her or her education and maintenance.

If a child of mine dies before reaching 21, leaving children of his or her own, my Trustees must hold the deceased child's share on trust for those children, in equal shares absolutely.

PART 2: At a corporate level

1. **Family business considerations.** Most businesses in the world (about 90%) including in Uganda are family businesses which creates the "risk of informal structures" – and hence they are particularly exposed on the death of the founder or patriarch/matriarch. You need to have in place formality of structures. The next generation for example needs to be made aware of what is happening – do they attend board meetings? Do they have password access to critical systems? If they cannot act as shareholders (for example minors), can this cause a problem on death? Perhaps consider placing shares in trust?

   In **Appendix 1** we summarise key considerations for a family business as relates to formalization.

2. **Key man loss insurance.**

   To ensure business continuity, many businesses have a key person who is responsible for the majority of profits, or has a unique and hard to replace skill set such as Intellectual Property that is vital to the organization.

   An employer may take out a key person insurance policy on the life or health of any employee whose knowledge, work, or overall contribution is considered uniquely valuable to the company. The employer does this to offset the costs (such as hiring temporary help or recruiting a successor) and losses (such as a decreased ability to transact business until successors are trained) which the employer is likely to suffer in the event of the loss of a key person (source: Wikipedia).

3. **Business back up and disaster recovery simulation.** It is not enough to have disaster recover or business continuity plan. It needs to be tested. Where are passwords to key systems kept for example? Is the management team aware of them? How about all key documents? Are they stored on a personal laptop or are they on a shared server? With the advent of cloud systems, disaster recovery and backup should be less of an issue. Google APPS for example provides an online server for all business documents. This is a key consideration as a business continuity tool to enable the company continue on the loss of a key person.

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Appendix 1: Formalising of family business to ensure continuity

Are family businesses really bad?

Of the world's top 20 billionaires in 2014 per the Forbes.com list, about 35% are family owned businesses. This includes the no. 2 person – Carlos Slim Hemu who is actually wealthy together with his family. Other family owned billionaires on the list include those behind *Walmart* – the US retail giant, *L'Oreal* – the cosmetics giant and *LVMH* – The luxury brand behind names like Louis Vuitton and Don Moet Champagne and Bulgari.

Some of Uganda's most successful firms are family businesses as well e.g Ruparelia Group (*Speke, Crane bank*), Mulwana Group of Companies (*Nice, Jesa*), Madhavani family (Kakira sugar).

Why is it then that despite the potential to be very successful, many Ugandan family run businesses do not succeed? How can the process of formalizing matters help ensure success and business continuity?

First, why do businesses in Uganda fail?

Uganda is ranked as one of the most entrepreneurial nations – It means we set up businesses much faster than many countries – and many of our businesses are driven by opportunity rather than necessity (e.g retrenchment or unemployment)

But a respected 2004 study conducted by Makerere University Business School (MUBS) and sponsored by among others the European Union (EU) indicates our business failure rate is 50%!

That means 1 in every 2 businesses that is started fails – usually within 3 years. This therefore means that most of the businesses failing are family businesses!

But why exactly are Ugandan (family) businesses failing?

Businesses worldwide not just in Uganda fail for a variety of reasons. The top 4 reasons include: not enough demand, stubborn owners, out of control growth and poor accounting.

Is business failure worse for family businesses?

Yes. The problem is worse for family owned business – a failing family business causes higher levels of stress – particularly as you cannot just get rid of your business partner who has contributed to the failure – they are after all your spouse, brother/sister, mother etc.

So how do you manage the issue of formality in family business to ensure continuity?

Below is a list of key things to consider.

1. **A formal strategic plan (with succession planning)**. If other family members are not involved in the day to day, how about putting the "ins and outs" in a formal document? This is a starting point of business continuity as by putting it on paper you can enable your success formulae to be replicated – hence business continuity ensured.

   If you need to get it reviewed by a professional do so – this is highly recommended.

   A business plan template is a good starting point when developing your strategic plan.

   Specifically consider a succession planning pool. Who is your "deputy"? Why not formalize this? If you cannot specify one person, how about putting a committee or body with guidelines on how they will work together.

   In families it is sensitive but roles should be based on skills, not seniority.

   The "money" person or even "chairman" doesn't necessarily need to be the eldest – say the clan head, he who alone is allowed to eat *"Nkoko Nkulu"* (chicken gizzard). Companies are for example run on merit – the most capable. Business even family should follow the same principle including for succession.

   If you want to handle the dilemma of the "elders" (say your parents, your older siblings) How about creating a "two tier" organisation structure – the "council of elders" who for example only vote on critical matters and resolved disputes BUT are not involved in daily matters. They say attend quarterly meetings. Then you have the "management team" – the team responsible for the day to day matters – based on merit/ability.

   In summary, have a governing document, which acts as a succession planning tool as it clearly sets out who is responsible for what. A two tier organisation is how most successful companies are run – they often have a board of directors (similar to the elders) and then the staff and managers (day to day management).

2. **What if you are non – resident or require privacy (e.g Kyeyo/Diaspora, sensitive position)**

   In the *"Wolf of Wall Street"* Leonardo Dicaprio's character wanted to hide money away from reach of US tax authorities. He entered a deal with his Aunt Emma. He would give her the money, she would take the money to a Swiss bank. This worked well for many years – and then aunt Emma died, and there was $20m of his money sitting in a bank – he couldn't retrieve it!

   This is an extreme but some options to consider for this situation include:

   - **Power of attorney** – appoint a lawyer as a legal representative to sign documents on your behalf

- **Nominee arrangement** – The person listed on the face of the document is different from the "real owner" BUT A 3rd document (say a "deed of trust") is signed to protect and/or reveal the "real owner" in the event of anything. This means for example you appoint cousin X to act formally but you have a deed of trust he signs to recognize your legal rights or ownership.

3. **Put in place a formal dispute resolution mechanism.** A lot of businesses fail due to disputes, including on loss of a key person. You must put in place a formal dispute resolution mechanism.

   Dispute resolution is particularly critical in family business – you cannot after all typically avoid family like you would do an unrelated party.

   This might include for example a professional who you have all agreed to (e.g a lawyer, business advisor or accountant) as the person with the final say to which all parties in the family shall agree to in any dispute about business. The courts are really a last resort in our view.

   This is not strange by the way, large companies often do this – their contracts include an "arbitration clause" – a route for solving dispute. If you cannot afford to appoint an accountant, agree and nominate a respected family member – who is also good at business. This person will handle disputes. It will give you all peace of mind.

4. **Put in place a formal "business break up" or "handover" mechanism.**

   When businesses are incorporated the articles of association and the like are sometimes not clear on what happens in the event of death of say the majority shareholder.

   There should be put in place a clear clause in the document that clearly lays out the procedure for the transfer of shares or ownership in the event of death. This is particularly if you don't have a will – Ugandans are so terrified of death (its apparently bad luck to talk of it in our cultures) so this is a simple way to deal with the issue without the worry of "bisirani" (bad luck).

5. **Formalise any loan terms.** Businesses often lend to family members and vice versa. On death this could become confusing. Experts suggest that even when dealing with family, drafting a simple document that outlines the terms of the loan. This should answer knee-jerk questions a 3rd party would ask if you are not present e.g: "Pay back date", "interest rate", and "Repayment term."

6. **An independent monitoring mechanism**. The problem with family business is that familiarity is it's best part - decisions are for example made easily but this also the worst part - absence of systems is one of the quickest causes of failure.

   In the words of Charles Dickens: *"It was the best of times, it was the worst of times"*

   How do you solve this dilemma? You should put in place a system that for example requires an independent "audit" – a person not connected with family, or if family – a person unconnected with day to day business.

This person is preferably an accountant/auditor or business advisor (one who understands numbers) to help you in ensuring you have systems in place to manage the business. Do you for example have board minutes? How about accounts?

Such formalization and checks and balances are great for business continuity purposes as there is a record of key matters.