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PRACTICAL TIPS FOR ESTATE FREEZES

By: L. David Fox, Partner

1. Is this the right time to implement a freeze? How old are the beneficiaries? 21 year rule?
2. If a freeze is implemented, is there adequate value for the remainder of the Freezor's life?
3. Is a section 85 or 86 freeze the right choice? Is it contemplated that the operating company will be sold? Availability of the capital gains exemption?
4. Are there multiple unrelated shareholders of the operating company? Is creditor-proofing relevant?
5. Must make reasonable efforts to ascertain value and ensure a price adjustment clause is included in the share terms.
6. Consider risks of association given trustees/beneficiaries of family trust.
7. Consider subsection 74.4(2) and insert relevant clause into family trust.
8. Consider subsection 75(2).
    a. potential capital beneficiaries can't be settlor/contributor and can't provide funding to acquire common shares unless *bona fide* loan.
    b. If settlor/contributor will be trustee, should be at least 3 trustees, trustees should make decisions by majority and settlor/contributor must not have veto
9. Consider section 74.3—If spouse/minor nieces and nephews and non-arm's length minors are income/capital beneficiaries in respect of settlor/contributor:
    a. are non-income producing asset to settle family trust;
    b. avoid using settlement amount or other gifted property to acquire common shares;
    c. use loan to acquire common shares; and
    d. if can use funds gifted by non-subsection 74.3(1) person, do so.
10. United States Beneficiaries
    a. U.S. income/estate tax and reporting must be considered.
    b. Consider Canadian corporate beneficiaries among other beneficiaries.

c. No tax-deferred rollout of trust property to non-resident beneficiaries.

11. Family Law Act—if beneficiary is married, freezor should subscribe for shares and gift shares to trust along with necessary Family Law Act language.

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