FAMILY & BUSINESS

An AFBE Publication

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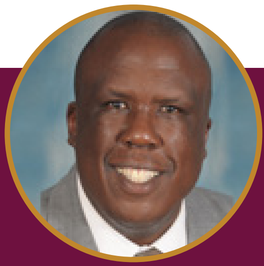
Association of Family Business Enterprises

SUCCESSION MATTERS

INSIDE



Message from the Chair

Welcome to our third edition of Family and Business. In this issue, our main story is on succession, a key factor in determining the longevity and the success of a business. 2020 has been a different year from most. The ravages of the pandemic have had an unimaginable impact on society. However, it has also been an opportunity to take stock on our lives, our purpose and our businesses.

An oft-overlooked aspect in leadership is succession planning and the transition from one leader to the next. Succession planning is challenging in almost all types of organisations: some leaders are reluctant to leave, others have not identified suitable successors, sometimes there is a power struggle. The list is long. Succession in family business is further complicated because of the family. Sibling rivalry, clashes for control, unpreparedness, reluctance by the successor, selecting the wrong successor culture (patriarchal) are just some of the challenges in family business succession. This contributes to the low transition rate of family businesses from one generation to the next.

In our main article on succession, our guest author, Rochelle Clarke, states the importance of business succession planning, and the 3 pillars that are necessary for a smooth transition to happen. We also feature an article on the merits of Mediation as an effective alternative dispute resolution mechanism. Conflicts in families have sadly led to the demise and closure of otherwise successful family businesses. In many instances, the conflict could have been resolved through mediation. However, as the appetite for litigation is increasing, many families opt to take each other to court. This has resulted in the destruction of relationships between family members in addition to the companies.

As we look towards 2021, we have to be optimistic that the economies will rebound and that even though the Corona virus may be with us for a while longer, its effects on society will abate as we continue to adapt. I take this opportunity to wish you Happy holidays and commend you for your resilience through a very trying year. I hope that in 2021, we can all bounce back and make it a good year.

JOE OKELO

Chairperson - Association of Family Business Enterprises

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WHO WE ARE

The AFBE was founded in 2015 to strengthen the success of family businesses over generations. We provide family businesses with a safe space to share experiences, challenges, skills and knowledge and address common issues that family businesses face.

MISSION

To provide a nurturing, enriching and empowering environment through which Family-Owned Businesses can flourish over generations.

OUR VISION

To promote and support family businesses to prosper into future generations.

Family and business is a publication of the The Association of Family Business Enterprises (AFBE)

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Why every family business should be part of a network of family businesses

BY ANTOINETTE WA- TINDI

The family is defined as the basic unit in society traditionally consisting of two parents and their children. Most people will site the family as the single most important influence in defining their, values, work ethic, tenacity, relationships and the list can go in. Most successful family businesses small and large will equally attribute these same traits as contributors to their prosperity. The Association of Family Business Enterprises was founded in 2015 with a mission to promote and support family businesses to prosper over generations. Over the past five years in our interactions with family businesses locally or internationally, the one reoccurring theme that continues to be articulated is the value that family businesses have derived from being part of this form of a network.

Some of the feedback we have received is :

“Has helped us look at how we run our business and what we need to do to ensure the business continues even after the founder is no longer at the helm.”

“We have been able to start putting our succession plans in place.”

“The activities and conferences are very informative with engaging panel sessions with great topics “

“Since joining we have learnt a lot and have been able to engage experts to help us put things in place for the business and the family.”

“We have learnt a lot on topics like Wills, Governance “

“The forums have helped us address difficult issues which we had been struggling with.”

“Been able to attend family business visits those of our fellow members and international ones, we also have met with founders who have shared their journey.”

We at AFBE believe that it is important to continue to be a source of information for members especially during these unprecedented times .We shall continue to promote and address issues that affect family businesses and remain at your disposal .

For more information on the association and how to join visit our website **www.afbekenya.org** To join us click on the link **https://afbekenya.org/online-application/**

About the author:

Antoinette Wa- Tindi is the Co - Founder, Manager - Partnerships & Memberships at Association of Family Business Enterprises.

Escaping the Family Wealth Tragic Circus!

BY REV. GEOFFREY NJENGA

"Tragedy is a tool for the living to gain wisdom, not a guide by which to live"

JOHN F KENNEDY.

The cruel tragicomedy

Were it not so tragic it would be hilarious and perhaps even morbidly fun to watch! It's a cruel tragicomedy punctuated by a desperate ending that often shifts to the sequel production illuminated by loss and destruction and even needless and senseless deaths. We are talking about the fight over family wealth which happen with predictable familiarity today.

The plot is simple. The journey often begins with humble folks who start life at the bottom. They break their backs to gather material wealth. Tots come to grace the home as well. By and by lady luck smiles on them and the family begins to enjoy the good things of life. They are the envy of those who live in humbler circumstances many of whom have hardly enough to hold skin and bones together.

The circus begins!

Then it happens! The old folks pass on. And now the circus begins. All the demons of hell descend on the family. The fangs and the claws are bared as the siblings go for each other with hammer and tongs to grab their share of the family wealth. The march to the abyss has begun in earnest and will soon accelerate as the "learned friends" come to chaperone the herd to the courts of law to dance the dance of death as the hapless souls tear at each other with abandon. The accompanying orchestra of the drums of hell beat with the familiar tone and rhythm calling their own.

The orgy of destruction is on as jealousies, egos gone awry and unbridled greed are loosed from the dark. It's hard for onlookers to understand this madness! They can cannot relate and only shake their heads in sorrow. It will invariably end badly, after many wasted years. Then these warriors, once the envy of many, will fall one after another destitute and disoriented. The powers of darkness will sing the song of triumph. Just wait and see.

The drama is difficult to miss as it repeats itself in our midst with cynical regularity. The hope invested in the progeny of the founders is now a sure curse. A cruel epitaph to the old folks and gross betrayal of their labor of pain. An ancient Greek philosopher once said "the gods first make mad whom they wish to destroy!" Oh how true!

Truth is.... "

We have been told that courts of law will give us justice and so we troop there in hordes. No, not so for the family. Truth is, a win against a sibling is pyrrhic. At the fall of the gavel, bitterness and anger will spike to the skies whoever the "winner" is. The chasm in the family will widen. The golden blood cord is shattered.

You can raise the paper judgement against your blood in empty triumph. You will soon learn the bitter truth: the scarlet cord can never be replaced by expensive toys and trinkets or tracts of land and real estate. The

Photo/iStock

only true winner in this cruel duel are the "learned friends" as they troop to the bank all smiles. But then the laborer is worth his pay, isn't it? And an ox must not be muzzled while threshing grain.

You know what! The court will determine the matter on rendered facts. But those who know will tell you that facts and the truth are often different. So called facts can be created and dressed so well that the fake looks real. The courts can determine a matter but not settle the dispute. The difference between the two is gargantuan. As the so-called wheels of justice chug on, the multiple injunctions and numerous caveats flow fast and furious from all sides grinding the estate to a halt. The goose with its golden eggs is cooked. Sounds familiar? So what to do?

Your Escape Route

We have neither the space nor the time here to tell why the court cannot settle the matter between blood relatives. Courts of law were designed to decide right or wrong and declare the winner and the loser. And that the arbiter must do. Inevitably, when the gavel comes down, the family is left holding on to nothing. The ultimate prize slipped out of their grasp. There is no winner after all.

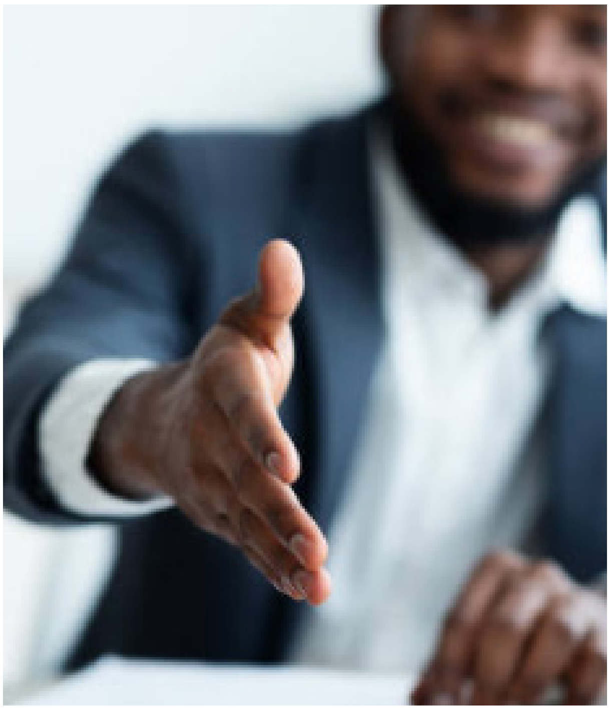
Truth be told disputes are inevitable in human relations. Every family has its own share of disputes. Family feuds are the rule and not the exception, I dare say. You can choose the rule of the jungle and strike your brother to get the goods. But is there another way? Yes there is.

There is another way to help re-stitch the family fabric and achieve sustainable peace. You don't have to agree on everything just because you have same blood running in your veins. Same blood does not condemn you to like or even love each other. Each can go their way, but in peace and not in pieces. How can this be?

Come let us talk....

Mediation holds the secret. This is the sure system to help each party negotiate their interests. The mediator will hold your collective hands on the tried and tested road to negotiated peace. The first step is to choose to come to the table and talk. These discussions are always held in a private and secure location thus wisely avoiding the circus of the court. Everybody is given an opportunity to talk and express themselves uninterrupted and unhindered.

You will talk with each other and not at each other. Everyone's point matters. Being given a chance to be heard brings therapeutic relief that heals the heart.



The facts are examined carefully and the solutions emerge within a short time, sometimes even in a few weeks. When people talk great things can happen. I have seen it happen countless times.

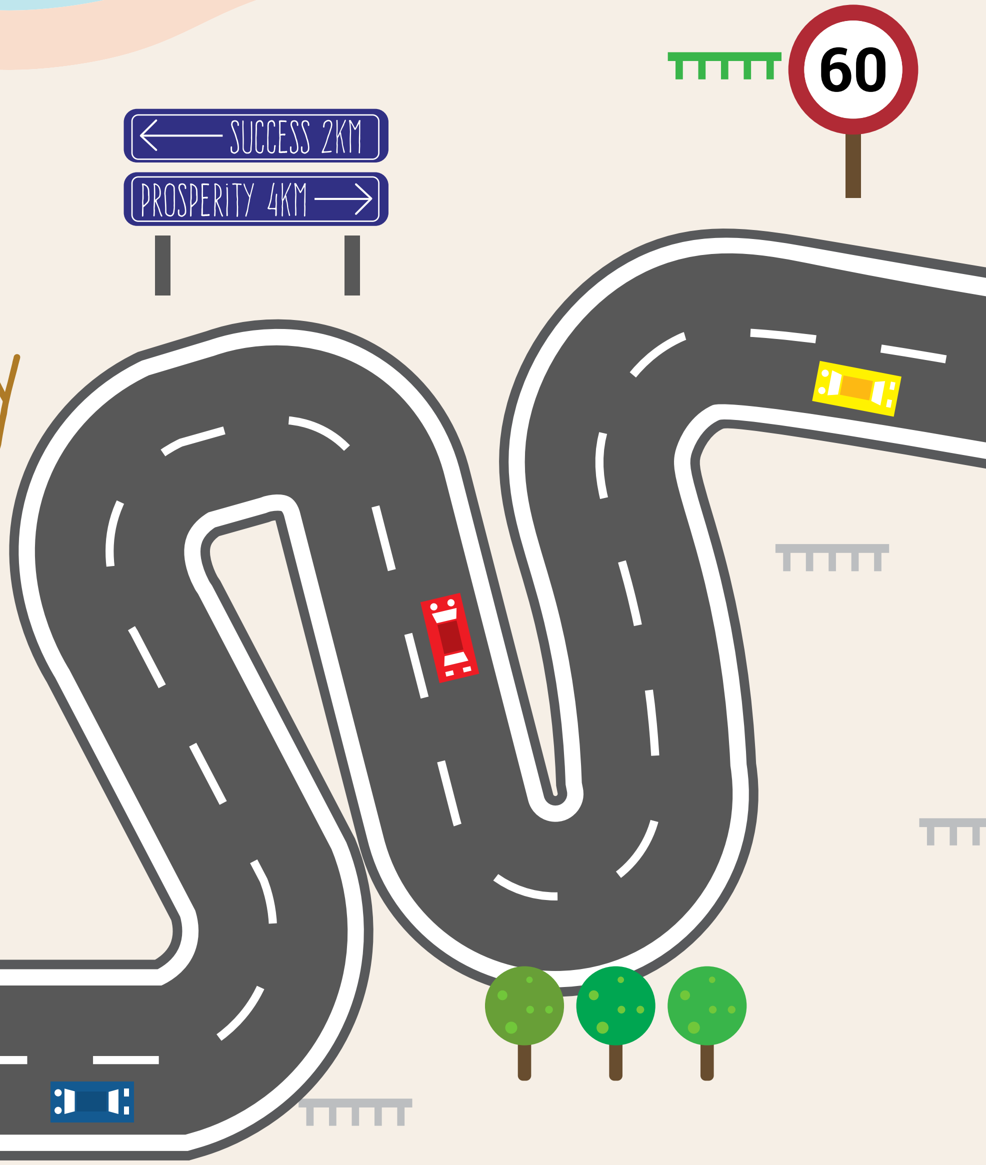
Saving time saves money. Coming to the table and talking to pursue your real interests gives you peace which is irreplaceable. You will live longer and more fruitful live if you have peace. You can live at peace with each other when you define what is important to each other. This is the secret of mediation. Mediation is not about apportioning blame but planning for a better future which you deserve. As you settle in peace here below, the folks over yonder will be all smiles!

You don't have to needlessly destroy each other. Mediation is the sure way of escape out. But the choice is yours! Come let us talk.

About the Author

Rev Geoffrey Njenga is a Chartered Insurer (CIL of London), Professional Accredited Mediator: Kenyan Judiciary. A founder director of Dispute & Conflict Resolution International (DCRI).

THE ROAD...
...TO PROSPERITY



We invite family business owners to join the association of family business enterprises, a unique forum for family business owners to engage with one another.

As an AFBE member you will enjoy the following benefits

- Workshops, webnairs and training
- Annual conferences and workshops
- Networking events
- Access to information materials and professional advisory services
- Mentorship programs and linkages
- Representation in governemnt, advocacy and lobbying
- Next Generation programs

Join us today by registering on www.afbekenya.org
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Association of Family Business Enterprises

Why even entrepreneurs cannot afford to ignore business succession

BY ROCHELLE CLARKE

Photo/Istock

There aren't too many entrepreneurs out there who would identify themselves as "family business owners."

Why not?

For one thing, entrepreneurs are leaders, and leaders tend to walk a lonely road. The road to startup glory is paved with long hours spent dreaming and scheming in isolation. When your entire world is focused on churning out a viable product or service, it's hard to imagine anything beyond its launch and the subsequent day to day survival.

But, imagine you must.

In the UK, two-thirds of businesses are family-owned—that's 4.8 million businesses in total. In the U.S., that number rises to about 85%. The story is not different in Africa. Accounting for around an estimated 75 to 85% of the business across Africa, family-owned companies remain the essential backbone to most African economies.

Those numbers point to the **probability** that, should the business survive, it is highly likely that it would be a member of the entrepreneur's **family** who would be in control. Entrepreneurs are therefore the first generation and foundation of a family business.

So what? What does this have to do with entrepreneurs today?

As a company that specialises in helping family businesses successfully transition from one generation into the next, we at Succession Strength have seen what happens when owners fail to envision and start planning for the future. Entrepreneurs, eager to maximise their young business' slim odds of survival, are much more likely to not have the luxury of a long term, generational view for their business as they focus on the operational pressures of today.

The pains of running a business along with the complexities of family dynamics make it easy for companies to put off key conversations about succession. If an owner dies unexpectedly or retires, however, these businesses quickly find themselves in the midst of a leadership crisis.

This is fundamentally a cultural problem. It starts in the earliest years of the company when the future is bright, business is busy, and the motivation to think about succession is all but nil.

Silence becomes the status quo, and no one bothers to ask the question: who will carry the torch after our founder is gone? Weeks become months. Months become years. Years become decades. And, all of a sudden, **someone** needs to step up and take over the company. There's no time for a long, careful crafted succession plan or process. The company's under the gun; we need a new leader—**today.**

The three pillars: a cultural foundation for successful transition

If the trouble with the under-the-gun approach to succession isn't immediately apparent, consider this: 70% of family businesses will fail to transition into the second generation.

To put it bluntly, the deck is already stacked against family businesses at transition time. If owners plan on building a business that survives into the next generation, they must begin by laying a solid cultural foundation upon which regular conversations about future succession can be based.

If they do not, then as the years pass, family members move into the business, and relational dynamics will solidify around a few key players and relationships. The sheer power of inertia will prevent family members from taking the necessary steps towards effecting a thorough transition plan.

As we often tell clients, the foundation for a successful succession transition centers around three pillars:

- **Communication** – The hardest part of preparing for transition—whether in the short- or the long-term—is making time and space for conversation. By openly and frequently discussing continuity, however, entrepreneurs can create a culture in which these conversations happen as a matter of course.

- **Preparation** – Communication is vital, but talk is cheap unless and until it is put into a concrete plan of action for the future. At a minimum, this includes a written set of guidelines outlining the operational details of your business' operations as a part of a business continuity plan. It also includes successor identification and the creation of intentional pathways for leadership development.

- **Execution** – To ensure success, business owners need to plan for how they will execute their transition plan. When the time comes for an owner to step back from the company, it is critical for clear expectations to be set, benchmarks defined, and structures put in place that will hold the new leader accountable to incumbents' and stakeholders expectations.

Conclusion

Entrepreneurs are world-builders. They see a need in the market, and they forge ahead to see that need satisfied. In the process, they make the world a better place for themselves and their customers.

But, in the midst of all that world-building and place-making, entrepreneurs fail to plan for that day when the business no longer needs to be built but preserved and passed on. The business' place in the economy will no longer need to be made, but kept.

When that day comes, what will the ensure the survival of the organisation? Who will be prepared to take up the torch and carry it into the next generation?

If you are a business owner and you are serious about building a business that lasts, then you cannot lose sight of the fact that your successor will more than likely come from within your own family. It is never too early to start talking about and planning for that future reality.

In partnership with the Association of Family Business Enterprises (AFBE), Succession Strength will be bringing our Business Continuity, Communication, Governance and Successor Preparation solutions to help enterprising families in business do just that.

About the Author

Rochelle Clarke is the Founder and CEO of Succession Strength, a company that helps family businesses assess their succession readiness and prepare for successful business transitions.

The Mauritius Shareholding Trust (MAST)

A novel way to hold your shares in Companies

© Freepik

BY SAYYAD KHAYRATTEE

We are living an unprecedented period with the unfortunate Covid-19 situation in the world. We must deal with circumstances going out of hands with little time to prepare and plan, and certainly most of us would have wished that we could have planned things sooner and perhaps differently. Predicting the future has become a real challenge. We never know when another crisis could hit us. Take for example clients who have established companies in Mauritius and hold their shares in their individual name. The vast majority of them tend to overlook the potential consequences in respect of their shareholding upon their unfortunate demise. In such cases it is wise to consider the fate of their shares with a view to ensuring that the process for the transmission of their shareholdings to their heirs is as seamless and straightforward as possible. This requires careful thoughts on succession related issues and the ways and means to address them.

Succession process is triggered by the death of the person. In a nutshell, it is the legal process by which heirs are designated (by law or will as the case may be) and the property composed of rights and obligations of the deceased is shared amongst them. A succession can come in two forms, namely (1) Succession ab intestato (succession to the property of a person dying intestate/without a will) or legal succession; and (2) Succession by will or testament. It is to be noted that if the succession is governed by Mauritian law, there are some mandatory provisions on the determination of the heirs and their share in the property of the deceased which cannot be excluded even by a will.

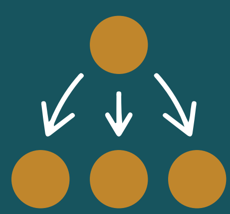
Under Mauritian laws, the law applicable to the succession is that of jurisdiction of the domicile of the deceased *(Lex Domicilii)* to be understood as the place of last domicile of the deceased (the country of permanent residence of the deceased) and should not be confused with the place where the death occurred. This being said local law rules may apply (i) for conservatory measures taken to protect assets during the succession process or (ii) in respect of the transfer formalities to be completed to give effect to the succession where the property is located in a different jurisdiction.

We will consider below with the scenario of a succession opened under a foreign law, out of which shares in a Mauritius company have to be transferred to the heirs.

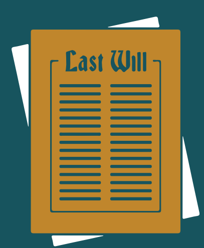
Under the Companies Act 2001 of Mauritius ("CA 01"), a share in a company is considered as a movable property. At this stage, it is equally significant to consider the

SUCCESSION PROCESS IS TRIGGERED BY THE DEATH OF THE PERSON.

A succession can come in two forms



1. Succession **ab intestato** (succession to the property of a person dying intestate/without a will) or legal succession.



2. Succession by will or testament.

process under which a share in a company can legally be transmitted to the heirs, and the CA 01 provides that:

- The heir of a deceased shareholder may transfer a share even though the heir is not a shareholder at the time of transfer and such transfer of share will be valid as if he had been such a shareholder at the time of execution of the instrument of transfer; and
- Before entering a transfer as mentioned above, the directors of the company may require production of proper evidence of the title of the heir of the vesting order.

As such, it is important to identify the heirs of the deceased, and the succession process will depend on whether there is a will, or the person died intestate.

Where there is a will, the shares held by the deceased in a Mauritian company cannot be validly transferred to the heirs until a grant of probate has been obtained by the court of domicile of the deceased. A grant of probate is a legal document which confirms that the executor (the person authorized to deal with the deceased's property) has the authority to deal with the deceased person's assets and he will be administering these assets in accordance to the will. Once this is granted, in addition to a copy of the will being provided to the company, a legal opinion from a lawyer in that country will be required to:

- Advise on the grant;
- To provide confirmation and verification of the laws of inheritance at the date of the death of the person;
- Confirm who are the executors and heirs of the deceased under the terms of his will;
- To give further confirmation of the residence and domicile of the person at the date of his death.

Upon receipt of all the above, the secretary company in Mauritius will be able to do the needful, including advising the Registrar of Companies, for the transfer of the shares to the heirs.

Where there is a no will, the shares cannot be validly transferred to his heirs until the requisite procedures are undertaken in the law of domicile to designate the heirs and tackle the other issues related to the of succession ab intestato such as the sharing of property amongst the heirs. In some countries, provisions exist for the grant of letters of administration or affidavit of succession. Once these procedures are completed, provided there is a legal/court document confirming the heirs of the deceased, accompanied by a legal opinion by a lawyer of the country, the company will be able to do the requisite to transfer the shares to the heirs including advising the Registrar of Companies.

In both scenarios, the process of succession may be lengthy, costly and complicated and becomes a

real burden on the heirs. This is where the MAST, as introduced by AXIS, comes as an effective solution. The MAST is a Trust established under the laws of Mauritius (the Trust Act 2001) and is a Trust which is specifically set-up to hold the shares of the company for the benefit of the individual and his heirs/family. MAST, which is very easy, quick and cheap to set up and maintain, will effectively become the shareholder of the company and its most interesting aspect is that it can give the complete freedom to the settlor (the former shareholder) to deal with the shares as if he was a shareholder in his own name.

MAST will also cater for the names of beneficiaries (the shareholder can appoint his heirs) and in the event of demise, there is no impact on the structure, as the MAST will remain the shareholder of company for the benefit of the beneficiaries. Thus, the succession issue is successfully tackled without any burdens (as mentioned above) on the heirs and it avoids the cumbersome legalization, registration and cross-border enforcement formalities associated with either a foreign will or in a case there is no will. In the same way as MAST may be used to hold shares in Mauritius Companies, it may also be used to hold business interest in companies worldwide outside of the domicile of the client.

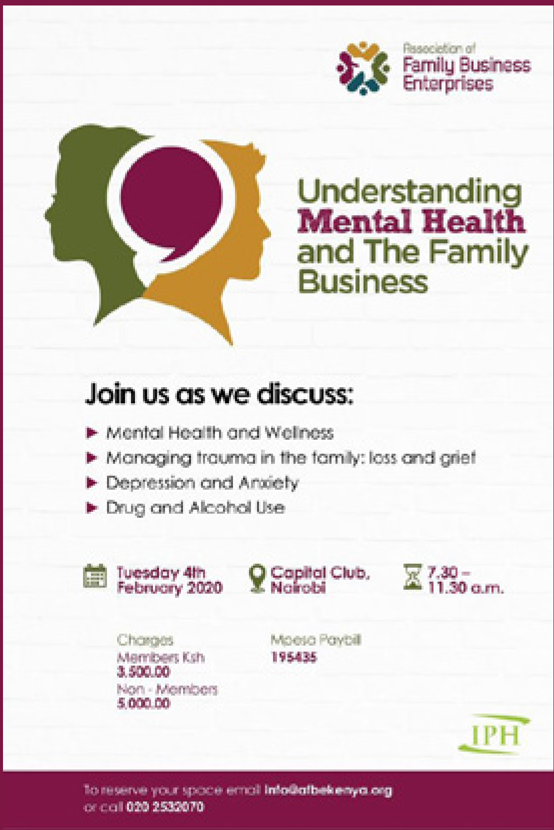
Covid-19 has taught us lessons that things can change dramatically without the least expectation. Just like the struggle in the fight against this pandemic, it is imperative to plan ahead for the protection of your business. A MAST can certainly become your mask of protection and help you protect your companies by having an effective succession planning without undue burden on your heirs.

Please contact us to receive a detailed factsheet on the MAST and reach out to us today to assist you in setting up one!

About the Author

Sayyad Khayrattee is the head of Business Development and Marketing, Axis Fiduciary Ltd

2020 highlights



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