

By: Florian Meyer

### Past Issues

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*Attracting and Retaining Top Talent in 2022*

#### May 2022

*Who is Addressing the Elephant in the Room?*

#### April 2022

*Can You Run Your Business and Sell It Simultaneously?*

#### March 2022

*Business Management Theory: Company Purpose, Culture and Values*

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*You Sold Your Business. Now What?*

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*Employee Benefit Plans – A Hidden Intangible in the Sale of a Company*

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*Understanding the Most Common Types of Buyers*

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#### September 2021

*Trust and Secrecy When Selling Your Business*

#### August 2021

*Are You Running an Owner-Dependent Business?*

#### July 2021

*How to Exit or Transfer a Business Successfully*

*I will start by exploring how you might be exposed to undue credit risks. Today I met with two consultants, much like most of us, and asked; if they have incorporated their consulting practice. They both said yes. Then I asked if they had a Holding Company, and they both said no. In both cases they had quite a bit of cash in their Operating Companies and were hoping this would start to fund their future pension. However, what if someone is not happy with your services and decides to sue you, is your hard-earned cash protected? In the operating entity it is not. However, if you had a Holding Company you could dividend up to that company tax free and your nest egg would be protected from people that want to sue you for any reason.*

Many business owners have all their corporate assets in one company. What happens when that company is sued for some unforeseen reason? All the assets in that company are now at risk. Is this risk worth taking, or is there something you can do about it?

I recently worked with a company that had five operating businesses in one corporation, which made the performance reporting of each business difficult to understand and gauge. If one of these business units got into any type of financial difficulty it could collapse the entire corporation and all the other businesses inside it. In this case, the construction arm of the business got into trouble the previous year and wiped out all the equity on the Balance Sheet.

All owners of private companies should incorporate a Holding Company (Holdco) that would own the operating entity. The Holdco should own all the operating assets (i.e., manufacturing equipment), any intellectual property, and any surplus funds not required to operate the business.

This means that the Operating Company (Opco) would not have any significant assets, technology or surplus cash on its books. The only things it would have are employees, inventory, AR and AP. The rest should be leased with a contract and payment terms from Holdco.

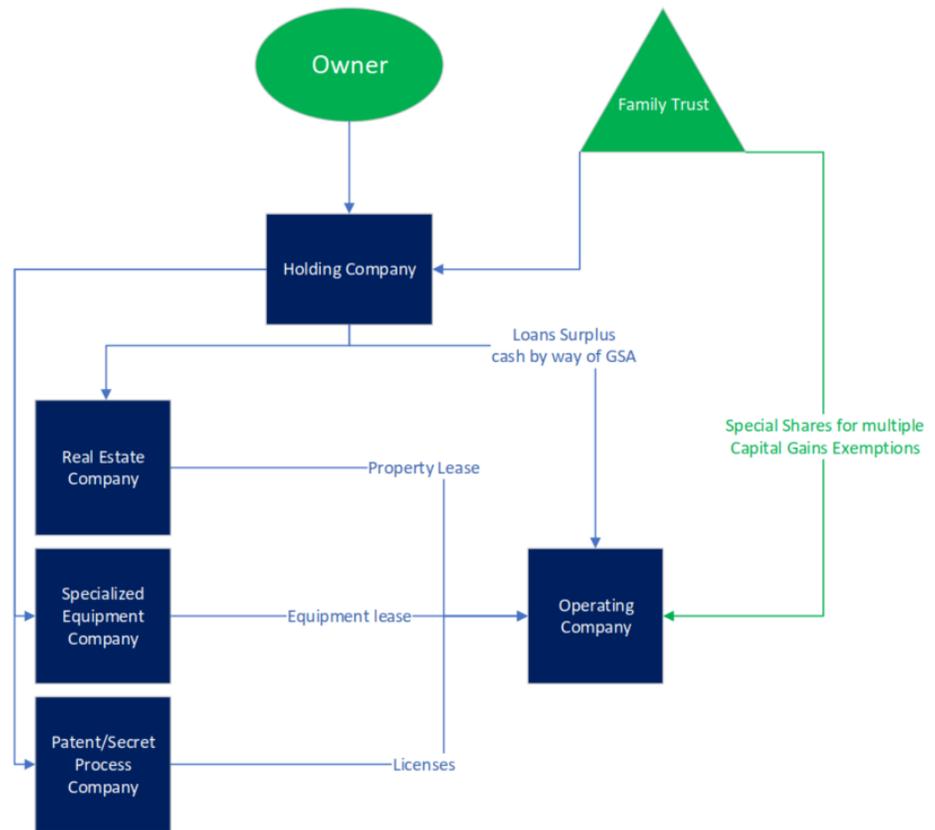
Here is another thing to consider. If Opco required funding, the monies should be lent from Holdco to Opco with a security agreement specifying interest rates and repayment terms. This may not allow you to be ranked ahead of the banks, but it would clearly have you ranked ahead of all unsecured creditors.

At another company I worked on, the building and land were owned by Holdco but the technology and machinery resided in the operating entity. If Opco got into trouble, we ran the risk of losing our intellectual property, which was used to produce most of the items that we manufactured. When we asked the external accountant if the intellectual property should be protected, they had not considered this matter since it was old and not recognized on any Financial Statements. Therefore, if we had lost the IP, we would have been out of business.

This whole area of risk mitigation can get complicated and may require lawyers and tax specialists, depending on the size of the business. Taking these steps is worthwhile, especially since we are becoming more like the United States -- very litigious and suing everyone in sight.

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Depending on the business and its complexity, a structure to minimize risk and taxes could look similar to this:



## Bottom Line

Each Business is unique and a careful assessment must be conducted by Tax Specialists, Accountants and Lawyers to effectively meet the needs of each business and to minimize risk and maximize tax savings.

## About the Author



### Florian Meyer – Partner, Newhouse Partners Inc.

Florian has been involved as an interim Chief Financial Officer for companies that are looking to grow and be more profitable over the past twenty years within Newhouse Partners Inc. The areas that this consulting practice works on are: steps in as the interim or part-time CFO to act as change agent to maximize growth and profitability opportunities for the organization, and as a director on their Board or member of their Advisory Board.

If you have any questions about risk mitigation, please feel free to contact Florian at (416) 873-8684 or [fmeyer@newhousepartners.com](mailto:fmeyer@newhousepartners.com)

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