BUILDING A SUSTAINABLE BUSINESS

GLACIER BY SANLAM

The Anatomy of Estate Planning

Taking a holistic view of one's estate that looks at a host of minor and major issues is essential to maintain a healthy estate and protect you and your business interests.

Many business owners are so busy growing their business that they never take the time to think of the consequences for their families in the event of their death. But, according to Tiny Carroll, estate planning specialist for Glacier by Sanlam, they also need to consider the impact that their death would have on their businesses, as well as their surviving family members.

It is not only death a business owner needs to plan for as there are a number of other events that occur throughout their lives that, if not properly planned for, could harm the financial security of their businesses and families.

The purpose of estate planning is to assist the business owner in accumulating wealth, protecting that wealth and the eventual onward disposition of that wealth, usually across generations. The estate planning process highlights the various issues facing a business owner and how to plan adequately for these. In addition, explains Carroll, estate planning is not a once-off event instead it is an ongoing process which develops over a lifetime.

"A person's estate plan needs to be reviewed at least annually or as their circumstances change – whichever is shorter," he says.

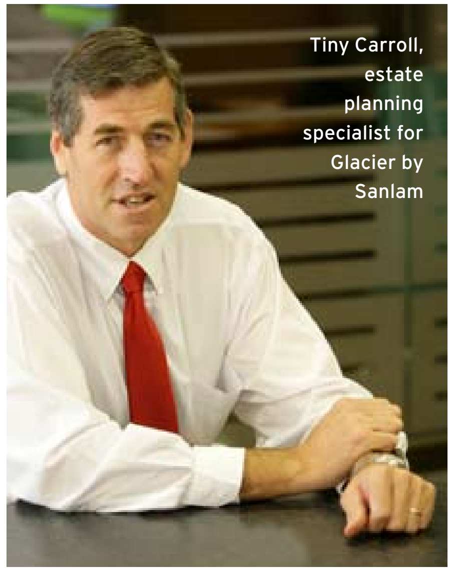
How it works

All the relevant information is collected from a client in terms of their estate. This includes existing policies, trusts and personal assets, antenuptial contracts, buy-and-sell agreements etc. An estate planning specialist will also listen to and address a client's concerns and their wishes for their estate, says Carroll.

Based on the information provided, an estate plan is crafted to meet the client's individual wishes.

Estate planning must be a personalised service aimed at providing advice to the client on where there are "gaps" in their current estate against the background of the existing legal and tax environment.

Once the strategy has been agreed to, the specialist must be in a position to implement



Tiny Carroll, estate planning specialist for Glacier by Sanlam

the strategy. Often this is undertaken in conjunction with the client's existing advisers, including his financial adviser, attorney or accountant. "The sooner one implements a strategy, the more it will benefit the estate going forward," adds Carroll.

A tale of two clients

Carroll explains the benefits of early estate planning on the basis of two clients he happened to meet on the same day. While both the clients had access to assets of more or less the same value only one of the clients had undertaken and implemented estate planning advice he acquired some years earlier. The difference was that the client who had not undertaken any estate planning would be liable for R5 million more in duty and estate expenses than his counterpart. Thus, he quips that an entrepreneur who works to age 65 will have spent 77 000 hours building an estate. If he doesn't spend at least two hours with an estate planner he could deprive his family of R5 million.

A holistic 'life view'

The considerations that are important in estate planning are:

1 Business structure

When starting a business, the owner has to decide which business entity to use. Are you going to conduct the business in your name or through the mechanism of a CC, private company or trust? If it is attached to your personal estate and the business goes under, your personal wealth will go under with the business. If you die the business assets will be frozen while the estate is finalised. This could result in the loss of important contracts and even the forced sale of the business and its assets in order to meet estate commitments.

Trusts are sometimes used as business structures but getting trustees to agree to day-to-day business transactions is usually not practical.

2 Marital regime

For business owners who marry after starting their business, consideration should be given to getting married out of community of property with accrual. The antenuptial contract should ideally exclude the business from the accrual calculation.

If you are married in community of property your spouse owns 50% of the business. If you later want to sell the business, you will need your spouse's consent. Regardless of whether or not you have a buy and sell agreement in place, it is invalid if you don't have consent from your spouse.

3 Children

If you plan to send your children to university, have you saved for their education? Questions you need to ask yourself are: Have you established a trust to look after your children if something were to happen to you? Have you appointed legal guardians to care for your children? If your will states that your children will inherit your business, have you made provision in case they are still very young when you die? You also need to protect your children's inheritance through buy and sell agreements.

4 Divorce

Depending on how you were married, this will have an impact on your business. If your husband/wife owns 50% of your estate you are placing your business at risk when you get divorced. You need to look at your business structure and consider ways of protecting both the assets and the matrimonial asset.

In the event of divorce, retirement fund benefits are treated as an asset for the purpose of dividing a matrimonial estate. The non-member spouse is entitled to a share of the member spouse's benefits in a retirement fund.

For the business owner who has lost half of his/her retirement, an estate planning strategy will include methods of addressing the need to build up retirement capital again. This illustrates that estate planning must necessarily go beyond death, wills, and the like.

5 Insolvency

The business entity chosen may have an effect on your personal estate and wealth. The purpose of estate planning is to protect your personal wealth in case of the business becoming insolvent. Typically, you will separate high risk assets from lower risk assets. In this way your family will be protected in the event of losing a business. If you are a sole proprietor your personal assets could be protected by holding them through a vehicle like a trust. It is incorrect to think that if you are married out of community of property that you can protect your personal estate by transferring your assets to your spouse's name. The assets of both spouses can be attached and the solvent spouse will have to prove which assets are his/hers.

6 Retirement

If your business is your only retirement plan, you may be basing your retirement on a high risk asset. You need to consider the future of your business – particularly whether or not it will be able to continue running without you. Will it run as well as it does under you with a new owner? If you are the business, the income from that source will eventually dry up on your retirement. Also the value of your business may decrease on your departure, thereby affecting the income you or your surviving family will receive from the business.

7 Current structures

It is important to look at all the current structures in place and determine whether or not they are all aligned to your best interest. For example, buy and sell agreements entered into with co-owners have to be enforceable. In this regard they need to be up to date particularly as regards values and the assets underlying the purchase/sale.

For example parties who are married in community of property will require their spouse's consent when entering into an agreement. Failure to obtain this consent could lead to the agreement being regarded as invalid.

"A competent plan is not only about wills and trusts and the like but a thoughtful estate plan is in fact more a continuous transaction due to its complexity and the extent of the documentation and expertise required."

– Etienne Swannepoel, Webber Wentzel

8 Offshore

Only applicable to clients with offshore assets, the estate planning specialist will advise on how to deal with an existing will. The question arises as to whether you need a will dealing with your worldwide assets or whether it is necessary to have a different will for each jurisdiction in which assets are situated. Generally, it is advisable to look at the jurisdiction where the assets are. Some jurisdictions have laws which determine who may inherit from you. It is advisable to obtain advice from experts in these jurisdictions before finalising your will. Where you do make use of wills in each jurisdiction you need to make sure that the one will doesn't inadvertently revoke the other.

9 Emigration

If you as the business owner decide to emigrate and leave the business generating income it is remitted offshore as are company dividends. If your children have moved overseas but never formally emigrated, they are still regarded as South African residents for exchange control purposes.

If you leave your estate to your child the assets cannot go offshore until they have gone through the formal emigration procedure.

10 Disability

This is one area of financial planning that is ignored at your peril. Questions you need to ask yourself are: Have you made provision for disability? Does your buy and sell agreement cater for disability? Is your family protected in the event of disability? Can your business carry on if you are disabled? You also need to consider, if you have a stay-at-home spouse, the impact of them becoming disabled or dying.

Taking time out of your business day to look after small children could affect your profitability over the long term and consideration needs to be given to finding someone who can take over these responsibilities. □

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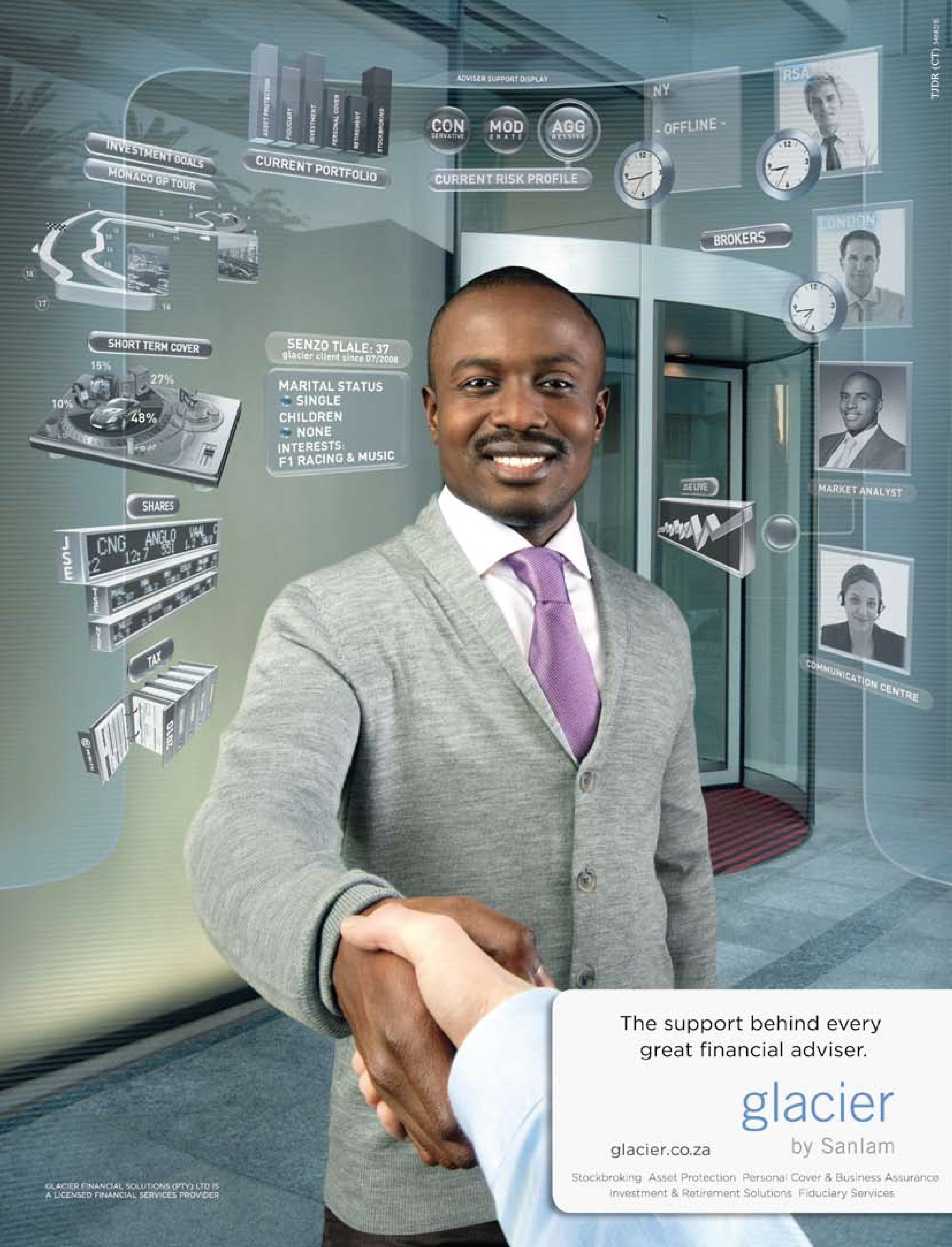
READERS ARE ADVISED TO CONSULT THEIR ATTORNEY AND/OR FINANCIAL ADVISOR PRIOR TO PURSUING ANY INVESTMENT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