

Can a trust preserve family harmony? Ten practices to improve the odds

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Asian families say they value family harmony, but they often do not do anything to invest in it other than hold frequent family gatherings. How do you make family harmony an enacted value, one that is practiced rather than just preached? This takes effort and involves leadership; an investment of time, money and resources in family relationships and building new skills. It involves ensuring there are structures and processes to support honest communication. Can a family trust structure help?

1. The family need to be more intentional

Family harmony is about family relationships. These are human relationships. A trust creates legal relationships. When you add a trust into the mix, there will be an overlay of legal relationships over family relationships, and it becomes more complex. Therefore adding a trust is going to make the goal of achieving harmony a more complicated one to achieve. When a wealth owner decides there are good reasons for using a trust structure, the family need to become even more intentional about putting in the work to make family harmony an enacted, not just espoused, value.

2. Design the structure to match the culture

There can be good reasons for trust structures, but they only work if the family have the capacity to understand and make them work. The family culture and family dynamics and emotions will not be suppressed by a structure. If there is destructive conflict within the family relationships, this will not go away by making them beneficiaries of a trust. Therefore an understanding of the family culture has to come first. Advisors should help design the structure around that culture. When you look at the family culture, do the family members have the capacity to be pooled together, to share joint beneficial ownership together? What is trust, communication and conflict like in the family? Have they ever worked together or been joint owners before?

3. Advisors should talk to the whole family

Often the settlor does not have an accurate picture of all of the family relationships. If you are an advisor working with a settlor to set up a trust, it is critical that you meet and talk to all of the adult family stakeholders. If you only talk to the settlor and you only see the family through his or her eyes you cannot accurately understand the family culture and capacity.

4. Widen participation in the design process

Ideally, the terms of the proposed family trust would be discussed as they are being created in one or more family meetings so that the adult family members can have a voice in the creation of the trust. Giving the family members a voice in the process is not the same as saying they are able to dictate the terms to the settlor.

5. Invest in developing collaborative skills

Take the view that the adult beneficiaries of a trust are the collective beneficial owners of the trust assets. If you are going to make adult family members the beneficiaries of a single-family discretionary trust it is important that they can collaborate together. Collaboration means sharing power together. Collaboration is a skill, and it can be developed through

family meetings, participation in family governance, family philanthropy and joint investment activities. Hire a coach to work with the family on their interactions.

6. Create a forum for the beneficiaries

One of the hallmarks of family enterprise continuity is that the stakeholders remain emotionally committed to the enterprise. Paradoxically, the ability of a trust to consolidate legal voting rights in the hands of a few means the default trust structure is one where there is no forum for the beneficiaries, and they do not have a voice. Without a mechanism to have a voice in the governance of the shared assets, they may become disengaged and disgruntled, and they will not be committed. Therefore there should be a forum to keep the adult beneficiaries educated about the business or investments and to give them a voice in their governance. This can be done through regular family meetings or creating a family council or a beneficial owners' council.

7. Invest in trustee-beneficiary education

A trust is a form of relationship between trustee and beneficiaries. You cannot have a good relationship unless the terms of that relationship are clearly understood by all the parties to it. Trusts are complex and the duties and authorities of trustees, protectors and other fiduciaries are not easily understood by lay persons. Even discretionary beneficiaries individually have to learn how to be responsible beneficiaries. There needs to be trustee beneficiary education. This is an educational programme that can be carried out on a regular basis through family meetings. It will include making sure the adult beneficiaries understand the terms of the trust and the roles and responsibilities of each party to the trust.

8. Make the protectors the judicial branch of the system

Asian families respect elders. Elders are often trusted non-family 'uncles' or 'aunts'. Elders can help to be a bridge between generations, and mediate when relationships are strained. Trusts have protectors who can change the trustee. Do not put family members into protector roles. View the protector role as being the judicial branch of the governance system the trust creates. The protector role includes informally mediating disputes among beneficiaries, and between beneficiaries and the trustee. Protectors should be trusted by the family, objective and understand the responsibilities of the trustees.

9. Make it possible to exit

Trusts prevent ownership fragmentation. However, disgruntled beneficiaries of discretionary trusts do not have anything they can sell if they want to exit. Lack of exit rights can lead to a loss of emotional commitment to the family enterprise. Emotional commitment is important to harmony and enterprise continuity. On the other hand, if there could be exit rights this would enhance emotional commitment and give a way to let off steam. Pruning the tree is a feature of long-lived Chinese family firms. If there were a conflict and if there were exit rights, you would have more options. Therefore design trust structures in such a way that an exit in return for a distribution is possible, albeit not an automatic right.

10. Use the trust to invest in family human capital

If a family can use the trust as a vehicle to invest in the personal development and growth of its family members, encouraging them to become successful, mature adults, who can stand on their own, while remaining connected to their family, they will be better at making joint decisions together and participating in the family governance in appropriate roles. Using the

trust as a platform to invest in the family human capital is another factor that will contribute towards a harmonious system.