Preserving the golden goose

CHRISTIAN STEWART DISCUSSES THE CASE OF THE YUNG KEE GOOSE RESTAURANT AND ITS LESSONS FOR FAMILY BUSINESSES

Almost all visitors to Hong Kong will know of the popular and famous Yung Kee goose restaurant on Hong Kong Island. The restaurant was founded in the 1930s by Kam Shui-fai and has built an enviable reputation as one of the best restaurants in the area.

However, the restaurant has been in the press recently for reasons other than its culinary delights. The Kam family has been embroiled in a family feud, as the two second-generation brothers, who became the main shareholders in the holding company of the business after their father's death, started litigation proceedings against each other.

The Kam family feud is worth serious reflection for family businesses in Asia, especially those contemplating the transition from first to second generation. This case can be held up as an example that Asian family-owned businesses should invest time in addressing the governance of the business and hold regular, facilitated family meetings.

Background

While the father and business founder, Kam Shui-fai, was alive his eldest son, Kinsen, ran the restaurant while his younger son Ronald ran property and investments and handled the back office. Each brother had his own function, and presumably in disputes Kam Shui-fai made the final decision and mediated.

When Kam Shui-fai died in 2004, five family members inherited the assets and shares of the restaurant: Kinsen was left with 35 per cent of the shares in the holding company; Ronald was also left with 35 per cent; their mother was left with 10 per cent; their sister (who did not work in the business) was left with 10 per cent; and their other brother (who also did not work in the business) was left with 10 per cent.

When the father died, it would be reasonable to assume that the older brother, Kinsen, saw himself as the head of the family and the business leader. It is also reasonable to assume that if Kinsen were very traditional and Confucian in his outlook he would not have entertained his younger brother Ronald acting as an equal or questioning his leadership.

On the other hand, the younger brother Ronald was reported to be a better businessman than Kinsen. Indeed, Ronald, his sister and the other brother (the two outside shareholder siblings) thought that Ronald was the better-qualified business leader. These three effectively ganged up on Kinsen; the two other siblings gave Ronald their shares, increasing Ronald's stake to 55 per cent of the shares and allowing him to gain control of the family holding company. At this point Ronald put his own son on the board of the company, and this allowed Ronald to control both the board and the shareholder meetings.

Once Ronald was in control of the board and shareholder meetings it appears, from the Court's records, that there was a total breakdown in trust and communication between him and Kinsen. Moreover, the Court records show that Ronald's behaviour was unprofessional as he attempted to further the gains of his own branch of the family.

Lesson one: family dynamics will change

The most important lesson from the Kam family feud is that family dynamics usually change when the founder dies and that the leadership model of the first generation will typically not successfully pass to the second generation. It should not be assumed that the oldest brother in an Asian family firm will be able to step into his father's shoes. Moreover, the second-generation business leaders have to learn how to be accountable to their shareholders.

Lesson two: develop a shared dream

A key point that stems from this case is that it is important that family members hold regular formal family meetings to discuss and develop a 'shared dream'[1] for the future of the business, ideally while the patriarch is still alive.

If the Kam family had held regular meetings, perhaps the brothers would have realised that they would not be able to agree a direction for the future of the business and that it would be better for them to go their separate ways.

In many family firms, an outside facilitator is required to help the family members reach a deeper, more honest level of communication, in order for them to work on a shared dream.

Lesson three: look at the work history

Another factor that should be reviewed is the brothers' working relationship while their father was still alive. If their past working relationship was based on each brother working on his own separate division, perhaps a collaborative working relationship should have been established and developed at the holding company level while their father was still alive. Attempting to establish a collaborative working relationship at this stage would also have given a fair indication of whether the brothers would be able to work together after their father died.

Lesson four: always have a shareholders' agreement

If the Kam family had drawn up a shareholders' agreement this could have resolved many of the issues in the litigation, e.g. how to value the holding company shares.

A shareholders' agreement would also have required any transfer or gift of shares to be carried out in a way that gave all shareholders an opportunity to preserve their pro rata shareholding interest, i.e. there would be pre-emptive rights provisions. In the Kam case the absence of such provisions enabled one brother, Ronald, to gain control.

In a family business, at the sibling partnership stage, the real value in creating a document such as a shareholders' agreement lies in the communication and planning ahead, rather than in its nature as a legally binding document.

When creating agreements and policies for family firms, the concept of fair process in decision-making is important.[2] If there is fair process in decision-making, family members will comply with family agreements and policies even if they are not legally binding. If there is an absence of fair process then, even if an agreement is legally binding, family members may try to ignore or challenge it.

Lesson five: use a professional mediator

The Kam brothers did attempt mediation of their valuation dispute before going to Court, but they used their *feng shui* master[3] to conduct the mediation. Needless to say, the *feng shui* master was not a professional mediator.

It is common for Asian families to refer, in the first instance, to a trusted, known party to help them mediate family conflicts. However, if the trusted party is not a professional mediator skilled in dealing with family business disputes and family dynamics, this could jeopardise the opportunity to resolve the conflict.

Families in business together should spend time developing their own process for resolving conflicts. Conflict within a family firm is inevitable and families have the best chance of navigating these conflicts if they have designed their own conflict-resolution process.[4]

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Lesson six: use independent directors

Another complicating factor in the Kam case was that at the holding company level there were no non-family non-executive directors to help mediate and bring objectivity to the dispute between the two brothers.

In a family firm, such non-family non-executive directors can play an important role in mediating disputes, by acting as mentors to develop the next generation of business leaders and providing the founder with objective feedback on the performance of – and relationship between – the family's children.

Lesson seven: ownership succession needs careful consideration

The Kam family feud also raises the question of the wisdom of leaving shares to outside shareholders, or at least demonstrates how these minority stakeholders can have a significant influence as holders of the swing or casting vote. If the founder had intended the eldest son to be in control, shouldn't that son have been given the majority of the shares?

Lesson eight: ask how the family can support the business

The power struggle between the Kam brothers ended up harming the business and the family. In this case the family members were unable to work out a model for the business that would preserve and grow its value.[5] Wise families that want to protect their golden goose should consider adopting the philosophy of always treating the business like a business and treating the family like a family. To protect a family business, the family members have to develop a healthy boundary that allows them to distinguish between family issues and business issues. ■

1. Ivan Lansberg, *Succeeding Generations: Realizing the Dream of Families in Business*, Harvard Business School Press, Boston, Massachusetts, 1999
2. Randel S Carlock and John L Ward, *When Family Businesses are Best*, Palgrave MacMillan, 2010
3. In English this can be translated to 'fortune teller'
4. Ian Macdonald and Jonathan Sutton, *Business Families and Family Businesses: The STEP Handbook for Advisers*, Globe Law and Business, chapter on 'Conflict management and dispute resolution' by Ian Marsh, of FamilyDr Ltd, UK
5. Private correspondence with Dennis T Jaffe PhD, author of *Stewardship in your Family Enterprise*, 2009